

The member for South Perth raised important environmental issues and he raised concerns that I have repeated here about this company being able to do the job. It can do the job only with substantial backing from other major investors, be they onshore or offshore investors. I hope they will be onshore investors and at one stage about a year ago that seemed likely. However, that has not come to fruition and we anticipate that the investors may indeed be offshore. Nevertheless, I believe there is sufficient protection in the legislation to overcome the problems the member has recognised, but at the same time a great deal of care must be taken by the responsible Governments to ensure the problems he has raised do not come to fruition. I cannot promise that they will not and I would not pretend to do that. I certainly recognise that they could be real problems for people such as the pastoralists and the people of Onslow should the project collapse and we are left with the sea walls and the like referred to by the member for South Perth. Those matters will be addressed by the Environmental Protection Authority and the responsible Minister in due course. I thank members for their general support for the Bill.

Mr C.J. Barnett: Do you have an expectation of the timing of the project?

Mr TAYLOR: If the legislation goes through the Parliament these people will have an opportunity to go to the market and say they have State backing for the project and seek interest on that basis. I think they would be reasonably fortunate to be able to start work on the project next year. A lot will depend on overseas demand for salt and the world recession has reduced demand for that commodity. Of course, the expansion that Dampier Salt (Operations) Pty Ltd and Leslie Salt have undertaken or is nearing completion will also meet a lot of that demand, but I hope the project will start in 1993.

Question put and passed.

Bill read a second time.

Third Reading

Leave granted to proceed forthwith to the third reading.

Bill read a third time, on motion by Mr Taylor (Minister for State Development), and transmitted to the Council.

BILLS (2)

Messages - Appropriations

Messages from the Governor received and read recommending appropriations for the purposes of the following Bills -

1. Morley Shopping Centre Redevelopment Agreement Bill
2. Mining Amendment Bill

FREEDOM OF INFORMATION BILL

Recommittal

On motion by Mr D.L. Smith (Minister for Justice), resolved -

That the Bill be recommitted for the further consideration of clauses 15, 75 and 84, and schedule 1.

Committee

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

Clause 15: Transfer or notification of applications -

Mr D.L. SMITH: I move -

Page 8, line 15 - To insert after "knows" the following -
 , or has reasonable grounds to believe,

Page 8, line 16 - To delete "may" and substitute "has to"

Clause 15 provides that where an agency does not hold requested documents but knows which other agency does hold those documents, the agency may transfer the request. The

Royal Commission recommended in its second report that agencies should be required to transfer requests in such circumstances. This amendment will give effect to the Royal Commission's recommendation.

Mrs EDWARDES: These are matters previously raised in debate which were referred to in the second part of the Royal Commission's report. The Opposition is happy to support the amendments.

Amendments put and passed.

Clause, as amended, put and passed.

Clause 75: Decisions of the Commissioner -

Mr D.L. SMITH: I move -

Page 48, line 23 - To delete "may" and substitute "has to".

Page 48, line 25 - To insert after "form" the following -

whichever is appropriate in order to ensure that the public is adequately informed of the grounds on which such decisions are made

Clause 75(8) provides that the Information Commissioner may arrange to have his or her decisions on complaints published in full or in abbreviated form. The Royal Commission recommended in its second report that the Information Commissioner be obliged to publish reasons for all decisions. This amendment is intended to give effect to the Royal Commission's recommendation.

Mrs EDWARDES: This matter was also raised in debate previously. When the commissioner makes a decision it is important that people who are not parties to the proceedings have an opportunity to learn of the decision to assist them in the conduct of their businesses, practices or procedures in the future. It is important that members of the public understand why the commissioner makes certain decisions.

Amendments put and passed.

Clause, as amended, put and passed.

Clause 84: Appeals to Supreme Court -

Mr D.L. SMITH: I move -

Page 54, after line 2 - To insert the following lines -

- (d) confirm the refusal of the agency to deal with the access application; or
- (e) give access to a document in the manner referred to in section 27 or withhold access under that section,

or if the decision is a decision not to deal with the complaint.

Page 54, lines 5, 6, 8, 9, 10 and 14 - To delete the lines.

This clause deals with appeals to the Supreme Court. Members will recall that in previous Committee debate on this clause, concern was expressed that some of the items listed as not being appealable under subclause (2) should be appealable. In particular, subclause (2)(a) prohibited an appeal in respect of the refusal of the agency to deal with the access application, and subclause (2)(c) prohibited an appeal in respect of the giving of access to a document in the manner referred to in clause 27 or the withholding of access under that clause. Subclause (2)(f) prohibited an appeal from a decision of the commissioner in respect of whether or not to deal with a complaint. The intent of this amendment is to transfer those three prohibitions into subclause (1) so that there will now be a clear right of appeal in respect of those three items. The remainder of the amendments are consequential amendments to subclause (2) and the other clauses arising out of the transfer of those items from non-appealable items to appealable items.

