The petition bears 51 signatures and I certify that it conforms to the Standing Orders of the Legislative Assembly.

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

[See petition No 139.]

FREEDOM OF INFORMATION BILL

Committee

Resumed from 24 November. The Chairman of Committees (Dr Alexander) in the Chair; Mr D.L. Smith (Minister for Justice) in charge of the Bill.

Schedule 1: Exempt matter -

Clause 1: Cabinet and Executive Council -

Progress was reported after the schedule had been partly considered.

Dr CONSTABLE: I move -

> Page 73, after line 11 - To insert the following subclause -
>
> > (4) Matter is not exempt by reason of the fact that it was submitted to an Executive body for its consideration or is proposed to be submitted if it was not brought into existence for the purpose of submission for consideration by the Executive body.

This amendment is necessary to clarify matters touched on in last night's debate. The exemption for Cabinet and executive body documents is broad, but it must not include documents brought into existence for purposes other than Cabinet or the executive body. It is a matter of clarification. Therefore, under this amendment material which is not specifically created for Cabinet purposes, but incorporated into Cabinet documents, is not made exempt.

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

Mrs Edwardes: What does the Minister understand the amendment to involve?

Mr D.L. SMITH: Quite often Cabinet minutes relate to various reports which are created independently of Cabinet, but are presented to Cabinet for note or endorsement in some way. When a document comes into existence for reasons other than specific Cabinet purposes, the Cabinet exemption should not apply. If some other form of exemption applies to that document, so be it; however, the exemption should not apply because the document happens to turn up at Cabinet as part of Cabinet documents.

Amendment put and passed.

Clause 2: Inter-governmental relations -

Dr CONSTABLE: I move -

> Page 74, after line 3 - To insert the following -
>
> > Matter is not exempt under subclause (1) if at least 5 years have passed since the matter came into existence.

This places a time limit on documents relating to intergovernmental proceedings. No other State legislation leaves the exemption as open as is the case with this Bill. Therefore, this amendment proposes a time limit of five years, at which time the document will become available. This goes to the heart of the Royal Commission report and the issue of accountability. Five years is a reasonable time after which citizens should know about the deliberations of Government.

Mr D.L. SMITH: Obviously, this exemption precludes the disclosure of material between Governments when such disclosure may damage the relationship between those Governments. Also, a limit applies to the exemption when the material's disclosure would be in the public interest. In my view, if it can be shown that on balance it would be in the public interest for it to be disclosed, the information should be available immediately. If it is not in the public interest and one can simply say at the end of the five years that that information must be released, that is too short a time. The life of Governments in most

States is four years, and if they happen to overlap they can run for six or seven years. The Government has international relations with sister States and with other countries.

Dr Constable: Why is it necessary to keep this information secret?

Mr D.L. SMITH: We do not want violent arguments to break out between States in Australia, between the State and the Federal Government or between the State and neighbouring countries simply because matters become public which are in the nature of very strong exchanges of views on particular issues, which if they became public would damage the relationship between Governments leading to a lack of cooperation and damaging the public interest. The limit on exemptions in the public interest prevents that from happening. The other problem is if other States feel that information they give will be made public after five years regardless of whether it is in the public interest or not, they might not provide that information. For example, it would be of enormous concern to the Commonwealth if communications between the Commonwealth and the State Government at the end of the five years, regardless of whether it is in the public interest to disclose, became public information. If there were no onus to show it was in the public interest for the information to be disclosed, we would find that much important information which might be of value to the State would not be passed on to Western Australia because of the five year limit that the member for Floreat is proposing.

Dr Constable: We seem to be enshrining the status quo. We do not seem to be moving ahead in the spirit of the Royal Commission's report.

Mr D.L. SMITH: We should not be driven by the Royal Commission. I am not prepared to endorse the view that the Royal Commission is absolutely right in every one of its findings.

Dr Constable: I am talking about the general thrust of accountability in Government. We seem to be enshrining what happened in the 1980s.

Mr D.L. SMITH: We should not move into a position which disadvantages the State. The objective of freedom of information legislation is better government and better accountability to the people in the public interest. If one starts doing things which are damaging to good government by depriving government of information -

Dr Constable: Who decides what is in the public interest?

Mr D.L. SMITH: In this case the Information Commissioner decides what is in the public interest.

Dr Constable: That is the case only if someone knows enough to ask him to decide.

Mr D.L. SMITH: Yes.

Dr Constable: Yes, so how do you know?

Mr D.L. SMITH: The onus in this case is on the person seeking the disclosure of intergovernmental communications.

Dr Constable: It is a bit lopsided.

Mr D.L. SMITH: It is not lopsided; it exists for a very good reason. We cannot move to a position where the end result leads to bad government because information is not provided to us by other States or countries. All we would achieve is a breakdown in the relationship between us, other countries, other States and the Commonwealth just because very strong communications between State Ministers and Federal Ministers will become public knowledge. The media would love to be able to develop those sort of divisions, but as parliamentarians who are interested in good government we should not be encouraging those divisions between our State, other States, the Commonwealth and other nations because someone thinks it is a general principle that all of our dirty linen should be aired.

Dr Constable: Why are you worried about dirty linen? Why shouldn't the people know?

Mr D.L. SMITH: The media are not interested in whether it is in the public interest to disclose the dirty linen, they are interested in creating and publicising disputes and confrontations. If one takes the example of communications between the former Minister for Health and his Federal counterpart, one would not want him to have been constrained in the way he expressed his opinion because five years and one day down the track all the communications relating to Medicare between the State Government and the Federal

Government will be made public. For very good reasons a lot of information which supports the argument about what is wrong with Medicare may not be the sort of information -

Dr Constable: Why shouldn't it be a public debate? It might be in the Minister's interest.

Mr D.L. SMITH: The member would find that Ministers and others would be constrained in what they communicated and how forcefully they communicated it if they felt that five years and one day after they made the comment it would be in the public arena.

Dr Constable: I am talking about open Government and accountability. Why shouldn't it be a public debate; why should it be a private debate after five years?

Mr D.L. SMITH: Because it would destroy the strength of the debate by making people only write things which they feel they would be comfortable with if they were made public.

Dr Constable: What a strange mentality we have developed.

Mr D.L. SMITH: When dealing with one's neighbours one does not always tell them what one may think about them.

Mr Strickland: It is a bit like local council meetings in local government.

Mr D.L. SMITH: We are talking about the strength of debate on matters which are in the public interest and which, if they were public, would create divisions between this State and the Commonwealth or this State and other States. For example, cooperative arrangements between this State and South Australia or the Northern Territory in police surveillance or in other matters like moving fruit across borders. One would not necessarily want all of those communications to be out in the public arena as that may disclose operational matters.

Dr Constable: You have moved into the area of police investigation.

Mr D.L. SMITH: I am moving off police investigations into procedural areas with cooperation between States such as the question of stock control across boundaries, or disease control for fruit. That is hardly in the nature of criminal matters, but if people wanted to avoid it that they could. It might relate to the question of customs procedures for checking at ports and may or may not relate to the investigation of a criminal offence.

Dr Constable: Surely that would be covered by other legislation?

Mr D.L. SMITH: The member is saying she is not satisfied that if one cannot show it is in the public interest for those intergovernmental relationships not to be made public, they will be made public. The member wants carte blanche after five years and one day so that every communication between this State and anywhere else becomes public. That will be great for those people who want to publicise divisions, who want to publish the fact that Western Australia strongly disagrees with some aspects of the way things are done nationally, but it will hardly be conducive for people caught by that mechanism to repeat the process and provide information in future. We will find that less and less will be said in writing and more and more will be done by oral communication.

Dr Constable: It does not matter if it is in writing because nobody will know about it anyway.

Mr D.L. SMITH: If one were a journalist with a lot of time to spare, one could go down to the FOI commissioner and ask for all communications between Western Australia and the Commonwealth relating to financial borrowings of the State and approvals in relation to those matters.

Dr Constable: That is covered in other areas.

Mr D.L. SMITH: A journalist could ask for all that information and will get all that is available, notwithstanding the exemptions, and could sift through those to see what he could find. If he could find something which is damaging to the State's interest or to the relationship between this State and the Commonwealth, he could publish it and make a name for himself as a good investigative journalist. The information is available immediately if it can be shown to be in the public interest. The Government's aim is to protect the public interest.

Dr Constable: So we must pay for information?

Mr D.L. SMITH: Some of the media outlets such as News Ltd and others have reasonably

substantial budgets. They are quite capable of going on very good fishing expeditions with this sort of constraint. The amendment moved by the member for Floreat would sacrifice public interest for some sort of private interest. Accountability is in the public interest; and this legislation also provides for the public interest. However, the aim of the legislation will be sacrificed if public interest is disregarded altogether in determining when matters become public. Good government is in the interests of the community and is about strengthening the democratic system. However, legislation can jeopardise good government, frank exchange of views or good decision making - good decisions must be based on full and frank exchanges of information. An exemption which is limited to five years, which no other State, the Northern Territory or the Commonwealth has, would, as the member said, put Western Australia at the leading edge. However, we would be punished because those other Governments would not want to give Western Australia information because five years and one day later, if that information did not fit into one of the other exemptions, it would be made public.

Dr CONSTABLE: We both agree that we need good government, but I want to do it from an open stand point and the Minister wants to do it from a secrecy stand point. I do not think we will agree on this.

Mr D.L. SMITH: The member for Floreat does not understand the situation, perhaps because she has neither been in Cabinet nor in the position of wanting to exchange full and frank views with other States or the Commonwealth. She does not understand why sometimes it is necessary to do that in language which one would not be very keen to express, knowing it may be published.

Amendment put and negatived.

Clause 3: Personal information -

Dr CONSTABLE: I move -

> Page 74, lines 11 to 13 - To delete subclause (1) and substitute the following subclause -
>
> > (1) Matter is exempt matter if its disclosure would involve the unreasonable disclosure of information relating to the personal affairs of an individual (whether living or dead) other than the applicant.
>
> Page 74, lines 15 to 17 - To delete the lines.

Subclauses (1) and (2) conflict; my amendment will replace them with a clearer subclause which will be easier to understand.

Mr D.L. SMITH: The Commonwealth used to have the provision proposed by the member for Floreat, but has now rejected it and amended its legislation in accord with ours. The Commonwealth found that "personal affairs" was too restrictive a definition. It meant that information which people regarded as very personal and important to themselves could be made public because it did not come under the definition of "personal affairs" rather than "personal information". In addition, the public interest exemption would apply in this case. The combination of a narrower definition relating to personal affairs and the public interest test would mean that people must overcome two hurdles to restrain people from finding out what information the Government has on them. For many reasons involving policy formulation and controls of various social problems, it is important that the Government should hold personal information about individuals.

We all agree that it is wrong for private information to be peddled in the public arena, whether for reward by public servants acting improperly or other reasons. Irrespective of whether that happens under a freedom of information process or otherwise it would be equally as bad if the result were to severely damage someone in the process. In a matter of this kind we should apply the widest possible exemptions because access to that private information is not a matter of public interest or good government; it is a matter of the right of individuals to their privacy. It is a critical right which, in many respects, is even more important than the full and open Government we are talking about. We are serious about some of the philosophical principles of the freedom of individuals to go about their business without the intrusion of anyone by compulsorily obtaining information which would be available through some process. We should strongly guard against that. It is completely

contrary to all notions of privacy legislation. It is the very reason that the Commonwealth has backed away from the definition which the member for Floreat seeks to insert. The consultative process is provided for in this legislation in relation to personal information where parties have the right to object to disclosure of that information. Those processes should not be detracted from by limiting exemptions.

Dr CONSTABLE: I do not disagree with what the Minister says about the importance of an individual's personal records being subject to the strictest privacy constraints. However, subclause (2) contradicts that and I do not think he covered that in his explanation.

Mr D.L. SMITH: Subclause (2) relates to personal information about the applicant. Applicants should have the opportunity of knowing everything the Government has on their file. I would have no problem with the member obtaining a file about herself, but I would have a great deal of concern if she wanted to see a file on me.

Amendments put and negatived.

Clause 4: Commercial or business information -

Dr CONSTABLE: I move -

Page 76, lines 2 to 4 - To delete all words after "affairs".

The last part of this exemption is overkill and unnecessary. Clause 8 covers serious cases. As exemption 4 is aimed at the protection of the private sector, I am not sure why information relating to the Government or to an agency must be introduced because clause 8 covers matters relating to the Government and Government agencies. This exemption relating to the private sector should be maintained and we should deal separately with the issue of Government agencies, which is already contained in clause 8. In any event, this matter could probably be dealt with in the other exemption.

Mr D.L. SMITH: Clause 8 provides for cases where a specific breach of confidence is involved in the disclosure of information. It does not protect the position where information is being provided to a person in trying to either assess a project which people might be proposing, or for reasons of policy or planning for the future. For various reasons, one may wish to discuss with all of the major firms in Western Australia which projects they have on the drawing board over the next few years. Those companies may wish to disclose that they have an important project which involves a new process which they are considering establishing in Western Australia. One may wish to know that because it may lead to extra employment in that area, which may lead to an increase in population, and which in turn may result in other things. If that information became publicly available one may find that in the future, when one was seeking similar information, those firms would not want to disclose that information because it may be available in that way. Private companies and individuals must be encouraged to provide as much information to the Government as they are willing to give to enable it to assess questions of infrastructure which may be required, whether assistance may be granted to those people in some way under a State agreement, or in simply planning future provisions for infrastructure or social and community facilities to enable people to cope with various situations.

The Government wants firms to be as frank as they can be. For example, in the south west it is very important for the Government to approach competitors in, say, the mineral sands and bauxite industries to seek information about their future plans so that the Government can gear to meet those requirements and the public's requirements that will flow from some of the decisions that the firms will make. The Government requires as much information as possible. One will certainly be in a much better decision making position if one can obtain up to date information, which is not available from the Australian Bureau of Statistics, and can gain an understanding of what is occurring in a business today rather than the sorts of retrospective views one obtains from other sources. Being able to access that information is important for future planing. That must be encouraged in the public interest and in the interests of good decision making.

A person's trade secrets are valuable in a commercial sense and a person is entitled to have them protected. However, at the same time, the Government must know what is occurring. For example, the Government is constantly told about the number of inventions which leave this State and are taken overseas. One of the reasons the inventors go overseas or interstate may be that they are not willing to inform the Government because they are concerned that

the information will be leaked in some way. A public interest applies in encouraging the provision of that information so that the Government can look at whether it can encourage those industries to remain in Western Australia. However, if the firms will not tell the Government in detail about their proposals it is difficult to provide them with the appropriate assistance. This exemption is about implementing a position where one of the factors that the commissioner must consider is whether the supply of information in that case would prejudice the future supply of similar information from other people. That is an important factor. It is a factor only in decision making and not an exemption in its own right.

Amendment put and negatived.

Clause 6: Deliberative processes -

Dr CONSTABLE: I move -

Page 79, lines 1 to 19 - To delete the lines.

This is another case of overkill in this Bill. In my reading of the exemptions this is unnecessary because any sensitive deliberative processes worthy of protection will be covered in other clauses. Clause 1 covers the Cabinet and Executive Council, clause 2 covers intergovernmental relations, clause 9 covers the State's economy, clause 10 covers the State's financial or property affairs, and clause 11 covers the effective operation of agencies. This clause is repetitious. Why must this be contained in the legislation?

Mr D.L. SMITH: I am surprised by this amendment because this exemption is found in all the freedom of information Acts throughout Australia. Although it may seem broad, it is considered necessary because the Government requires the provision of the fullest and frankest advice in the course of Government deliberations. It is critically important that every public servant and every person outside Government feels they can provide advice in the fullest and frankest way. In any event, this exemption is limited by the words in paragraph 1(b) that it must be shown that it would, on balance, be contrary to the public interest. The member will note that in this case the onus is on the agency to show that non-disclosure is in the public interest and not on the individual applying for the information. To that extent, we have gone to the strongest limit of this exemption compared with any other jurisdiction.

Dr Constable: It certainly is a step in the right direction.

Amendment put and negatived.

Dr CONSTABLE: Given that the last amendment was not carried, we should delete from line 19 the figure "20" and insert "10". It refers to exempt matter and the number of years which must pass since it came into existence. Members may recall the debate last night about the length of exemption on Cabinet documents.

The CHAIRMAN: The member for Floreat cannot move that amendment because the Committee has just rejected an amendment to the total clause. It is not possible, therefore, for the Committee to go back and reconsider the last line.

Mr D.L. Smith: What period was the member for Floreat thinking of inserting?

Dr CONSTABLE: Ten years, to make it consistent with the changes made last night.

Mr D.L. Smith: We can look at that when we recommit some of the clauses later.

Clause 8: Confidential communications -

Dr CONSTABLE: I move -

Page 80, line 14 - To insert after the word "agency" the following -

; and

(c) would, on balance, be contrary to the public interest.

Page 80, lines 23 and 24 - To delete the lines.

This tidies up the situation. Proposed paragraph (c) would bring this section into line with previous paragraphs in these exemptions. We should not start by saying that something is exempt and then look at the public interest. We should consider first the public interest; we have done that previously. In a sense this amendment strengthens the effect of the public interest clause by not expressing it in the negative, but expressing it in the positive.

Mr D.L. SMITH: This clause seeks to treat confidential communications in the same way as we treated deliberative processes. The deliberative processes exemption is different from the standard provision which is in all of the other exemptions where there is a public interest exemption. In my view, if the disclosure of a confidential communication would be a breach of confidence for which a legal remedy could be obtained, it would be dangerous to put the onus on the person who is trying to protect that confidential communication to show it is in the public interest rather than on the person applying for the information to show that it is in the public interest. If someone has thought it important enough for these communications to be kept secret and to provide a remedy for their breach, either in other legislation or under the common law, I do not think we should open it up to the extent of putting the onus on the person whose confidential communication is being protected to show it is in the public interest to keep it confidential. The very fact that other remedies exist indicates that people have considered it previously and found that it is in the public interest for that confidence to be obtained. All we are seeking to do under this legislation is to allow that to be overcome on occasions when it can be shown by the applicant to be in the public interest for that to occur.

Amendments put and negatived.

Clause 9: The State's economy -

Dr CONSTABLE: I move -

Page 81, after line 13 - To insert the following -

Limits on Exemption

(2) Matter is not exempt matter under subclause (1) if its disclosure would, on balance, be in the public interest.

(3) Matter is not exempt matter under subclause (1) if at least 12 months have passed since the matter came into existence.

As the clause is written, there are no limits on the exemption and we should have limits on exemptions relating to public interest, and also a limit on the exemptions related to time. We have had the argument about time limitations. In this case, I have suggested a limitation of 12 months. I doubt whether the Minister will agree with me. The public interest proviso is extremely important. It appears in the New South Wales and Queensland jurisdictions. The fact that it has been part of these exemptions for a number of years speaks for itself. I am sure that the Minister will argue that the time limit of a year is too short. However, once again, in the light of the Royal Commission report and the things that I have said before in the Committee stage, we must ensure that information relating to the economy of the State is available to its citizens.

Mr D.L. SMITH: Two types of exemptions are provided for in relation to the State's economy. The first is that information, the disclosure of which could reasonably be expected to "have a substantial adverse effect on the ability of the Government or an agency to manage the economy of the State". This clause is obviously aimed at the public interest of having the best economy for the State. Frankly, I would have no problem with a limit being placed on that through a public interest test. However, I would have a problem with the one year limitation and I could not accept it because much of what might be disclosed - if it has an adverse impact on the State - does not change in the passage of one year. The economy is not so fluid that it changes dramatically from year to year. In paragraph (b), the second leg of the limitation, we are moving away from the public interest to the private interests of individuals not to allow some unfair benefit or detriment caused to them because of the premature disclosure of information. It is not appropriate that in these cases the public interest should be weighed against the private detriment to an individual. I certainly do not think the 12 month limitation should be imposed in that case either. For that reason I am inclined to oppose the member's amendment.

Regarding the recommittal of this Bill, I intend later today to report progress and discuss with the member for Floreat the clauses the Committee has said it will come back to. We can give consideration to an amendment to the member's amendment to make it appropriate for the first part of this provision.

Amendment put and negatived.

Clause 10: The State's financial or property affairs -

Dr CONSTABLE: I move -

Page 81, line 16 to page 82, line 2 - To delete the lines and substitute the following -

(1) Matter is exempt matter if its disclosure -

(a) could reasonably be expected to have a substantial adverse effect on the financial or property affairs of the State or an agency; and

(b) would, on balance, be contrary to the public interest.

The first part of this exemption follows the New South Wales example and the way I read it subclauses (2) to (4) are unnecessary. Sensitive information is covered by subclause (1) which is a general clause. Companies are already covered under clause 4 in similar terms to subclauses (2) to (4) in this exemption.

The intent of my amendment is to simplify and open up the clause and it follows the exemptions in two other jurisdictions - New South Wales and Queensland. The Government seems to be giving itself the same sort of protection that private enterprise receives under clause 4. What seems to me to be fair in the private sector is not necessarily the case in the public sector where accountability is the key. If the Government has an extra onus on it to be accountable it should not have the same definite exemption as does private enterprise. My amendment leaves a broad protection, but it demands more accountability by the Government.

Mr D.L. SMITH: Subclause (6) states that a matter is not exempt matter under subclauses (1) to (5) if its disclosure would, on balance, be in the public interest. Under this exemption we are seeking to give trading agencies of the State the same sorts of rights and privileges that private companies and enterprises have, but limit it so that it can be disclosed if it is, on balance, in the public interest.

Dr Constable: Is the onus on someone to apply?

Mr D.L. SMITH: Yes, and to show that it is in the public interest for it to be disclosed. We must look at why it is necessary to place the onus in that way. Under subclause (1) the matter is exempt matter if its disclosure could reasonably be expected to have a substantial adverse effect on the financial or property affairs of the State or an agency. The tests there are, firstly, the substantial adverse effect - it cannot be an ordinary adverse effect - and, secondly, it must be reasonably expected that that substantial adverse effect could occur. One cannot say it might have a substantial adverse effect; he must show that it is reasonably expected to have a substantial adverse effect.

Under subclause (2) matter is exempt matter if its disclosure would reveal trade secrets of an agency. The trade secrets exemption for private enterprise is no different from that of an agency. If it is in the public interest for the trade secrets of an agency to be disclosed and it can be demonstrated, they must be disclosed.

Subclause (3) states that the matter is exempt matter if its disclosure -

(a) would reveal information (other than trade secrets) that has a commercial value to an agency; and

(b) could reasonably be expected to destroy or diminish that commercial value.

I do not know whether we should be disadvantaging commercial agencies of the State by making information available which does have a commercial value to that agency.

Subclause (4) states the matter is exempt matter if its disclosure -

(a) would reveal information (other than trade secrets) or information referred to in subclause (3)) concerning the commercial affairs of an agency; and

(b) could reasonably be expected to have an adverse effect on those affairs.

It may be argued that this is couched in wider terms than the provisions applying in other States and perhaps it is an issue I can raise with the member for Floreat later.

Finally, subclause (5) states that the matter is exempt matter if its disclosure -

(a) would reveal information relating to research that is being, or is to be, undertaken by an officer of an agency; and

(b) would be likely, because of the premature release of the information, to expose the officer or the agency to disadvantage.

Again, there is a public interest limit to that test. If original research undertaken by the Department of Agriculture or any other department has commercial value or some academic credit for the researcher, and we made that available through FOI, we would thereby either devalue that research or enable someone else to take advantage of that research in a way which would be to the detriment of the researcher or the agency concerned. Again, there is a limit based on the public interest. In most of the cases involving agencies information would be sought with some particular purpose in mind. If, for instance, one asked a question about what research was currently being undertaken by the Department of Agriculture on an aspect of genetic engineering and it led to the researcher showing that the nondisclosure of that information was in the public interest, then he would suffer private detriment because he is a leader in that field and the academic credits he might achieve from it -

Dr Constable: Are you talking about subclause (5)(a)?

Mr D.L. SMITH: We are talking about subclauses (5)(a) and (b).

Dr Constable: I am not seeking to delete those. I want to tighten up this clause. I do not disagree with a word you have said about research.

Mr D.L. SMITH: The only ones I am inclined to look at are subclauses (3) and (4) and, again, we can perhaps look at these during the lunch break.

Amendment put and negatived.

Dr CONSTABLE: I move -

Page 82, line 6 - To insert after "agency" the words "or by a person on behalf of an agency".

I seek to strengthen this provision. In many instances agencies and Government departments commission people from outside the agency or department to do research. This amendment will cover people who do research on behalf of agencies.

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

Amendment put and passed.

New clause 15 -

Dr CONSTABLE: I move -

Page 84 - To insert after clause 14 the following new clause to stand as clause 15 -

15. Court documents

Exemptions

(1) Matter is exempt matter if it would disclose -

(a) information relating to the judicial functions of a court;

(b) matter prepared for the purposes of proceedings (including any transcript of the proceedings) that are being heard or are to be heard by a court; or

(c) matter prepared by or on behalf of a court (including any order or judgment made or given by the court) in relation to proceedings that are being heard or have been heard before the court.

Limit on Exemptions

(2) Matter is not exempt under subclause (1) (b) or (c) if it would, apart from this Act, be available to the parties to proceedings or the public, as the case may be.

These exemptions relate to court documents. When perusing the Bill it seemed rather odd to me that the exemptions relating to court documents were contained in the glossary rather

than in the schedule of amendments. I propose this amendment to make the Bill more consistent by including the exemptions in the schedule. The exempt matters refer to three categories: The first is information relating to the judicial functions of a court. The second category is matters prepared for the purposes of proceedings that are being heard or are to be heard by a court. This material would not normally be available and I do not believe people should have access to it. The third category is matters prepared by or on behalf of a court in relation to proceedings that are being heard or have been heard before the court. These matters should not be available until they become publicly available. I seek to protect these documents until the point at which they would normally become publicly available. If they are not protected, people may seek access to them at an early stage of the proceedings before the court. These documents should become automatically available after the court proceedings have been heard.

The limit on exemptions in proposed subclause (2) is quite straightforward. A special document or opinion prepared for the court would be protected before it became a public document.

Mr D.L. SMITH: The member for Floreat is embarking on what I might call the Supreme Court argument about the way in which it should be exempted. I have concerns about the way in which she is attempting to do it because the amendment simply refers to information relating to the judicial functions of a court. That could have a very wide interpretation and may even cover roster lists of judges and matters of that kind which should not necessarily be exempt. I have no problem with paragraphs (b) and (c) but I think these are covered by the existing Bill, for reasons I will explain later.

The proposed limit on exemptions worries me enormously because the member is suggesting that information of the kind described in paragraphs (b) and (c) is not exempt if it is available to the parties. In the Family Court, for example, a party can obtain a transcript of the proceedings but the whole objective of the Family Court legislation is not to make those transcripts generally available. The proposed subclause (2) would make those transcripts available, especially in Western Australia since the Western Australian Family Court is a creature of the State Government rather than of the Federal Government.

Dr Constable: I understand it is part of the New South Wales legislation.

Mr D.L. SMITH: I am not sure it is framed in that way. I imagine it is framed in a way which would allow access which would be available to the public otherwise. As far as I can see under item 11 of the New South Wales legislation there is no limit on the exemption in the way proposed - certainly not in the copy of the Act I have. Paragraphs (a), (b) and (c) are similar to the member for Floreat's proposal but there is no limit on exemption.

More importantly, I will try to explain the way court proceedings are protected. The first is that the court is an agency, so for general purposes it is treated no differently from any other agency of the Government.

Dr Constable: Why is it in the glossary and not in the schedule?

Mr D.L. SMITH: Because it does what it is intended to do in a better way.

It refers in (b) to a registry or other office of a court, and the staff of such a registry or office are part of the court; so the staff of the court is treated the same as the staff of any other agency. In (c) it states that a person holding judicial office or other office pertaining to a court being an office established by written law establishing a court is not an agency and is not included in an agency; so while the administrative staff are an agency, the judges and magistrates are not. To that extent a person cannot apply for documents in the possession of a judge or magistrate in the course of proceedings.

The other important clause is clause 5 which says that a document relating to a court is not to be regarded as a document of the court unless it relates to matters of an administrative nature. So matters which are held by the court and which are of a judicial nature are exempt by virtue of clause 5. That, of course, extends not just to draft judgments or personal notes of a judge, but also to all the records that assist or support the judge in his judicial function. That also includes the sorts of documents to which the member refers in paragraphs (b) and (c) of her amendment. It does not have the limit the member is talking about. Although the courts are agencies with administrative functions, their staff are treated in the same way as any other agency, the judge and the documents of the court that relate to the judicial function of

the judge rather than the administrative aspects of the court are also exempt. That is the way we have preferred to do things. We wanted to be in a position of treating the courts as if they were ordinary agencies. In this case the member seems to be seeking a more specific and almost wider exemption which runs contrary to the general theme that has been present in most of her remarks about other sections.

Dr Constable: This appears in the glossary. An exemption would have been more consistent. Is the Minister indicating he will be looking at aspects of this matter, anyway?