Mrs EDWARDES: I do not support the proposed amendments. I stated during the debate yesterday that an appeal to the Supreme Court should be able to lie in respect of any question of law arising out of a decision of the commissioner, and I do not resile from those comments. The mere fact that the Minister has now picked up three of those areas means that there are still three other areas where a question of law which may arise from a decision of the commissioner will not be appealable to the Supreme Court.

Mr WIESE: It is interesting that the Minister has gone part of the way towards meeting the concerns raised during the debate last night. I do not know why the Minister is not prepared to accept that if justice is to be done under this system, there should be a right of appeal in respect of all questions of law arising from a decision of the commissioner. However, the Minister has gone part of the way, and that is a start.

Mr D.L. SMITH: I remind members that the purpose of this recommittal is to increase the range of opportunities for appeal. To that extent, I am surprised that these amendments are being opposed. One would have thought they would have been accepted, and that members opposite could then confirm their wish that they be extended further. The worst thing that could happen to the system which we are now setting up is that it would become a legalistic system where eventually all decisions would be made by the Supreme Court. Were that to occur, it would simply make this too expensive and protracted a system for obtaining the information which is sought, and most potential users of the legislation would be discouraged from doing so. These amendments strike a balance between the concerns that were expressed by some members about how the right of appeal was too limited, and the real desire to make the system relatively cheap, simple and accessible rather than an excessively costly one from which only lawyers will profit.

Amendments put and passed.

Clause, as amended, put and passed.

Schedule 1: Exempt matter -

Clause 1: Cabinet and Executive Council -

Mr D.L. SMITH: I move -

Page 72, line 12 - To delete the line and substitute "for possible submission to an".

The intent of the proposed amendments to schedule 1 is to read down the particularised list of matters which would be covered by the Cabinet exemption so that, for example, in respect of a communication between Ministers on matters relating to the making of a Government decision or the formulation of a Government policy, it is made clear that only matters of the kind which generally have to go to Cabinet for approval or endorsement will be exempt under this provision and that it is not to relate to Government decisions or policy in general terms. The intent of the other proposed amendments to this clause is to ensure that documents will be exempt if they are produced for possible submission to an Executive body and if it is indicated on the face of the documents that that is their purpose. Similarly, documents which are the subject of consultation among Ministers relating to the making of a Government decision of a kind generally made by an Executive body or the formulation of a Government policy of a kind generally endorsed by an Executive body will also be exempt.

Mr DONOVAN: This amendment and the other amendments which are foreshadowed by the Minister represent an attempt on the part of the Minister to come part of the way towards meeting some of the concerns expressed about this clause. However, I point out that members will quickly recognise that the amendment which the Minister has proposed to line 12 is just a different wording, which deletes the words "(whether submitted or not) to an Executive body" and seeks to get around the problem by saying "for possible submission to an" Executive body. One does not have to be a lawyer to work out that if a document was not submitted to an Executive body, it would still qualify as an exempt document if it was intended for possible submission to an Executive body. Therefore, this amendment is really a bit of a play on words, but that is all I will say about it. I will not oppose the amendment.

Amendment put and passed.

Mr D.L. SMITH: I move -

Page 72, lines 14 to 16 - To delete the lines and substitute the following -

- (c) is a communication between Ministers on matters relating to the making of a Government decision or the formulation of a Government policy where the decision is of a kind generally made by an Executive body or the policy is of a kind generally endorsed by an Executive body;

Mr DONOVAN: This amendment constitutes a halfway accommodation on the part of the

Minister because at least here we have a recognition that the purpose of a matter which would qualify under proposed new subclause (1)(c) is directed towards the decision making processes of an Executive body, whereas existing subclause (1)(c) could, unintentionally or otherwise, incorporate matters to which it would be quite improper to grant an exemption. I thank the Minister for coming that far along the track.

Mr WIESE: It would be ungracious of me not to say likewise that at least the Minister is going part of the way towards ensuring that this legislation is effective. I am pleased to see this amendment.

Amendment put and passed.

Mr D.L. SMITH: I move -

Page 72, lines 19 to 23 - To delete the lines and substitute the following -

- (i) prepared for possible submission to an Executive body, or
- (ii) the subject of consultation among Ministers relating to the making of the Government decision of a kind generally made by an Executive body or the formulation of a Government policy of a kind generally endorsed by an Executive body;

These amendments are consequential to the two previous amendments.