Mr D.L. SMITH: Yes.

New clause put and negatived.

New clause 15 -

Mr D.L. SMITH: I move -

Page 84 - To insert after clause 14 the following new clause to stand as clause 15 -

15. Information as to precious metal transactions

Exemption

(1) Matter is exempt matter if its disclosure would reveal information about -

(a) gold or other precious metal received by Gold Corporation from a person, or held by Gold Corporation on behalf of a person, on current account, certificate of deposit or fixed deposit;

(b) a transaction relating to gold or other precious metal received or held by Gold Corporation as mentioned in paragraph (a).

Definition

(2) In this clause -

"Gold Corporation" means the Gold Corporation constituted under section 4 of the *Gold Corporation Act 1987* or a subsidiary of Gold Corporation within the meaning of that Act.

The purpose of this extra exemption is that Gold Corporation operates like a bank with trading accounts in precious metals. It was not intended that the accounts of individuals would be made public through FOI legislation. Gold Corporation sought an agency exemption. I was not prepared to grant that, but thought it was appropriate there be an exemption for the private trading accounts of individuals.

Mrs EDWARDES: What does Gold Corporation presently do? From memory the R & I Bank took over the gold section and Gold Corporation now deals only with mint operations. If the Minister was not prepared to give Gold Corporation an exempted agency status under the schedule, why is the other clause of the Bill dealing with personal detail exemptions which would not necessarily apply in these instances where individuals have current accounts at Gold Corporation similar to those at a bank? In relation to (1)(b) of the proposed amendment, we are not dealing with a similar situation to that of an individual with an R & I Bank account but rather with transactions relating to gold or other precious metals received or held by Gold Corporation as mentioned in paragraph (a). Why is paragraph (b) needed?

Mr D.L. SMITH: I am not in a position to tell the member what Gold Corporation does in total. I am sure officers from Gold Corporation would be happy to brief the member on what they do. It certainly operates accounts of the kind referred to in paragraph (a), which relates to the current account of depositors and fixed deposits related to precious metals. Gold Corporation does operate a mint function which is different from the trading function where it receives gold and pays people for it as individual transactions rather than operating as a trading account with precious metals coming and going. That is why paragraph (b) is needed in addition to paragraph (a).

Mrs Edwardes: I would have thought (b) is covered by (a).

Mr D.L. SMITH: Except that paragraph (a) refers to "gold or other precious metal" etc.

Mrs Edwardes: That is held by Gold Corporation.

Mr D.L. SMITH: Received by Gold Corporation from a person or held by Gold Corporation on behalf of a person, on current account, certificate of deposit or fixed deposit. That is the account which deals with the movement of the gold. The other is the transactions; that is, sales of gold and nuggets, copies of dealing notes and those sorts of things.

Mrs Edwardes: If matter is exempt and disclosure would reveal information about the gold received or held by an individual at Gold Corporation, whether that came about by way of transaction, the transaction would cover the note as well.

Mr D.L. SMITH: It is gold or other precious metals received, so it has to come from those persons or be held by or on their behalf. Take the example of the gold nugget coins. If the member goes in and buys 300 nugget coins, as she may regularly do, and a sales invoice is produced for that transaction, she has not deposited any gold and no gold is held on her behalf, that is simply a purchase by her of that gold. Paragraph (b) is intended to protect those transactions as distinct from actual trading accounts.

Mrs Edwardes: The Minister has referred paragraph (b) back to paragraph (a). It is not separate. I wonder whether it is wide enough in its terms and whether paragraph (b) should be limited in the way it is.

Mr D.L. SMITH: My advice is that paragraph (a) is intended to relate to the current account, where there are movements in and out, as in statements of the total transactions, and that paragraph (b) is related to the individual transactions.

Mr AINSWORTH: Why has this exemption been placed in the clause in this way, given that transactions relating to gold or other precious metal received or held by Gold Corporation on behalf of a person would involve personal information which would be exempt under other clauses of the Bill? It seems strange that we need a specific exemption for that type of transaction, when all sorts of other business transactions of a private nature are exempt in the Bill.

Mr D.L. SMITH: This was really a compromise in respect of not making Gold Corporation an exempt agency. This clause is intended to recognise that Gold Corporation is international in its activities, and that it wanted to be able to say to people that the information would be kept secret and not have to refer people to the interpretation of other clauses or to the limitations in other clauses in respect of public interest. Gold Corporation wanted a specific exemption in respect of two aspects of its operations so that people could be absolutely confident that under no circumstances would information be revealed unless it were through a Royal Commission or by other means.

Mr OMODEI: Agencies such as the Department of Conservation and Land Management or the Department of Fuel and Energy may hold information or trade in commodities and, in some cases, in a State resource, or deal with timber royalties or a joint share farming scheme. If all agencies were exempt on grounds which were similar to those applicable to Gold Corporation, there would be no freedom of information at all. If Gold Corporation is to be exempt, those agencies should also be exempt.

Mr D.L. SMITH: The exemption in respect of other trading agencies, which would include the Department of Conservation and Land Management, is really provided under clause 10, but in a restricted way because much of what is done by CALM does not relate to the selling of timber to individuals, so we do not want to make the exemption too wide. The sole reason for Gold Corporation's existence is to buy and sell gold and to allow people to trade in precious metal. For that reason, it was thought appropriate to have a specific exemption to deal with those aspects, rather than rely on the agency exemption which Gold Corporation was seeking to have.

Mrs EDWARDES: I cannot understand the relationship between paragraphs (a) and (b), and perhaps the Minister would like to review the wording of those paragraphs in order that they reflect what he is saying. The interpretation which I would put on those paragraphs does not reflect the narrow interpretation which the Minister is trying to put on them, because paragraph (b) is incorporated into paragraph (a) in any event. If something else were intended by paragraph (b), the Minister might like to reword that paragraph.

Mr D.L. SMITH: I am inclined to delete the words in paragraph (b), "as mentioned in paragraph (a)".

New clause, by leave, withdrawn.

New clause 15 -

Mr D.L. SMITH: I move -

Page 84 - To insert after clause 14 the following new clause to stand as clause 15 -

15. Information as to precious metal transactions

Exemption

(1) Matter is exempt matter if its disclosure would reveal information about -

(a) gold or other precious metal received by Gold Corporation from a person, or held by Gold Corporation on behalf of a person, on current account, certificate of deposit or fixed deposit; or

(b) a transaction relating to gold or other precious metal received or held by Gold Corporation.

Definition

(2) In this clause -

"Gold Corporation" means the Gold Corporation constituted under section 4 of the *Gold Corporation Act 1987* or a subsidiary of Gold Corporation within the meaning of that Act.

Mrs EDWARDES: That still leaves it very wide as being just a transaction in relation to gold.

Mr D.L. Smith: At this stage, the amendment does all that I want it to do. I will consider the member's views when we break and will reconsider some of these matters.

Mrs EDWARDES: The Minister has still not achieved the objective that he set out to achieve by paragraph (b) in the first instance. The Minister obviously received advice from Gold Corporation about the reason that it needed this exemption, where it referred to the types of accounts which individuals hold at Gold Corporation for dealing in gold or precious metal, and that led to its asking for an exemption for transactions in relation to gold or other precious metal received or held by Gold Corporation. Obviously the Minister would not want to leave the wording in paragraph (b) as it is because that would make it so wide that Gold Corporation might just as well have been made an exempt agency. We are really talking about all transactions in relation to gold or other precious metal received or held by Gold Corporation per se, and it would not be limited to the private dealings of an individual, a corporation or an agency.

Obviously the advice received by Gold Corporation intended to include transactions which does not necessarily mean that gold or precious metals are being held by the corporation but something wider. Can the Minister explain the reason for the inclusion of this provision?

Mr D.L. SMITH: Paragraph (b) relates to individual transactions. If an agency is exempt, all of the administrative and financial aspects relating to its affairs would be exempt. This provision is attempting to exempt the actual transaction relating to gold or other precious metals received or held by Gold Corporation.

Mrs Edwardes: Is that when they make large purchases of gold perhaps ready for sale?

Mr D.L. SMITH: Or even small purchases of gold for the purposes of later resale.

Mrs Edwardes: Why would that information need to be kept confidential?

Mr D.L. SMITH: Because the transaction would be with an individual. We would not want individuals or gold mining companies having their receipts or advice about how much they are paid for their gold or how much gold they delivered made public.

Mrs Edwardes: Is "transaction" defined sufficiently?

Mr D.L. SMITH: The dictionary and legal definition is wide enough to include most transactions. I am happy to discuss these matters with the member later, rather than holding up the Chamber.

New clause put and passed.

Schedule, as amended, put and passed.

Schedule 2: Exempt agencies -

Dr CONSTABLE: I move -

Page 85, lines 4 to 10 - To delete the lines.

Freedom of information matters have been of concern to the community for a long time. Generally speaking, schedule 1 is wide enough to protect sensitive information. However, I seek to delete the four exemptions that include the Governor and the Governor's establishment, the Legislative Council or a member or committee of the Legislative Council, the Legislative Assembly or a member or committee of the Legislative Assembly, a joint committee or Standing Committee of the Legislative Council and the Legislative Assembly. It seems that these agencies are protected anyway by clause 12, schedule 1. In other ways, the agencies are protected and are in a privileged situation. The agencies are not exempt in a number of other jurisdictions, in the Commonwealth, Victoria or New South Wales, as far as I can see from examination of legislation in those jurisdictions. This is a straightforward amendment.

Mr DONOVAN: As the member for Floreat said, schedule 2 lies at the very heart of the Bill. We all support freedom of information, and notwithstanding some of the deficiencies of the preceding clauses which have been debated or which we have attempted to amend, nothing provides more of an obstacle to the practice of freedom of information than an extensive list of agencies that are exempt. They pose themselves as obstacles and pose themselves in this Bill as self-defeating. I cannot endorse strongly enough the comments of the member for Floreat, particularly in relation to the amendment before the Chair.

Following the affairs of the Royal Commission and the concerns alive in this State for the past couple of years, and following the second report of the Royal Commission, as members of Parliament I do not know how we could go out of this place when we rise this evening and say to our constituents that we will be exempting ourselves from the freedom of information legislation. That is a peculiar position for Parliament to take, at the very least, and at worst it will have the effect, when the Bill becomes an Act, of once again further reducing public confidence in this institution. The first group of agencies to be exempt from the provisions of this Bill includes the Governor and the Parliament of Western Australia. That is an inexcusable situation.

I remind members of some of the things that the Royal Commissioners had to say in their second report. Members will recall previous debate. I am not a fan of the Royal Commissioners in many respects but their second report goes to the heart of the basic areas of reform that perhaps we need in our State. On the question of openness and the basic principles of democracy and what that demands of a Government, the Royal Commissioners stated -

> They require that the public be informed of the actions and purposes of government, not because the government considers it expedient for the public to know, but because the public has a *right to know*. Openness in government is the indispensable prerequisite to accountability to the public. It is a democratic imperative.

In relation to Parliament they said that in the practice of FOI legislation there must be two basic principles and -

> First . . . the practice of open government requires the good faith commitment of the officials who are at the heart of the action. The public and the public's accountability agents, including the Parliament and the Auditor General, depend upon this commitment for information. To be a reality, open government must be a habit, a cast of mind. It is an attitude which must be encouraged at all times. Importantly, it requires a willingness to expose miscalculation and failure as well as to publicise innovation and achievement.

Surely the Minister cannot be serious. In the light of that discussion, the public furore about openness and accountability and, let us face it, the public's basic disbelief and total loss of confidence in this institution, if we place the Parliament itself in the first group of agencies to be exempt under this legislation we will be laughed at in the public arena. I cannot put it more strongly than that. We have been working towards freedom of information legislation for a long time, some of us nervously and some of us enthusiastically. Such legislation is recognised as basic to any reform of government and public administration practices in this State.

As the Royal Commissioners said, it must become a habit and a caste of mind, which, surely, must start on the floor of this Parliament. This institution must be the last agency to set itself up as exempt from freedom of information provisions. Instead, it is proposed that the first agency to be exempt under this schedule is Parliament! That will be laughed at in the public arena if the member for Floreat's amendment is not passed. I hope the media will do their duty and ensure that the public are aware that Parliament was the first to exempt itself from freedom of information legislation. The public must be made aware of that and understand the implications when people vote at the forthcoming State general election.

I cannot recommend strongly enough the member for Floreat's amendment, which every member of this Parliament, in both Houses, must support. Far from making the Parliament the first agency of exemption, we must proudly state that this Parliament will not be exempt. Members of Parliament should set an example to our public servants and agencies. We can do that by ensuring that we are open, accountable and freely accessible. The amendment should be welcomed and supported by all members.

Mr D.L. SMITH: Frankly, I find it hard to understand why any parliamentarian must stand in this place to defend Parliament's exemption from the provisions of the Bill. The member for Morley is leaving the Parliament, and perhaps I understand why: He does not seem to believe in, or understand the nature of, Parliament. Parliament is not the Government; it is superior to the Executive. For individuals in the community the primary control of the Executive and the judiciary is through the Parliament. We are the supreme court in the absolute sense as we are the final control of the Executive.

The privileges of this place have always been based on the notion that we have absolute freedom. The Information Commissioner should not be able to tell us what, or what not, to do. No court can interpret our Standing Orders and tell us whether we are acting properly. No court can supervise what is done in this place. If Parliament is not supreme, the people have no real control over the Executive or the judiciary. After all, in this country we do not elect our sheriffs and judges; we elect our parliamentarians and our local government councillors. It is by controlling the membership of this place that people can control the way in which the Government and its agencies operate.

Every time we accept an argument, whether it be by the Royal Commission, a judge or someone in the Executive, that they should be able to control Parliament or interfere with its affairs, we detract from Parliament's powers. In that way we detract from the powers of the people to control by whom and how the State is governed. All our accountability provisions rely upon the accountability of the Executive and the judiciary to the Parliament. The moment we allow the judiciary or the Executive or anyone else to control Parliament - whether that person is appointed by the Parliament or not - in an uncontrolled way, the Parliament would lose control. In that way we would whittle away the very foundations upon which the Westminster system is based.

I find it peculiar that it should be argued that the courts should not control Parliament in any way, yet the Information Commissioner should come into parliamentary committees and make decisions about information held by them, their staff, the Speaker or anyone else. Who will protect our position? Ultimately, we are without control other than by the Constitution which governs us. That is the way it must be if people want the confidence that we can discharge our functions, even those which the Royal Commission said we have been failing to do. Perhaps in some ways we were not active enough in supervising the Executive, the judiciary and other agencies. However, we will not facilitate that supervision by accepting the constraints of the kind the amendment seeks to impose. To claim that the Official Corruption Commission should be exempt from the freedom of information legislation, yet this place not be exempt, is absurd. Where does the primary responsibility for good government lie? It lies within this Parliament.

Mr Donovan: That is why it should set the example.

Mr D.L. SMITH: That responsibility is derived from Parliament's absolute power - if one has an absolute power, one has an absolute responsibility. No-one in this place should shy away from that responsibility and seek to whittle down the foundations on which that responsibility is based. It should not be claimed that somehow or other we are not culpable as members of Parliament if we fail to meet that responsibility.

It seems strange that this debate has ensued between parliamentarians. If any misunderstanding has arisen in the public, we have failed to educate the public about the reasons the Parliament needs to be exempt from this legislation. If Parliament is not exempt, we will jeopardise the whole Westminster system. Although I agree with the Royal Commissioners that some imperfections need to be ironed out by the Parliament, the Government, the courts and other agencies, I do not accept that we should allow this to be done by outside parties when it concerns the Parliament, albeit that the person is to be appointed and the position legislated for by Parliament. That person should not be able to come into this place and control or interfere with Parliament's operations.

Sitting suspended from 12.59 to 2.00 pm

Mr DONOVAN: In defence of the Government's position on the inclusion of the Houses of Parliament as exempt agencies, the Minister was addressing the question of parliamentary privilege and the freedoms of Parliament. He made the point that Parliament must be supreme on behalf of the people of the State. The Minister was essentially talking about the question of ultimate power. It is my view that the ultimate power of the people to decide the question of Government and its accountability rests with this Chamber. Legalistically the Minister is probably quite correct, but in reality he is ignoring what is occurring in the community, which is a massive disbelief in this institution. As a member who is leaving this place, effectively at the end of next week, I am saddened that whereas my great hope on coming into this place - as indeed it was yours, Mr Chairman - was that somehow faith would be restored in the democratic process as opposed to what the Minister for Housing would describe as democratic outcomes. Mr Chairman, both you and I shared a hope that some restoration of the democratic process would occur, but there has not been any great evidence of that. More importantly, the community has no sense of the restoration of a democratic process in this place. The Minister is technically correct, resting as he did on the argument of a 300 year old tradition of privilege which was intended to serve the interests of the people of a democracy, in this case our State. The Minister has failed to recognise that nobody in the community shares that view any more. It is sad that people regard this Parliament as a lesser institution, as a cowards' castle on questions of privilege, as a rubber stamp for Government, and as a means by which decision making is withheld from them. They do not regard this place as a watchdog over Government, or as a place that has proven itself as a check and balance on Executive power. The community does not see this Parliament in those terms any longer. Although that may be sad, it is nonetheless true. Yet the Minister wants to include in this Bill an exemption for Parliament and its agencies on the basis that somehow or other the people should be able to exercise their ultimate power through the Parliament. I do not need to remind members of the oft-quoted saying about power - that power corrupts, and absolute power corrupts absolutely. That is the impression that the people of Western Australia have of this Parliament and it has been reflected by the Royal Commissioners. The Parliament has not served the people well. For the Minister's proposition to hold up -

Mr Bloffwitch: I do not think we on this side of the Chamber had a lot of say in those things.

Mr DONOVAN: I do not think the member has had very much to say at all. That is less important -

Mr Bloffwitch: It is important when you are blaming the whole Parliament.

Mr DONOVAN: - than the fact that the community tars us all with roughly the same brush. The Minister is a lawyer by profession; I am a sociologist. We both have some understanding of the way in which power is translated into authority. Power is easily exercised, by brute force or subterfuge and secrecy, as has been the case in this State. For power to become authoritative it must have some legitimacy in the community. People must believe in and support the Parliament; but people do not do that. The community does not

subscribe to the view that this Parliament has the authority of the people of this State. There is simply a recognition of the power it is able to exercise. I was interested to hear yesterday on ABC radio, I think it was Gerry Gannon's program - a discussion of discipline in schools and whether corporal punishment was administered effectively in the old days because it ensured respect on the part of students, or whether it was effective because it drew fear from students. The point was made by a number of people on that program that respect must be won, it cannot be imposed. In the same way, the respect of politicians and members of Parliament must be re-won. We do not enjoy it at the moment and it certainly cannot be imposed. That is the great difference between the position that the Minister is putting forward and the position that the member for Floreat and I are putting forward.

If this Parliament is to begin restoring public confidence in Parliament as an institution, I am afraid it must start from square one. It must re-earn the respect of the community. It will not do that task any service by putting at the head of its list of exempt agencies the Legislative Assembly, the Legislative Council or committees of either of those Houses and their members. That will not wash in the community. Nobody will believe it; nobody will respect it. The public are looking, instead, for an indication from this place that members have learned lessons from the oft quoted eighties. If we use the first part of the exempt agencies in schedule 2 of this Bill to impose our power, the public will recognise it for the bludgeon it is and reject it by saying to members on both sides of this House and the other place that they do not have their respect and they will be treated accordingly. The amendment moved by the member for Floreat should be taken very seriously by members in recognising that they are at square one in the community. The way to regain that confidence is to demonstrate that we are prepared to be the first to set an example in the community. We must therefore reject the proposition that the Legislative Council, the Legislative Assembly or joint standing committees of those Houses be exempt agencies under this schedule. Further, no matter how unpalatable it may be to people, we must apply exactly the same rule to the office of the Governor and the Governor's establishment. The amendment should be supported.

Mr THOMPSON: I differ from the view of the member for Morley. It is not the Parliament whose credibility must be restored as a result of events of the eighties, it is the credibility of the Government.

Several Opposition members: Hear, hear!

Mr THOMPSON: The second report of the Royal Commission stated that the institution of Parliament should be strengthened. I seriously believe that allowing individuals in the community to have access to this institution and committees arising from it is directly contrary to the general recommendations of the Royal Commission. I attempted to get the call before lunch because at that time the gallery was filled with school children. It reminded me of the speeches and comments I often make to groups of school children whom I conduct through here. I point out that in the Legislative Council above the Chair occupied by the President is a picture of a crown. It is in that place because that seat is occupied by the Crown or the representative of the monarchy when the representative of the monarchy comes here. No representative of the monarchy, or she, can come into the lower House of any of the Parliaments modelled on the Westminster system. That has not occurred since the time of Charles I, who endeavoured to interfere with the independence of the people's House of Parliament. For his temerity, he lost his head. Throughout the centuries countless people have given their lives for the independence of the parliamentary institution. Why should we, because of a misconception of a Royal Commission report, or what we believe to be a view held by a majority of people - I do not agree that that majority opinion exists - that things are crook, interfere with the independence of Parliament? Members are not here as of right, but as an extension of the community. We represent the people in the community and they will suffer if we allow the slightest semblance of interference with the operations of this institution. I do not support the amendment moved by my colleague, the member for Floreat. I am in a very dangerous position because I am as close to her as it is possible to get and she will probably become violent!

Dr Constable: Never.

Mr THOMPSON: If we are to allow this institution to become the subject of the provisions of this legislation we would be doing in the eye the people we are here to represent.

Mrs EDWARDES: The Liberal Party will not shy away from an open policy of government.

We support the freedom of information legislation to its fullest. However, to misrepresent some of the recommendations of part 2 of the Royal Commission report by saying that Parliament and the Governor's establishment should be removed from the exempt agencies is to misunderstand the recommendations of the Royal Commission. The second report recommends enhancement of the role of Parliament. On page 2.4 it states that Parliament's role includes the critical and responsible examination of that information on behalf of the public. The commissioners recommend changes in order to ensure openness of government, and to enhance the role of Parliament by ensuring the openness of government during question time, the probity of ministerial responsibilities, the independence of Parliament, and the integrity of the committee structure with the opportunity of directly questioning public servants and agencies. That would be the openness of government suggested by the second report of the Royal Commission.

Mr AINSWORTH: A few nights ago I spent some time debating the Royal Commission report and referred to the need to return to a standard of behaviour and representation of the parliamentary process which we enjoyed some years ago. Those comments are equally valid in this debate. The amendments of the member for Floreat are a misguided notion that by having some other party or body scrutinising the operations of this place that will somehow enhance the Parliament. That is not the case. Parliament must return to the conventions of this House where ministerial responsibilities are taken as they used to be; question time is not abused and the tone of the place is lifted to what it was some years ago. That will be in the public interest and in the representation in this place which, I agree, has sunk to an all time low as a result of the actions of certain members and certain Governments. The amendment moved by the member for Floreat will not achieve the return to the high standard of integrity that this place requires. In fact, it will impede it rather than help it. I will not support the amendment.

Mr DONOVAN: See how they run! When politicians on either side of this place in this State are asked to be the first to be accountable and open they all run to the other side of the House and say, "No". That is how their views will be seen in the community. They demand accountability for everybody else except us. An example of why politicians are so poorly believed is that yesterday in this place a debate was conducted about whether to sell the SGIO. As part of their argument members opposite kept putting the point quite properly that 67 per cent of the population of this State did not want it sold.

Mr C.J. Barnett: It was 78 per cent.

Mr DONOVAN: However, when it came to a vote Opposition members simply said that they were not happy with some of the details, in spite of the fact that 78 per cent of the people did not want that asset to be sold. They said that they would go along with the Government, even though they would do the same thing if they were in Government, because they would rather the Government copped the blame for it.

Mr C.J. Barnett: You are wrong; I must correct you. The 78 per cent figure I quoted was the people who wanted the SGIO to remain in Western Australia; it was not whether it would be privatised.

Mr DONOVAN: The 67 per cent figure I referred to initially is probably the accurate figure. A view exists in the community that if this is a Claytons Government, members opposite comprise a Claytons Opposition. A view also exists in the community that all that is done in this place is deals, and that this Parliament is, in a sense, a facade for deals. The Minister for Housing and I have been involved in a long argument about this matter. He puts the issue quite cogently. At least he is honest enough to say that his interest is commitment to outcome, whereas I am committed to process. That is a fair way to describe the difference between us. However, the community has lost faith in outcomes and is concerned about process. If members opposite think their concern is confined simply to the benches of the Government, they are dead wrong. As members know, politicians are ranked by their electors as being second from the bottom of those listed in recent surveys.

Mr Shave: That is because of your Labor Government.

Mr DONOVAN: It is not only because of our Labor Government.

Mr Shave: It was the worst Government in 100 years and you were part of that.

Mr DONOVAN: If that were true, why does the member for Melville and his leader not

figure much better in the polls than they do? Opposition members should think about that and stop running away from it. Members opposite are saying that if we accept the proposition of the Minister, we will want everybody in the agencies, departments and instrumentalities of this State to be accountable, open, and accessible for information except us. If members adopt this proposition that is what will be read out in the community. See how they run! What real difference exists between the Government and the Opposition parties on this issue? The answer is that there is, and has been for a number of years, little difference between the two parties when it comes to policy and procedure in this State. It is not simply a matter of my or the member for Floreat's picking up the Royal Commission's report and saying that it is the authority. Members know that I do not necessarily regard the Royal Commission as an authority, but it is a very useful reference point and a useful mirror for the community on this issue. That is the value of the Royal Commission's opinion.

It is a question of whether members are to be believed. If members are to be believed they should be the first in this State to say that their agencies, offices, houses and committees will be open for information access. They should not be the last people to be saying that, and certainly should not be the first to be saying that everyone else should be accountable except them.

Mr TRENORDEN: I have a particular concern about this issue. All members are concerned with the closed nature by which government in this and other States has operated. However, members must also be very clear about some of their functions. I am unconvinced in this matter in many respects. For example, as a member of Parliament, if I take up an issue which I think is important to me and my electorate, obtain information and keep that information in my electorate office, and speak about that information in the public arena, someone who is opposed to the action I am taking could take the information - I am yet to be convinced otherwise - from my office because my office is not protected by this Parliament. That information would be in the public domain. If somebody perceived that I was pursuing a course detrimental to them they could stop me from doing what I believed to be a duty on behalf of my constituency. I have a great deal of sympathy for the views put forward by members opposite, but members must be careful about enabling members of Parliament to do the exact opposite and enable them to probe and build cases and substantiate those cases without fear or favour. If people believed that members' actions could be prejudicial to them, they could gain that information, and politicians would be spiked as members of Parliament in the course of carrying out their campaigns. That is just as dangerous as the argument put forward by the other side of the House.

The difficulty is that if people with no scruples serve as the Premier and as Ministers of Parliament, no protection exists against them. If they are able to fool this Chamber, members of the Opposition and even members of the Press, what laws will be passed to protect Western Australians against those individuals? One cannot be protected against that level of impropriety. In attempting to do so, one faces a definite risk of having every member of this and the other place spiked. They would be trying to carry out their duties which the Government was attempting to promote, while at the same time the Government was attempting to spike those activities.

Mr Strickland: How do you think that would impact on the operation of the Public Accounts and Expenditure Review Committee?

Mr TRENORDEN: I have given many speeches in this places indicating that I think the public accounts committee should be held in open session.

Mr Donovan: What would be the effect of taking evidence from witnesses in open session?

Mr TRENORDEN: The effect would be that the Press was present.

Mr Donovan: If the Press were present the people would know what we were doing; is that correct?

Mr TRENORDEN: Exactly.

Mr Donovan: What is wrong with that?

Mr TRENORDEN: I have said on many occasions that if my party reached Government I would change the functions of the public accounts committee. I am a strong supporter of that.

Mr Pearce: It will be conducted just the same.

Mr TRENORDEN: The member for Armadale should be a little careful. He has taken one step back from the front bench, and I must admit that the second bench looks a lot better than the front bench. However, the next step for him is out the door, where he should be going.

The CHAIRMAN: Order! Members should return to the topic before the Chair.

Mr TRENORDEN: I have a great deal of sympathy for the members for Floreat and Morley in what they are attempting to achieve. I believe that one cannot interfere with the functions of a properly operating member of Parliament if one wants to have accountability in this place. If we start spiking our ability to get into activities and take on people without fear or favour - that is why some of these powers are put there so that we can take on issues without fear or favour - the result will be the dead opposite of that which we are trying to achieve.

Mrs EDWARDES: By virtue of the Parliamentary Privileges Act, Parliament is one of the more open institutions of our society. Committee hearings are held in public if the chairman decides to do so under the Standing Orders. The committee of the other House which is colloquially known as the Pike Committee regularly holds its hearings in open session. When committee hearings are completed, the reports are tabled and, on many occasions, the evidence and submissions are also tabled. Therefore, the Parliament has been a very open institution to date. Documents are tabled on a regular basis. Far more information can be brought into Parliament than would be available outside its four walls. As the institution is very open at this time, I oppose the amendment.