Mr DONOVAN: I point out to members that by a combination of the two previous amendments, we have got a play on words where the words "(whether submitted or not)" have been taken out and the words "prepared for possible submission" have been inserted. That will achieve the same effect as the amendment to line 12. I again thank the Minister that he has at least gone part of the way towards making concessions.

Amendment put and passed.

Mr D.L. SMITH: I move -

Page 73, lines 8 to 11 - To delete the lines and substitute the following -

- (3) Matter is not exempt matter under subclause (1) if it, or, in the case of matter referred to in subclause (1)(f), the original matter, came into existence before the commencement of section 10 and at least 15 years have elapsed since it or the original matter (as the case may be) came into existence.
- (4) Matter is not exempt matter under subclause (1) if it, or, in the case of matter referred to in subclause (1)(f), the original matter, came into existence after the commencement of section 10 and at least 10 years have elapsed since it or the original matter (as the case may be) came into existence.

The intent of this amendment is to make the period for the exemption of Cabinet matters 15 years in respect of matters which were created before the legislation comes into effect, and 10 years in respect of Cabinet matters that arise or are created after the legislation comes into effect. The current situation, as members will recall, is that it is currently 10 years in both cases. I do not wish to embark on a debate about the matter, but I will listen to members' views.

Dr CONSTABLE: Two issues are involved: One is the very special feature of the Bill; namely its retrospectivity. This is the only legislation of its kind in the country with a retrospectivity provision. I can live with Cabinet documents already in existence being exempt for 15 years taking into account the retrospectivity. Secondly, when we come to view documents which are yet to be created, 10 years is the limit which should apply. I agree with the Minister that we do not need a debate of any great length on this matter. We need to take the least restrictive option in support of FOI and the Royal Commission's report, and in relation to the least restrictive legislation in other jurisdictions, the 10 year limit should apply to future documents.

Mrs EDWARDES: I do not support this amendment. It involves running away from open government by the imposition of a 15 year restriction. Amendments were moved last night by the member for Floreat who was supporting the 10 year provision, but today she and the

member for Morley are saying that they want Parliament not to be exempted from the FOI legislation. It was reported in *The West Australian* that they stood up against the Opposition and the Government - the major players - saying that Parliament should be at the forefront of freedom of information. Tonight they support the Government and are running away by adding five more years before Cabinet documents are available! The documents will be shrouded in secrecy. Next year we will have access to the Cabinet documents and records of this Government. The Royal Commission has found that documents are missing and have been shredded. Also it discovered that advice given to Cabinet was ignored. Nevertheless, the Minister says that that is okay because all the Cabinet documents have been to the Royal Commission. What about the issues outside the Royal Commission's terms of reference? That may be precisely the reason that the Government is running away from this provision. What is in those minutes of the first year of this Government? Cabinet records have been put under the pump by the Royal Commission, and what does the Government want to hide? Why do they want to impose a further five year restriction?

The pious attitude of the members for Floreat and Morley has been shown up for what it is! They have claimed to support openness in government, yet the next time they come into the Chamber and recommit the Bill they say that they want five more years of Cabinet secrecy. Why does the Government want five more years? Government members believe they will not be sitting in this Chamber next year and have to face questions in this regard. They do not want to face the odium attached to the Government's minutes. That is why they want another five years' restriction. If we have access to Cabinet minutes next year, we will bring them to this place and look into the whites of their eyes in the corridors of this place. The public and *The West Australian* will look closely at the Cabinet documents which this Government is trying to hide for a further five years.

Mr DONOVAN: The member for Kingsley is absolutely right; an agreement was struck this afternoon. Everybody should know that.

Mr C.J. Barnett: You made a deal?

Mr DONOVAN: However, that agreement is substantially and qualitatively better than the 15 year protection which the member for Kingsley is seeking - and probably still is - on schedule 1, clause 6!

Mrs Edwardes: Why hide for five more years? Stick to the 10!

Mr C.J. Barnett: You made a deal!

The CHAIRMAN: One member at a time. There is no need to become upset.

Mr DONOVAN: The member for Kingsley knows as well as anyone else in this place that the arithmetic is one vote different tonight from what it was last night. Were it otherwise, existing clause 3 would require 20 years.

Mrs Edwardes: You won 10 years; you got it through, so stick to 10.

Mr DONOVAN: There has never been, and will never be, any doubt about the preference that the member for Floreat and I have for the 10 years on both counts.

Mrs Edwardes: Except for your vote tonight, when it will be 15.

Mr C.J. Barnett: You make pious speeches in this Chamber day in and day out and now say you will vote for something you do not believe in.

Mr DONOVAN: I remind the Deputy Leader of the Opposition of what he and every member on his side of the House did on this matter. This afternoon they voted to exempt politicians from freedom of information legislation.