Dr CONSTABLE: One or two matters must be addressed. We are hearing a little too much protest from members on both sides of the House. One of the points I made earlier which I do not believe the Minister addressed was that these agencies are covered by broad exemptions in schedule 1 of the Bill. There are broad exemptions which would cover the concerns -

Mr Trenorden: Can you tell me that with 100 per cent certainty?

Dr CONSTABLE: I do not believe that a member of Parliament would be considered an agent under the "agency" definition.

Mr Trenorden: What about my electorate office?

Dr CONSTABLE: I do not believe it is an agency of the Government.

Mr Trenorden: You are saying that you do not believe. You cannot tell me -

Dr CONSTABLE: That is my interpretation of this definition.

Mr Trenorden: It is a bit dangerous to work to an interpretation.

Dr CONSTABLE: Why?

Mr Trenorden: Because once you have passed the law it is law.

Dr CONSTABLE: I am certain that it is not, then. I believe members' personal private deliberations are theirs and would not be subject to FOI legislation, the way this is written.

Mr Trenorden: Why do you want to amend it then?

Dr CONSTABLE: I think the Minister is seeking to force that issue when he does not need to force it, just as he said when he was commenting about judges earlier that matters relating to them should be included in this legislation. This is the same situation. I also do not believe the Minister answered my comment about the Houses of Parliament being covered by privilege. To the extent that we need to be, we are. I have no worry about committee meetings being open. I lived in the US during the Watergate years and all of the Watergate hearings were televised for the whole country to see. Why should not those things be open to people to see and to understand?

Mr Donovan: The committees belong to the people.

Dr CONSTABLE: Absolutely. For members to argue on the one hand that this is a people's House and then say, on the other, that people should not have access to it is bizarre. We are talking about keeping information from people and our system being secret. I would like to see it opened up to do what the member for Morley said - to rebuild the confidence of the community and to set an example to show that we believe in freedom of information for the people of this State.

Mr D.L. SMITH: I could use up my 10 minutes by responding to those who have criticised the Government. I still believe a very strong argument can be advanced that, notwithstanding the Royal Commission's findings, this has been a good Government and certainly better than the alternative now being offered. The second aspect I could cover is the fact that legislation is aimed at the Executive and not at the Parliament and then explain why that should be so. However, I think the member for Darling Range and some of the other contributors have adequately explained that.

In relation to the closing remarks by the member for Floreat about why Parliament should be an exempt agency as distinct from relying on the various exemptions of classes of documents or other provisions in the legislation, if it is not an exempt agency, it would have to go through the process of receiving the applications and then answering the applications by relying on the provisions of the legislation or the document exemptions. In the end, it would still involve the Parliament making itself subject to the process of a creature of the Parliament that has been created by the legislation. For all of the reasons that the member for Darling Range advanced, that would be completely contrary to what the Westminster system is about.

I also want to respond briefly to the member for Morley about whether it is the Parliament or parliamentarians who have lost credibility with the community. My view is that the vast majority of people still believe in and respect the Parliament. However, they are looking for parliamentarians to use the Parliament in the way it should be used and to adopt the role they have traditionally had. That is where the failing has been; it has not been in the basic powers and privileges which we seek for ourselves. It has been our inability as parliamentarians to use them properly.

We should not give the image to anybody that there is something wrong with the processes of this place or that we seek in some way to do things here which are secret and private.

Mr Donovan: Why do we give the community that image when that is what we do most of the time?

Mr D.L. SMITH: *Hansard* reporters sit here at all of our sessions attempting to take down every word that we utter; we provide spaces in the Press Gallery for members of the Press; we open up most of our committees; and the Parliament's finances from the Consolidated Revenue Fund are open for public scrutiny and are subject to audit.

The supremacy of Parliament should not be eroded by some view on the member's part, which is not shared by me or I believe by the community, that there is something wrong with our parliamentary processes. If there were something wrong with our internal processes we should be addressing that. However, we cannot fix the processes of Parliament by eroding the supremacy of the Parliament. Once we do that we begin to erode the whole concept of the Westminster system. I still strongly believe that, notwithstanding the gerrymanders and other concerns of the Royal Commissioners, the Westminster system is the best system of Government and especially of democratic Government that has been put in place anywhere in the world. It works very well if parliamentarians from both sides, the Government and the Opposition, use the Parliament in the way it should be used and conduct themselves in the way members should conduct themselves. I do not think this debate is helped by some of us being holier than thou and saying that the blame is all with the Government and not with them. An argument along those lines gives weight to the case being advanced by the member for Morley, that the community will believe the allegation that the Parliament and the parliamentary system is wrong because it can be abused by individuals and not by members opposite.

All of us, however much we may differ about our view of the Executive Government of the day and about issues of policy, should always be united in trying to promote to the community the value of this institution and the quality of its performance. It does perform well when it is used properly and to the extent that any current members of Parliament are concerned about the process of the Parliament or the outcomes of the Parliament, that is a criticism of us and not of the institution. We certainly will not enhance our role or that of the Parliament by making this change. Parliament should be the supreme body of the land because it is directly elected by the people for the people. We should be supreme and every other entity in this State should be subject to the laws of this Parliament because this Parliament represents the people of this State.

Division

Amendment put and a division taken with the following result -

		Ayes (2)	
Mr Donovan		Dr Constable *(Teller)*	
		Noes (43)	
Mr Ainsworth	Dr Gallop	Mr Marlborough	Mr Taylor
Mr C.J. Barnett	Mr Grayden	Mr McGinty	Mr Thomas
Mrs Beggs	Mr Grill	Mr Minson	Mr Thompson
Mr Blaikie	Mrs Henderson	Mr Omodei	Mr Trenorden
Mr Bloffwitch	Mr Gordon Hill	Mr Pearce	Mr Fred Tubby
Mr Clarko	Mr House	Mr Read	Dr Turnbull
Mr Court	Mr Kierath	Mr Riebeling	Dr Watson
Mr Cowan	Mr Kobelke	Mr Shave	Mr Watt
Mr Cunningham	Dr Lawrence	Mr D.L. Smith	Mr Bradshaw *(Teller)*
Mrs Edwardes	Mr Leahy	Mr P.J. Smith	Mrs Watkins *(Teller)*
Dr Edwards	Mr Lewis	Mr Strickland	

Amendment thus negatived.

Mr D.L. SMITH: I move -

Page 85, after line 10 - To insert the words "A department of the staff of Parliament."

The schedule already exempts both Houses of the Parliament, their members and the committees and joint committees of both Houses. It was intended to exempt all parliamentary departments from the Bill. However, the Clerk of the Legislative Assembly raised a concern about whether the Parliamentary Library, Hansard and Joint House staff were exempt from the Bill as drafted. This amendment is intended to ensure that all parliamentary departments are exempt agencies.

Mr DONOVAN: Part of the reason that we had the previous debate is that once we accept the proposition that both Houses of the Parliament should be exempt from the processes to which everybody else is subject, it is a matter of automation that a department of Parliament would be included.

It is interesting that the Minister forgot that when the Bill was drafted. What prompted the Minister to move for its instalment here? Who is concerned about the records of the Parliament - is it a staff member, or someone else? Would some embarrassment befall this place if a department of the staff of Parliament were not included as an exempt agency? Is someone being muzzled? One wonders why one sees by amendment at this late stage, on a Bill drafted by the Government, an attempt to correct an oversight which led someone to say, "Oops, perhaps we had better include a department of the staff of Parliament." Is it that simple, or is there some other problem which this amendment is designed to cut off before it is exposed?

There are some smiling faces on the Opposition side. I do not see any smiling faces on the Government side. One cannot help but share at least some of the cynicism that I might be expected to have when we have just had a debate about the question of openness and accountability and the fact that it should start with the Parliament, and when the very next debate that we have is about an amendment to ostensibly correct an oversight. That amendment was, I understand, added to the Notice Paper yesterday. Who is embarrassed by that oversight, and should not the public of this State have some concern about the fact that we have to go to these lengths to conceal from them what the Minister acknowledged is their property; namely, the Parliament of this State and its departments? I oppose the amendment.

Mr D.L. SMITH: I am not smiling because I do not think it is a matter to smile about. We are seeking to protect the institution of Parliament in its entirety. We should not treat the staff of Parliament any differently from the way in which we treat ourselves. I believed that the original draft of the Bill covered this aspect. However, the Clerk of the Legislative Assembly believed it was open to some doubt. Therefore, rather than leave the matter open to doubt, I wanted to specifically include it to ensure that the entire institution of Parliament

was exempt, not because we wanted secrecy, or for any ulterior motive, but simply because the supremacy of the Parliament is the basis of all of our institutions, many of which I admire.

Dr CONSTABLE: Would individual members of a department of the staff of Parliament have access to their personal records if this amendment were passed?

Mr D.L. Smith: An individual's access to the records of a department of the staff of Parliament is not something which is conferred by freedom of information legislation. It is something which an individual already has under the way in which the Parliament operates. In my view, there is no need for that to be covered by this legislation because if it were covered by this legislation, we would start to allow an intrusion into the Parliament.

Dr CONSTABLE: If an individual staff member or a past employee of a department of the staff of Parliament wished to have access to his or her personal records, would that person be able to do so?

Mr D.L. Smith: My understanding is that that person would be able to do so. However, as I said previously, if there were any problems of that kind, whether within the Houses or within the operations of the Parliament, they would be matters which we as parliamentarians could fix and should fix. However, we do not do that through legislation. We do it through ensuring that the processes under which we work are proper and due processes.

Dr CONSTABLE: I find it disturbing that the Minister cannot answer the question just by saying yes.

Mr D.L. Smith: I cannot just say yes because I am not the President and I am not immediately in charge of all of the staff of the Parliament. As far as I know, the answer to your question is yes, but if anyone in the executive of the Parliament has a different view about that matter, then that is a matter which you should take up with that person and bring to the Parliament if you think it needs reaffirmation in some way. We do not fix the problem by making the Parliament subject to outside interference.

Dr CONSTABLE: Were I to ask that question of the Minister in respect of the departments of which he is in charge, the answer would be yes, but the Minister cannot give me an unqualified yes in respect of persons employed in the departments of this Parliament. I want to get that on record.

Mr D.L. Smith: The reason I cannot give an unqualified yes is not because that is not the case, but rather because I do not know.

Dr CONSTABLE: It is a serious matter.

Mr D.L. Smith: It is not a serious matter if one accepts the basic principle that the Parliament, for reasons of supremacy, should be exempt from this legislation. If some unfairness were created of a kind that concerns the member, that matter should be addressed by the Parliament. We should not seek to have the matter addressed for us by some outside body.

Mr DONOVAN: I understand that the Minister intends to recommit this Bill for the purpose of debate on other clauses which precede this clause, and I put to the Minister that he withhold this amendment until such recommittal so that he can answer the question put by the member for Floreat in a yes or no form.

Mr D.L. SMITH: I decline to do that, firstly on the basis that the answer is yes to the best of my knowledge and, secondly, because it is irrelevant to the issue. The issue is whether this institution of Parliament will be subject to that sort of outside control. We should understand that were we to allow that to happen, there would be an erosion of our supremacy. The erosion of our supremacy would be an erosion of the will of the people of this State.

Dr Constable: Should that overshadow individual rights and freedoms?

Mr D.L. SMITH: In respect of the supremacy of the Parliament, yes. The whole basis of the protection of the freedom of the individual is the supremacy of the Parliament.

Dr Constable interjected.

Mr D.L. SMITH: That is simply not so. That is a question which the member is seeking to establish by saying I do not know the answer to it. The answer is that I believe it to be so.

However, in any event, it is irrelevant to the amendment that was moved because if the member had a concern about that, that could be fixed by this place or by a committee or by whatever other means we fix matters of that kind in this place. We do not fix it through freedom of information legislation, which is aimed at the Executive and not at the Parliament.

Mr DONOVAN: It is certainly not my wish, and I am sure it would not be the wish of the member for Floreat, to prolong this issue, but what we just heard is exactly the kind of obfuscation that people are most concerned about in respect of this place.

The simple question was whether this provision will in some way impact on the access to personal records by staff of this place. It should be within the ability of the Minister to answer that question; if not, the amendment should be withheld until the answer is provided. That is not difficult. To run the argument about the supremacy of Parliament simply supports the cynicism and suspicion rife in the community; this attitude was reflected in debate on schedule 1.

The member for Floreat is simply looking for a yes or no answer about the impact of the amendment. I would have thought the Minister would be more than happy to provide that answer. This place is all about asking and answering questions. The old saying is that one should get one's own house in order first; Parliament should get its house in order before it adopts these measures. The member for Floreat's question is a housekeeping matter, which the Minister should be able and happy to answer.

Mr D.L. SMITH: All members, not just the members for Floreat and Morley, believe that staff of this place should have the same conditions and entitlements as persons outside this place. However, that is achieved through the procedures and operations of the Parliament. Nothing will change as a result of the FOI legislation; namely, the objective of this legislation can be achieved through the internal processes of the Parliament, and that is how it should be done. Making this place subject to outside influence, to which the member for Morley refers, will erode the Parliament's powers. When someone has his mind set, as has the member for Morley, something evil and destructive can be found in all these provisions, but the reality is not that way at all.

This institution represents the people, and what we do here is for and on behalf of the people. The people judge us through election every four years, which does not happen to public servants. The control of all the institutions in this State is by the people through the Parliament. The moment we allow the will of the people, through the Parliament, to be subjected to outside influence - be it judiciary, Executive or independent office - we start to erode the powers of this place and the capacity to implement the will of the people as we should.

Dr ALEXANDER: The Minister has not answered the question asked by the member for Floreat. Will the staff in this Parliament be in a different position from staff of non-exempt agencies? If I had been here during discussion on schedule 1, I would have argued as strongly as the members for Floreat and Morley for the exclusion of Parliament from the exemption provision. However, the numbers are against us and the decision was made to exempt Parliament from the FOI legislation.

We are now considering the amendment covering departmental staff. Does this place such staff in a different position from those in non-exempt agencies regarding access to personal records? If so, what is the reason for that? I am not satisfied with the general answer given to the specific question raised. We wish to protect the rights of staff members of this Parliament.

Mr D.L. SMITH: I do not know how many times one must repeat things in this place. The staff of Parliament will not be able to access personal records using the freedom of information legislation. That is what the exemption is about. However, it does not prevent such staff continuing to access records by way of the avenues within the Parliament used in the past. If that is regarded as impertinent, the members for Perth, Floreat and Morley can raise the matter within this place and its various committees to ensure the situation is changed.

Such access is probably being achieved, but I am not prepared to make an unequivocal statement that it is - frankly, I do not know the way such access is achieved. This is a matter

for the Parliament. We should operate on the basis that the parliamentary staff work under the best conditions and circumstances with the same rights and privileges as anybody outside this place. However, we must do this through our Standing Orders, rules and management procedures and not on the basis of what is directed by some outside body.

Dr CONSTABLE: By way of comparison, do people employed in departments for which the Minister has responsibility have access to their personal records under this legislation?

Mr D.L. SMITH: I will have to check the list of exempt agencies to see whether all departments have that status. However, in the main, they would have that access.

Dr Constable: Therefore, some people are more equal than others!

Mr D.L. SMITH: No, some people obtain their equality through the FOI legislation, and others obtain it through the processes of the Parliament. We must ensure that the processes of this place are superior to even the FOI legislation. Frankly, if members want to continue making speeches and asking questions ad infinitum -

Dr Constable: You have clarified it beautifully.

Mr D.L. SMITH: - they may do so; however, it will not change the principle that this institution is supreme.

The only reason that people in departments within my portfolio responsibilities will have the protection of this legislation is because this place exists and has its powers. If Parliament did not exist, we would have anarchy and no means would be available to protect an individual's rights. If this place did not have supreme rights, we could not protect people from the courts and law enforcement.

Dr Constable: Are we protecting people employed in Parliament?

Mr D.L. SMITH: I reiterate, this place is the guarantee of the freedom and rights of every individual who lives in Western Australia. That is our responsibility. We must represent the people in the best way we can to discharge that onus to ensure that we are the supreme power in the land. The moment we allow the powers of this place to be eroded by outside influences, the rights of individuals will be jeopardised.

Dr Constable: You are talking about individual citizens now.

Mr D.L. SMITH: I am talking about Parliament always guaranteeing the individual rights and freedoms of its members and staff, but in order to guarantee the rights and privileges of the community this place needs special powers. This place needs a special status as it is the supreme authority in the land. Nobody in the Executive, the judiciary, the Public Service or an independent office bearer - not even the Governor - may be superior to this place. That is the way it should be. In that way we guarantee the freedoms and rights of the community and its individuals.

Dr ALEXANDER: The arguments have been canvassed and it is unnecessary to repeat them. However, when the Minister makes the statements he has, they must be answered to some extent. Firstly, as the member for Morley said, if Parliament were supreme, things would have worked out differently in recent times - clearly that is not the case. This legislation does not change the relationship between the Parliament and the Executive in any way. In fact, it seems to provide extra protection for the Executive; but that is a separate issue. Only a couple of months ago, as the Minister mentioned, legislation was passed through this Parliament to protect the employees of this place. It was long overdue and should have been done years ago, as everybody said at the time. Employees of this place now enjoy the same rights as workers elsewhere. If this is a special place, I do not know how they came to be the last on the list. This legislation now puts those same staff in a position where they cannot get access -

Mr D.L. Smith: That is not the case at all, we will guarantee that access as an institution.

Dr ALEXANDER: How? What an absurd proposition for a staff member to ask a member of Parliament, like me, for that information. As if any member of staff would be prepared to put themselves on the line like that. It would be a very poor way of obtaining information. Having worked for organisations where it has been difficult to get access to personal files, I am of the view that this provision is totally objectionable. If employees are to be given rights it must occur across the board unless there is a special reason for that not occurring. I do not

see, nor do I accept, that any of the Minister's explanations cover this question even if one accepted the arguments about the supremacy of Parliament and its being a special place, which we do not. Suppose, for the sake of argument, we do. There is still no logical extension of the argument concerning the employees in Parliament. They have rights, like anybody else, and they should be guaranteed to be at least equal, if not better than, those in other places. Of course they have some special obligations; everybody is aware of that. However, I do not see how the Minister's amendment does anything but take away workers' rights.

Mr DONOVAN: I understand that while I was out of the Chamber the Minister answered the question originally posed by the member for Floreat to the effect that members of staff of this place are not privy to the same protection under this legislation as are members of staff of other departments.

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

Mr DONOVAN: That takes me and the member for Perth back to the starting point of this debate. If the community is to believe in Parliament it should set an example of the operation of freedom of information legislation rather than be an exception to it. The credibility of MPs in this state and the community's level of confidence in them is sadly so low that we must address that credibility. I can only reiterate my earlier comments: Confidence is not restored or rebuilt by putting special boundaries around members of Parliament or the Parliament. The Minister referred to the fact that supremacy and power belong with Parliament and the fact that that is where the people's power resides. One cannot have that proposition and then say, paternalistically, the Government will put a special boundary around Parliament on behalf of people. Parliament cannot say people do not need to know as much as they think they need to know, because Parliament will look after those issues. People simply will not believe that.

I understand the Minister's concern for the credibility of this place; I share that concern. However, wanting it does not achieve it. To achieve it, some basic steps must be taken: People in the community must be told, not that they should believe members of Parliament because we say something is so, but because we are prepared to make it so. That is the issue.

Hot on the heels of that debate is the proposition to bring within those boundaries staff of Parliament who, as a result of this legislation, will not enjoy the same access to information as other employees in the public sector. What is the public to make of that? Surely, if members of Parliament believe the legislation they should open up themselves and their departments rather than conceal information or bring it within the purview of the exemptions in the Bill when everyone else must be subject to the Bill. It is indefensible to insulate the Parliament from the same processes, procedures and standards that the Parliament is, in turn, demanding of everyone else who serves it. One could get away with that in the "old days"; we could get away with that now if members of Parliament and institutions in which they sat still enjoyed the credibility in the community that they used to. The fact is, they do not enjoy that credibility. Wanting it so will not make it so. The only way it can be made so is to do it. That means opening up the institution, not closing it.

Mr D.L. SMITH: The special exemption that the member for Morley talked about is not being drawn by this legislation. It was drawn hundreds of years ago when this place was created. If the member for Morley wants to take away parliamentary privilege and all the aspects of supremacy and what that means, he will erode the rights of people of the State and surrender them to the bureaucracy. I wonder what would happen if, when the member for Morley spoke in this place, he was subjected to the same civil actions available to citizens in the community if he were making a speech somewhere else.

Mr Donovan: I have parliamentary privilege to protect me and my utterances. Exemptions under the freedom of information legislation are not necessary for that.

Mr D.L. SMITH: Parliamentary privilege must be protected at every opportunity. Only people who do not believe in the parliamentary process or the Westminster system - I think the member for Morley is one of them - mount those arguments. As a member of this place, I am prepared to guarantee that members and staff of Parliament will always have privileges and rights over and above those of the community. However, I will not allow - because it would surrender the rights of the people of this State - the erosion of Parliament's supremacy

by the insidious ways suggested by this amendment. Members should pride themselves on the rights and privileges they confer on their staff. Parliament is a supreme body and those rights are not conferred by trying to intrude artificially into Parliament as the member is suggesting. To ascribe to the Clerk, who suggested this amendment, some motive of the type the member for Morley is talking about is both wrong and unfair. I am simply seeking to reassert the supremacy of the Parliament as an institution, not the supremacy of this Chamber or the other place. The special boundary to which the member for Morley referred is there for very special reasons which are acknowledged, not just by me, but by every Parliament which has considered freedom of information legislation. No Parliament anywhere in the world which operates on the Westminster system allows the intrusions being sought by this amendment.

Quite frankly it is a circuitous argument made for the wrong motives and with a complete misunderstanding of how the basic rights and freedoms of individuals outside this Parliament depend upon the powers of this Parliament.

Division

Amendment put and a division taken with the following result -

Ayes (42)			
Mr Ainsworth	Mr Grayden	Mr McGinty	Mr Thomas
Mr. C.J. Barnett	Mr Grill	Mr Minson	Mr Thompson
Mrs Beggs	Mrs Henderson	Mr Omodei	Mr Trenorden
Mr Bloffwitch	Mr Gordon Hill	Mr Pearce	Mr Tubby
Mr Clarko	Mr House	Mr Read	Dr Turnbull
Mr Court	Mr Kierath	Mr Riebeling	Dr Watson
Mr Cowan	Mr Kobelke	Mr Shave	Mr Watt
Mr Cunningham	Dr Lawrence	Mr D.L. Smith	Mr Bradshaw *(Teller)*
Dr Edwards	Mr Leahy	Mr P.J. Smith	Mrs Watkins *(Teller)*
Mrs Edwardes	Mr Lewis	Mr Strickland	
Dr Gallop	Mr Marlborough	Mr Taylor	

Noes (3)		
Dr Alexander	Dr Constable	Mr Donovan *(Teller)*

Amendment thus passed.

Dr CONSTABLE: I move -

Page 85, line 13 - To delete the line.

My arguments for this amendment are the same as for my other amendments. This agency should be covered by the broad exemptions in schedule 1. We have a situation of overkill by including this agency of the Information Commissioner in the list. It seems a contradiction in terms to exempt the Information Commissioner. The broad exemptions I mentioned when we were previously debating the matter should cover the Information Commissioner. I see no reason why that office should be regarded as an agency which is given a blanket exemption.

Mr D.L. SMITH: The obvious reason for this exemption is that in his duties the commissioner from time to time will be receiving documents which are exempt. He would also be receiving some documents from exempted agencies. It would be a nonsense if the commissioner were subject to applications for access to those documents when he or she held them. More importantly the legislation is geared around people being able to complain to the Information Commissioner when they are dissatisfied with a response. If people are dissatisfied with the Information Commissioner's response it would be nonsensical to say they should then make a complaint to the Information Commissioner. A non-exemption of the Information Commissioner as an agency would require an insertion into the legislation of a series of amendments about how to deal with a complaint against the commissioner, or to set up an arrangement to allow direct access to the Supreme Court in relation to actions when people are dissatisfied with the commissioner's decision about himself or herself.

The commissioner will be responsible to the Parliament, will report to the Parliament, will be obliged to give written reasons for decisions and, to the extent that he or she is an officer of the Parliament, the commissioner will be subject to the scrutiny of the Parliament in all ways that are available to it. I do not think we need to include the office of the Information Commission as an agency. There is no reason why we would not exempt the commissioner but at the same time exempt the Auditor General or the Ombudsman or the Parliamentary Commissioner for Investigations.

Dr Constable: I would get rid of them all, if I could.

Mr D.L. SMITH: The member for Floreat might, but she would start to destroy their effectiveness. That is the theme of her speeches that worries me most. She does not seem to be concerned about the effectiveness of any of the agencies; she is interested only in this one issue of being able to get information. The member for Floreat seems to be willing to throw away the traditions of Parliament and to not worry about the impact upon the effectiveness of any of the organisations. Why do we have a Parliamentary Commission, an Auditor General, a Director of Public Prosecutions or an Official Corruption Commission? We have all these agencies because we believe there are specific tasks which they must do effectively.

Mr Donovan: Why did we have the Royal Commission?

Mr D.L. SMITH: We had the Royal Commission because there was a concern about the Executive arm of Government, and it has reported. One of the reasons it wants to set up a host of new checks and balances and offices is because it is the opinion of the Royal Commissioners that some of the agencies of Government do not have sufficient power to do what they must do. What the member for Floreat is seeking to do, based on the one value of wanting to know, is to sacrifice the effectiveness of all these agencies. The Royal Commissioners are saying that some of the existing agencies do not operate perfectly because they need more power and resources and, in addition, new agencies are needed which can do the things that the existing agencies cannot do. We will not cure the ineffectiveness of some agencies by throwing them open to the principles of this Bill. Many of the agencies would be almost neutered if we made them non-exempt agencies and they had to rely on the document exemptions.

The best way to make the Executive accountable to the people is to approach this issue on the basis that there is great value in freedom of information, but it is not the only way. The Royal Commissioners made the comment in relation to secrecy provisions that even the best kind of freedom of information legislation could operate in the worst of secret governments and not cure any of its ills. It is just one tool of accountability that should be available to the people. Over and above the right and the opportunity to know is that we also need an assurance, if information is available, that someone can actually use that information to restore the integrity, efficiency and effectiveness we should seek in all our Government enterprises and agencies.

People such as the Information Commissioner are there to ensure that the basic right of people to know is partly guaranteed through their office. To start eroding that by hamstringing the Information Commissioners operations so that he will have to deal with applications and, as a result, be forced to establish a review agency for his benefit, is simply the wrong way to go. There is an acknowledgement in principle that some agencies should be exempt: The obvious ones are the Freedom of Information Commission, the Official Corruption Commission and the Parliamentary Commissioner for Administrative Investigations. I am prepared to debate with the member about some of the others. We would destroy the effectiveness of the Information Commissioner and others that the member for Floreat has her eyes on if we treated them in the same way as we treat the Ministry of the Premier and Cabinet, the Department of Land Administration or any of those agencies. These are special agencies and their primary objective is to secure and guarantee the integrity and accountability of Government. That cannot be achieved by allowing people to intrude into their innermost operations by seeking information that might if it has been made available, destroy what they are trying to do.

Mr DONOVAN: I am sure, as is the Minister, that whoever is appointed to the position of Information Commissioner will be a model citizen committed to all the principles in this legislation. I am interested in the job myself and the Government will not have any worries. However, what happens when it becomes hard for me? Accountability and openness is easy

when there are no problems. It is when the hard decisions have to be made in relation to an issue, document, applicant or group of applicants that accountability becomes most important.

Far from its being the case that the special difficulties of the Information Commissioner are such that his agency should become exempt; it is much more the case that because he is the Information Commissioner he should set an example of accountability and openness to the people of this State in exactly the same way that the member for Floreat and I have argued that the Parliament must set an example of accountability and openness to the people of this State. That is the reason we rejected the first part of schedule 2. Cannot members understand that if the Information Commissioner is to have any credibility in the community he must set an example of openness and accountability? Whatever our rational turn of thought might be in this place, it has been said in the community since the time of Jesus Christ - I think he coined the phrase - "By their deeds ye shall know them."

For heaven's sake, if the Information Commissioner is exempted from the Act which is his responsibility to administer, we make a joke of him. As I said earlier in this debate, if things were different the credibility issue would not be so hard. If this place were viewed in the way we would like it to be, it would be one matter. If Government were viewed by the community in the way Government would like it to be, it would be another matter. If the process of public administration in this State were seen to provide the assurances that all of us and the public servants would like it to do, it would be a different matter, but that is not the case. We cannot stand up in this place on the hill and say to the people down in the valley, "No matter what you think of us we really have restored openness, accountability and credibility in this State", and then say, "By the way, the person who will have responsibility for administering this legislation, which is central to that restoration process, will be exempt." It is a nonsense and people simply will not believe it.

I understand what the Minister is saying about the importance attached to the ability of the commissioner to perform his functions. However, on the other hand lies the question of the confidence of the community that that function will be carried out properly. Of these two issues, and given where we are at in this State in respect of credibility, the question of credibility is more important in the community than is the question of the difficulties associated with the performance of the commissioner's functions. We are starting from a position of a lack of credibility. Therefore, our first task should be to get over that and then see what we can do about any difficulties the commissioner may have in performing those functions. The amendment moved by the member for Floreat addresses precisely that matter and deserves the support of this committee, if it wants the commissioner to be believed and the legislation to have the confidence of the people.

Mr D.L. SMITH: The example given by the member for Morley is one of more or less saying to members of the community, "We are introducing this legislation to make information held by the Government available to you in a host of ways and we want to confer on the person who will have the responsibility for enforcing that legislation certain special powers and privileges". I think members of the community will understand that only too well as they understand such matters in relation to Royal Commissions, Auditors General, Directors of Public Prosecution and the office of official corruption. The information commissioner will be no different. The way in which we seek to enhance his role and ensure his effectiveness is by making him responsible to the Parliament and not to the Executive. The commissioner will be in our hands. What we should not do is destroy the commissioner's effectiveness by making him subject to legislation which would hamstring his operation.

The nature of the commissioner's office will be such that all of the confidential documents for which exemption is claimed will go to him. If he is not exempt people will lodge applications not merely with the agency involved, but also with the commissioner as soon as he has the document. This amendment, if implemented, would start things going around in circles. In supporting the amendment the member has not said what sort of complaint mechanism he would have or how complaints would be resolved. In the end, the member would hamstring the holder of the office and prevent him doing the job as effectively as he could under this legislation.

As I said to the member for Floreat, one cannot approach the issue on the basis that the only

thing of any value to people in the community is information. We need a host of other agencies with special powers and privileges in order to ensure that they do their job properly. The commissioner needs this privilege of not being subject to his own legislation.

Amendment put and negatived.

Dr CONSTABLE: I move -

Page 85, lines 16 and 17 - To delete the lines.

The agencies listed here are the Parole Board, at line 16 and the R & I Bank Ltd at line 17. I believe the Parole Board is covered by the exemptions which appear in schedule 1. As far as I can determine, the Parole Board is not an exempt agency in any other jurisdiction. I cannot see why, having examined schedule 1, information about people and other deliberations will not be covered under that schedule. Therefore, I do not believe that power needs to be in this clause.

In relation to the R & I Bank Ltd we must refer back to comments made in part II of the findings of the Royal Commission. I realise that the Minister has said that we do not have to believe everything that has come from the Royal Commission. However, in this instance it is important to be aware that the Royal Commission noted at page 2 - 17 that a public enterprise engaging in commercial activity should not be exempted from freedom of information legislation except for compelling reasons.

I believe that the exemptions in schedule 1 provide enough protection for the bank without exempting it in a blanket way as in schedule 2. At page 2 - 15 of the report the commissioners say that public enterprises are not entitled to the same degree of secrecy as private sector businesses; in other words, that we cannot argue that the degree of secrecy in a public enterprise should be the same as that in a private enterprise. The State Bank should not be exempted under a blanket exemption as it is covered to the degree it needs to be by schedule 1.

Mr DONOVAN: This afternoon we adopted measures under schedule 1 of this Bill which exempted matters related to commercial and business information. The provisions we adopted appear to make it unnecessary to give the R & I Bank Ltd a blanket exemption under this clause. It is again a question of whether one should impose a discipline on people. I know that the Minister does not accept that argument. Were we to give the R & I Bank Ltd and other instrumentalities a clear inventory, if you like, of those areas that constitute exempt matters then it would be up to them to address the specific exemptions they would enjoy and not simply appeal to an umbrella exemption, because it is not intended that should be done.

Debating an exemption for the R & I Bank Ltd and the Parole Board in the same amendment is quite ironic. It is to satisfy the order of this place that we are dealing in one amendment with two agencies that are as far apart as the R & I Bank Ltd and the Parole Board. No need arises to provide an umbrella exemption. What is more important is to provide these bodies with guidelines directing them to discipline themselves. That direction is given under schedule 1 and preceding provisions of this Bill, so we do not need to give the umbrella provision outlined in this clause.

Mr D.L. SMITH: The member for Floreat is not correct in saying that no other State exempts its Parole Board. The Victorian and South Australian Parole Boards are exempt from the legislation. The obvious reason for the exemption of the Parole Board is that the primary matters which go before the Parole Board deal with the mental, physical and rehabilitative wellbeing of the applicants for parole. The Parole Board receives applications from people who are due for parole and determines whether those applicants should be granted parole, and in the course of performing that role, the Parole Board receives reports from psychologists, counsellors and other staff at the institution about the individuals who are the subject of the applications.

Mr Donovan: That is covered by clause 11 of schedule 1.

Mr D.L. SMITH: I am highlighting the fact that we are not talking about an agency which deals occasionally with the private affairs of an individual. We are not dealing with an agency which exists solely for the benefit of the individual. The Parole Board exists to protect the community in respect of the early release of prisoners. It maintains the security of the sentencing system by ensuring that the parole system is operated properly. It is

inevitable that when an application for parole comes up, the Parole Board receives reports about the conduct of the potential parolee and the opinions of the guards, the psychologists and the counselling staff. Under our legislation normally, that is the sort of personal information to which one would seek to ensure that individual had access. However, were parole refused because there was an adverse report from a psychologist or from one of the guards, and were that information to fall into the hands of the applicant, it would not only destroy the professional relationship between the applicant and that psychologist or guard, but also could lead to a desire on the part of the applicant for retribution against the persons who provided that information, and that would worry people.

The member for Floreat referred to the exemption for judicial people. In a way, the role of the Parole Board is not just an administrative one. It really has a judicial role, because it tries to weigh up whether it is appropriate to release a person on parole. That is its sole business. The Parole Board is not like other agencies which perform other major functions. Its only function is to deal with applications for parole. The Victorian and South Australian Parole Boards were exempted for the reasons that I have mentioned. It is a matter of judgment. New South Wales has made the Parole Board subject to the FOI legislation, and New South Wales is the State which receives the greatest number of applications from prisoners under the FOI Act, because they obviously see great advantage in trying to access all of the information that is available about them. That involves an enormous amount of work, and I am not sure whether it leads in the end to the early release of those persons or to a different judgment in respect of their release on the part of anyone who operates in the Department of Corrective Services.

The R & I Bank Ltd is a different creature. The R & I Bank by and large operates in the private enterprise system. It is Government owned, but it is not necessarily a Government bank. We all know that in a competitive situation, it could lead to the loss of customers if one could throw into the competitive equation the fact that privately owned banks could say, "At least you know that, in our case, you cannot get access through the FOI legislation to any of the information which we have, but the R & I Bank cannot give you that guarantee because it is not an exempt agency." The R & I Bank must rely upon establishing that the information which is being sought is contained in an exempt document under the provisions which apply to exempt documents. That sort of situation would scare the pants off anyone, because not only do people want to know that information about them is secure, but also they want a guarantee that it is secure. The moment we make the R & I Bank subject to FOI-type legislation, we cannot give that guarantee.

The Royal Commission, to the extent that it investigated any aspect of the R & I Bank's confidentiality, actually resulted in a very able Minister having to resign because he happened to pick up some information from that bank at second or third hand. This is a critical matter which goes to the personal affairs of individuals, and where we are talking about the successful and profitable operation in a competitive environment of a State owned agency. In not one State or Territory, nor in the Commonwealth, is its bank subject to this legislation, for the reason that that agency should be exempt from the requirement to provide information. That agency should also be able to guarantee that exemption, in order to ensure that no competitive edge can be gained by any of its competitors' saying that because it is a Government owned bank, it must rely upon the exemption of documents under the exemption list, or by saying that if the information were there, it would be just as good as giving that information to the Government because the bank is Government owned and the Government can access that information whenever it wishes.

We are dealing with the private affairs of individuals. What the community is really interested in is whether the R & I Bank is operating properly. That information can be obtained from the annual reports and through the controls which the State has in respect of the appointment of directors. That information should not be obtained by creating the risk that other information about the bank might also be obtained. We must remember that it is not just a question of the information which a bank holds about its customers. It is also a question of the information which a bank holds about itself. If on a day to day basis people could walk into the R & I Bank and seek information about its liquidity or other ratios and the bank had to rely upon the fact that it was a trade secret or that revealing that information might have an adverse affect upon its operations, that could put the bank in a position which none of its competitors was in. If the member for Morley and the member for Perth really

believe that the R & I Bank should be a successful State owned agency, the way to do that would not be to make it subject to an intrusion into its operations to which private banks are not subject. Every other State accepts that argument.

Dr ALEXANDER: This debate reminds me of a segment from "Yes Minister" where they are talking about open government. Sir Humphrey brings to the new Minister a report. It is a thick document titled "Open Government". The Minister who stood for and was elected on open government is pleased to see such a report within 24 hours of assuming office. However, he opens up the book to find nothing much in it at all. He asks Sir Humphrey about it and is told that the answer is easy because they dispose of the difficult parts in the title. It seems that this Bill is starting to fall under the same heading because while it talks about freedom of information openly and at length, the more we look at it when we come to the fine print the less we are able to get access to the information.

The Minister's explanation about the Parole Board is not very convincing because he admits that in New South Wales the Parole Board is not an exempt agency. That is generating a lot of interest among prisoners and no doubt their families seeking access to documents which may be before the Parole Board. In my brief time as a member of Parliament, coming into contact with people who come down at the wrong end of the judicial system and have ended up in prison or have been threatened with imprisonment, one of the most difficult tasks they face is access to information upon which the decision to either keep them in custody or release them is based. More usually, it is to keep them in custody. If that information were available to prisoners and their families, why would that do any harm? Why should a prisoner not know the reason that he or she has not been granted parole, as opposed to being released? Often one of the pent-up sources of frustration for prisoners and their families is that they simply do not know. They have no easy way to find out on what the decisions are based if the matter is not held in an open court. More often than not, the Parole Board sits behind closed doors. That would be a way to improve the judicial system and the faith of those who are on the wrong side of the system. They should know that the decisions of the Parole Board are soundly based. If not they have cause for complaint. If they are, they can at least see the reasons written down and have a reason to rationalise the extra time in custody. It may lead to a more harmonious situation rather than the suggestion by the Minister that people apply for information simply because they have nothing else to do. I would like to see the amendment go further. I cannot see why the Bureau for Criminal Intelligence is an exempt agency. Given the way in which that agency and similar agencies seem to have a penchant for collecting information about individuals, about which there is much suspicion in the community - some soundly based, some not - one of the ways to increase the confidence of people in these agencies which are supposedly set up to protect us, but which often end up oppressing people, would be to extend rather than restrict the exemptions.

Returning to the R & I Bank Ltd and the SGIO, I cannot understand the silence from the Opposition benches. When we debated matters concerning the SGIO and the R & I Bank Ltd over recent years the constant call has been for more information. Why then do we include these as exempt agencies? Why is it that the Opposition will not support the amendment to get the SGIO out of the category of exempt agency so that it can be treated like all other agencies? Then, when a request comes in, if under schedule 1 so many possibilities exist to exempt matter, there would be more than adequate protection for a body such as the SGIO. We have every reason to support the amendment; indeed most of the agencies included in schedule 2 should not have been included. To remove some of the agencies, particularly those highlighted in the amendment, would serve only to increase public confidence in the FOI legislation which at the moment tends to point more to barring access to information rather than providing freedom of information. If we provide the information on the one hand and restrict it on the other we have not made much progress when it comes to major Government agencies, about which there is a great deal of controversy already, at least partly related to the lack of information filtering through to this Parliament and to individuals caught up in dealing with the agencies.

Mr DONOVAN: I wish to briefly address the SGIO and the R & I Bank Ltd even though, because of the order problem relating to the Minister's proposed amendment we are not strictly speaking doing that. I undertake not to rise on his amendment for the SGIO. This provision raises the same issues as does the R & I Bank Ltd. I have finally realised that

schedule 2, exempt agencies, is a matter of God giveth and God taketh away. In schedule 1 the Government has had to exempt matters and provide limits to those exemptions. That has given the Government cause for concern regarding these agencies. It is the limit to exemptions that is providing the problem and has led to the expanded exempted agency situation. The provisions of schedule 1, clauses 9(b), 10 and 11 relating to the R & I Bank Ltd and the SGIO, and the Parole Board to the extent it applies give clear protections for specific matters for which the Minister wishes to provide an umbrella in schedule 2. If we are to simply umbrella-protect agencies, we are giving FOI legislation on the one hand and taking it away on the other. We are saying that in any event if people have a doubt or a problem with any of the matters, if they are unsure about whether clauses 9, 10 or 11 apply, they should not worry because they can always appeal to the umbrella in schedule 2. That is not good enough. We should be able to say to the agencies that they must get their acts together because from now on they will be confronted with FOI provisions, and that means they must sort out their disciplines. They will need to organise themselves so that they operate properly, openly and accountably as well as effectively under these provisions. It is not appropriate for the Parole Board, the R & I Bank Ltd, the SGIO and other agencies to have an umbrella escape route so that they do not need to worry if they have a doubt. The amendment should be supported.

Mr D.L. SMITH: I am coming to the conclusion that neither the member for Morley nor the member for Floreat has thought through the opportunities that arise with the introduction of FOI legislation. Imagine that the member for Morley goes into the local branch of the R & I Bank Ltd and applies for a personal loan of $6 000. He fills out the loan application, but his loan is refused. He returns to the bank to speak to the information officer. The bank is not an exempt agency so it must have a freedom of information officer at each of its branches. He asks for all the information surrounding his loan application and its consideration by the bank. The bank may not provide the information on the ground that it relates to the commercial activities of the bank. He makes a complaint to the Information Commissioner saying the bank refused to provide him with information and he is not satisfied that its ground for refusing is valid. The member for Morley believes that part of the information on the file should be available to him. The commissioner then must sift through each of the documents on the loan application file to see what is exempt and what is not. The member is not satisfied with the information provided to him by the commissioner and he appeals to the Supreme Court. He loses that appeal and he is still not happy so he turns his attention to the directors of the board. He thinks they are against him, so he formally requests minutes of all board meetings for the past six months to see who attended. The bank cannot argue that attendance records of board meetings fit under any of the exempt categories; so it is not exempt material. The commissioner must obtain the minutes. He must go through the bank's documents and delete all of the exempt matter and provide the applicant with the remaining information. The member notes that the board of directors had lunch at 12.30 pm and he wants to know what the directors had for lunch, and which restaurant they went to!

Mr Donovan: Won't that apply to any agency that is not covered by schedule 2?

Mr D.L. SMITH: Except other agencies which are providing services to the public.

Mr Donovan: What about SECWA?

Mr D.L. SMITH: The State Energy Commission of WA does not have the range of operations of a bank and does not hold as much confidential information as a bank. The primary business of the bank would be covered by the exemption - it is only ancillary activities that would not be subject to exemptions - but sorting out exempt material from ancillary material would be a costly exercise and would make the bank non-competitive. It would confirm to all and sundry that Government banks are different from any other bank because they can be hamstrung by these sorts of activities. That is the reason every other State of the Commonwealth has exempted its banks.

Amendment put and negatived.

Dr CONSTABLE: I move -

Page 85, line 18 - To delete the line.

We have just heard the argument for and against the inclusion of organisations such as the State Government Insurance Office. Once again it is worth repeating that the Royal

Commission said public enterprises are not entitled to the same degree of secrecy as are private sector businesses. We will probably differ about that, and in summary I believe that schedule 1 contains sufficient protections with exemptions for confidential communications about the State's economy, the State's financial and property affairs, the effective operations of agencies, and commercial and business information. The Minister gave the R & I Bank as an example and said that the FOI legislation would create too much work unless it was exempted. That argument is not good enough; the whole point of freedom of information legislation is having access to information. We should not exempt organisations such as State banks and insurance offices.

Mr D.L. SMITH: The question is not whether we follow the other States because they exempt banks or insurance companies, but whether the reasons for which the other States exempt their banks and insurance agencies are valid. In the case of an insurer, it is quite often engaged in litigation. The member for Floreat may argue that litigation material is exempt and therefore no-one can obtain such information, but if one is clever one could approach it in a different way. If a person were involved in a claim with an insurance company, he might ask for documents relating to the engagement by the SGIC of any insurance assessor over the last 12 months - which happened to cover the period when the accident occurred. They are then obliged to provide that information and copies of that documentation. For example, it could be seen whether an assessor engaged by the insurer went to Bunbury and rendered an account for his services. It would start to identify who the assessor was and provide an opportunity for information which one would otherwise not want to give.

Once the agencies, such as the SGIO, are privatised a problem does not exist because even if the State has a residual shareholding they cease to be Government agencies for the purposes of this legislation. In the main, we are talking about those companies which will not be privatised. They are the compulsory insurers for various Government purposes. It may be said that in relation to those entities the arguments are not as strong as they would be for a general insurer dealing with general commercial clients or a statutory insurer such as is required under the third party legislation. Nonetheless, if one examines the nature of an insurance operation it is clear that it would in the main be exempted by most of the document exemptions. The residual activities are so small that the valuable information can be obtained by the annual reporting process, otherwise there is not much point in making them subject to FOI legislation. However, the matter is debatable. I would not put it any stronger than that. The States' approaches to this matter vary.

Dr Constable interjected.

Mr D.L. SMITH: It may or may not be; however, the problem arises that because it is not an exempt agency the application is obtained. If people are dissatisfied with an answer on which they rely for an exemption an opportunity still remains through the various processes. Owing to the number and variety of people who may submit claims, the opportunity is such that they would seek to use or misuse it if they were dissatisfied with the response to their claim. In this case the corporation, which is the entity that carries out the general insurance, will be subject to the legislation. If it is then privatised the matter will become academic anyway. Until it is privatised, especially in the course of the preparation for privatisation, owing to the commercial advantage that people may obtain by being able to obtain details about its proposals for corporatisation, it should be allowed to be exempted until that corporatisation occurs. It will then not matter because it will be a private organisation and will not be subject to the legislation.

The CHAIRMAN: Because of the proposed amendment which will be moved later by the Minister I will put the question that the first four words on page 85, line 18, "The State Government Insurance" be deleted.

Amendment put and negatived.

Mr D.L. SMITH: I move -

Page 85, line 18 - To delete "Office" and substitute "Corporation".

Amendment put and passed.

Mr DONOVAN: I move -

Page 85, after line 19 - To add after "Commission" the words "until it has reported".

The member for Perth brought to my attention that that amendment may have grammatical problems if it were adopted because it refers to a member of a Royal Commission, not only the commission. I pointed out that "it" is a gender neutral term and should be quite acceptable to members. Much discussion has taken place over the past three weeks about the Royal Commission (Custody of Records) Amendment Bill. Members will recall that that debate focused heavily not only on the question that was raised by Hon Phillip Pendal in the other place about the archival issue of documents, but also, by other members, on whether the commissioner should have discretionary power in relation to the documents included. The irony of the situation today is that the Attorney General has just introduced legislation in the other place to deal with the issue of preserving working documents and other matters - admittedly for a period - although members in this place are dealing with this schedule that seeks to exempt the Royal Commission anyway from the provisions of the freedom of information legislation.

Members will recall that the member for Floreat's original amendment was to delete "the Royal Commission". I am prepared to concede that there may well be difficulties in applying that during the course of the Royal Commission's active life. Much debate has occurred over the past few weeks in this place and in the public forum about precisely that issue. However, I am not prepared to concede that that should continue ad infinitum, although I accept that special difficulties are associated with a Royal Commission, notwithstanding the other problems to which those difficulties relate. I am uncomfortable with some of those. However, those difficulties cease when the commission reports to the Parliament. Therefore, this amendment's intention is simply to provide a sunset clause to the special privilege attaching to a Royal Commission via its exempt status under this schedule and to sunset that special privilege at and from the day it reports to the Parliament.

Mr D.L. SMITH: I do not want to reiterate all that was said in the debate about the Royal Commission. Members who read the debate would be aware that for the effective operation of the commission it is necessary for the exemption to continue after the commission has reported. That may not be the case for all commissions because they do not all deal with matters such as those which were covered by this Royal Commission on WA Inc. In this case the public were asked to make submissions to the Royal Commission. Those submissions, complaints or whistleblowing exercises will still be on the records of the Royal Commission after it has reported. The amendment suggested by the member for Morley includes no safeguards by specifying for how many years access cannot be obtained. Under this amendment the access would therefore be immediate. This amendment provides that, as soon as the Royal Commission has reported, people can immediately obtain access to all of the information that the Royal Commissioners have unless they could rely on some of the exemptions which are provided for in the list of exemptions. As I said, I do not really want to have that debate all over again. It is obvious that Royal Commissions are one group that should be exempt by virtue of their status.

Dr ALEXANDER: As the Minister said, we have been through these arguments before. However, the point he raised is not an adequate argument against this amendment because if the concern is that the amendment allows theoretical immediate access to documents used for the drawing up of the Royal Commission report, we have just dealt with legislation which seeks to qualify that and which initially sought to allow the commission to destroy certain documents. I now understand that an amendment will allow compromise on that situation. However, that highlights the point that any Government worth its salt will deal with the matter of the length of time for which certain documents might be protected either at the time of the setting up of the Royal Commission or of its reporting.

The amendment looks at the principle and states that we believe that Royal Commission documents should be accessible by the public after the event. In practice, Governments or Parliaments may decide to exempt certain documents for certain periods. However, that would not in any sense contradict the spirit of this amendment, whereas, as the schedule stands currently, it says no access to Royal Commission documents, full stop. The Minister's adviser is shaking his head but that is how it appears to me to read. I will be interested to hear any contrary argument. The exemptions include any agency and any Royal Commission or member of a Royal Commission. What is that doing if it is not protecting all of the documents drawn up during a Royal Commission's deliberations and hearings?

I believe the amendment is a sensible compromise in that it provides that while the Royal

Commission is under way there should not be access to that commission through freedom of information legislation. However, once the Royal Commission has reported, perhaps there should be such access, depending on what the legislation pertaining to the setting up of what that Royal Commission has to say.

Mr D.L. SMITH: There is a fairly cute legal argument which suggests that this amendment is not necessary. In fact, it is not just cute, it is also correct. When a Royal Commission has reported, it ceases to exist, therefore, there is no agency to be exempt. Clause 7(2) of the glossary states that "a document of a Royal Commission that is included in the State archives is to be regarded as being a document of the Minister administering the Royal Commissions Act 1968". As soon as the commission has reported, it is no longer an exempt agency because it no longer exists. Requests for documents would then have to be made to the Minister administering the Royal Commissions Act and he would have to rely on the document exemptions. In fairness, that does not fix the problem. The usual practice in the past has been that when Royal Commissions report, they dispose of the documents in whatever manner they think fit. Because they are no longer an agency after they have reported, they would not be covered by the FOI legislation and would not be caught by the destruction provisions which were inserted earlier into the legislation. We need to have a more comprehensive solution to the sorts of problems that are being suggested by members in relation to Royal Commissions.

Mr Donovan: Why not leave them out of the schedule?

Mr D.L. SMITH: We want them in the schedule because we want them to be exempt while still in operation, otherwise numerous people will go to them and use the provisions of the legislation.

Mr Donovan: You can achieve that on a case by case basis.

Mr D.L. SMITH: No-one thinks that a Royal Commission or any other judicial body should be subjected to FOI legislation while it is still sitting and considering the matters before it. That would make a nonsense of the nature of a Royal Commission.

Mr Donovan: You could achieve it through the Act that establishes the Royal Commission. You don't need to provide the umbrella escape route in here.

Mr D.L. SMITH: Unless the exemption is granted, it will not be exempt because of the provisions of this legislation.

Mr Donovan: You could set up Acts to override previous legislation. We did that with the one that set up this Royal Commission.

Mr D.L. SMITH: This legislation overrides the other provisions of other legislation, unless it comes within the exemption provisions or the secrecy of this legislation.

Mr Donovan: Therefore, you should have no difficulty with the amendment. You should put in a sunset clause.

Mr D.L. SMITH: The amendment is meaningless because Royal Commissions no longer exist once they have reported. Making it a non-exempt agency after it has reported is a nonsense because it no longer exists. The Minister will hold the documents in an archival sense. If members want to preserve the documents of a Royal Commission after it rises so that they are put in the archives, that should be achieved by an amendment to the Royal Commission's legislation.

Amendment put and negatived.

Mr DONOVAN: This matter is important to those of us who have been mounting an argument this afternoon. I want to reiterate the principles upon which we have been arguing this matter. In this Committee we have been dealing with the provisions of a procedure whereby we will introduce into Western Australia freedom of information in our agencies, departments and instrumentalities. That is what it is about. In schedule 2 we have drawn a very tight boundary around that which is to be exercised in this Bill. Worse than that, we exempted the Parliament from it when it should be the first to be included. We sought in schedule 2 to try to reduce some of those agencies that are to be protected, inappropriately in the view of those of us arguing this case. That has not succeeded. However, the schedule when it is adopted - obviously it will be - should have attached to it a record stating that a

number of members of this place expressed serious concerns about the way in which God gave us freedom of information legislation on the one hand and took two-thirds of it away on the other. That is the effect of schedule 2. I said the worst possible feature of that is that this House representing the people in this State in the Parliament is about to say "everybody else, except us".

Mr D.L. SMITH: By the time this legislation passes through the Assembly in my view it will be the broadest and most open freedom of information legislation in Australia and will do the State and, I hope, the Government some credit.

Schedule, as amended, put and passed.

Glossary -

Mr D.L. SMITH: I move -

Page 86, lines 5 to 7 - To delete the lines and substitute the following -

"agency" means -

(a) a Minister; or

(b) a public body or office,

and **"the agency"** means the agency to which an access application or application for amendment of personal information has been made or to which such an application has been transferred or partly transferred;

"applicant" or **"access applicant"** means the person by whom or on whose behalf an access application has been made;

"applicant for amendment" means the person by whom or on whose behalf an application for amendment of personal information has been made;

There are a series of drafting amendments to the glossary. They are just a matter of changing the order in which things appear in the definition section as a result of calling agencies "the agencies" rather than simply "agencies".

Amendment put and passed.

Mrs EDWARDES: I move -

Page 89, line 14 - To add after the word "material" the words ", including affixed papers,".

Page 89, line 25 - To add after the word "mechanically" the words ", magnetically".

Mr D.L. SMITH: Both these amendments are agreed to.

Amendments put and passed.

Mr D.L. SMITH: I move -

Page 89, after line 25 - To insert the following lines -

"requested documents" means the document or documents requested in an access application;

Page 89, line 26 - To delete "the Library" and substitute the words "The Library ".

Page 90, lines 1 to 12 - To delete the lines.

The definition of "requested document" will be amended to "requested documents". The reference to the State Archivist will be amended by reference to The Library Board of Western Australia. That is the only intent of these amendments.

Mrs EDWARDES: The Minister has not explained the reason for the deletion of lines 1 to 12 on page 90.

Mr D.L. SMITH: This is a result of reordering the definition clauses. Lines 1 to 12 will be deleted but they have been substituted in effect by the definition of "agency" as incorporated earlier.

Amendments put and passed.

Dr CONSTABLE: Will the change in the definitions and the amendments moved by the

member for Kingsley regarding affixed papers mean, for instance, that a yellow slip attached to a document would be part of that document?

Mr D.L. Smith: That is correct.

Glossary, as amended, put and passed.

Postponed clause 47: Agency may amend information -

By leave, the following amendment was withdrawn -

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

Mr D.L. SMITH: I move -

Page 30, lines 9 to 21 - To delete the lines and substitute the following -

(3) The agency is not to amend information under subsection (1) in a manner that -

(a) obliterates or removes the information; or

(b) results in the destruction of a document containing the information,

unless the Commissioner has certified in writing that it is impracticable to retain the information or that, in the opinion of the Commissioner, the prejudice or disadvantage that the continued existence of the information would cause to the person outweighs the public interest in maintaining a complete record of information.

(4) Section 30 of the *Library Board of Western Australia Act 1951* does not apply to the destruction of a document under this section, but before information is amended under subsection (1) in a manner that -

(a) obliterates or removes the information; or

(b) results in the destruction of a document containing the information,

the Commissioner shall provide the Library Board of Western Australia with a copy of the certificate issued by the Commissioner under subsection (3).

Amendment put and passed.

Postponed clause, as amended, put and passed.

Postponed clause 62: Functions of Commissioner -

By leave, the following amendment was withdrawn -

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

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

Mr D.L. SMITH: I move -

Page 39, after line 24 - To insert the following paragraph -

(c) issuing certificates under section 47(3);

Amendment put and passed.

Dr CONSTABLE: I move -

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

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

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

Amendment put and passed.

Clause, as amended, put and passed.

Title put and passed.

Bill reported, with amendments.