Mr C.J. Barnett: What did you argue for?

Mr DONOVAN: Before the member barks too loudly, he should remember what he did this afternoon.

Mrs Edwardes: You are allowing this Government to hide behind a further five years of secrecy.

Mr DONOVAN: This afternoon we took on board the actions of the member for Kingsley and the Deputy Leader of the Opposition, and we were quite firmly convinced that in the light of those actions, the Opposition would support 20 years on both of those provisions.

Mrs Edwardes: We supported 10 last night and we would support 10 tonight, but you have changed your mind and agreed to 15.

Mr DONOVAN: The member for Kingsley should tell me that would have been otherwise.

Mrs Edwardes: We voted; where were we sitting?

Mr DONOVAN: The member voted last night. She cannot get away from that.

Mrs Edwardes: It was at 10 and you are changing it to 15 years tonight. You cannot back away from that.

Mr DONOVAN: That is true; we are amending it to 15 years tonight. The member for Kingsley went to the Minister to negotiate 15 years retrospectively and 15 years prospectively on both those clauses.

Mrs Edwardes interjected.

The CHAIRMAN: Order! We cannot have a discussion on that basis.

Mr DONOVAN: The Opposition hopes to be in Government next year, and it does not want to be saddled with 10 years.

Mrs Edwardes: We are; we will vote for it.

Mr DONOVAN: That is why the member for Kingsley went to the Minister this afternoon with a proposition for 15 years both ways on each clause.

Mrs Edwardes: If you want to change to 15, be consistent.

Mr DONOVAN: Is that not the case?

Mrs Edwardes: I admitted that, but 10 years was agreed to before tonight and we will be voting for 10 years as you will vote for this Government to have five more years of secrecy.

The CHAIRMAN: Order! Member for Kingsley, you have had your say; come to order please; the member for Morley has the floor.

Mr DONOVAN: It is entertaining.

The CHAIRMAN: You may find it entertaining, but I am trying to keep order in the House.

Mr DONOVAN: I apologise. I respect that, obviously, the Chair has a different view of these matters than has the House. I repeat that this afternoon those members voted to exempt themselves from the application of this Bill. What confidence could the member for Floreat, I or anybody else have in their integrity in the light of their approaching the Minister for a 15 by 15 year deal on both clauses? The member for Floreat and I went for the best deal we could practically achieve.

Mrs Edwardes: You had it last night.

Mr DONOVAN: Last night was last night; tonight is quite different and members opposite know that we have a recommitted Bill on which they sought to do a far worse deal than I did. People may be critical of us for the deal we made. If we deserve criticism, I am happy to accept that and, I think, so is the member for Floreat. It would have suited me better to have been able to achieve five years. If we could have achieved 10 years -

Mr Omodei: Let's be honest.

Mr DONOVAN: I am trying to be honest, but the member for Warren will not let me finish my remarks. My preference would be for five. The Opposition may be in Government by February next year; will it support five years? The Deputy Leader of the Opposition is shaking his head. Of course not. I cannot achieve five years. Last night we achieved 10 and the member for Kingsley knows as well as I that with the recommittal of this schedule on our proposition we would lose that 10 years.

Mrs Edwardes: You had 10.

Mr DONOVAN: We have 15 by virtue of an agreement struck this afternoon. We would not have maintained that 10 and members opposite know that very well because the arithmetic in the House would not allow that. That is the reason members opposite went to the Minister with a 15 by 15 year deal.

Mr C.J. Barnett: Put it to the vote.

Mr DONOVAN: The member for Floreat and I did the best we could to achieve what we thought was the best result.

Mrs Edwardes: You sold out your principles.

Mr DONOVAN: If we could have done better on that - we have not done better - I, and I am sure the member for Floreat, stand open for fair criticism. I am quite happy to wear that; that is not a problem to me.

Mrs Edwardes: You had agreed to the 15 when I spoke with the Minister because it had already been written. You sold out your principles for a further five years of Government secrecy.

Mr DONOVAN: We agreed to 15 years in order to obtain 10 years on the subsequent clause which we will be debating in a moment.

Mr C.J. Barnett: Who does that advantage?

Mr DONOVAN: I do not know how far the Chairman will allow me some licence in this, but members will see the point in clause 6 on page 79 of the Bill. The member for Wellington and the member for Avon will tell them that the experience of the past 12 months' inquiry into the Notre Dame affair has revealed that the information relating to deliberative processes delivered far more important, valuable and useful information than did the formal Cabinet minutes, comment sheets and decision sheets. In other words, in practical terms, it is far more useful to have a 10 year provision on deliberative processes than on a formal Cabinet document. That is reality; if members opposite care to consult -

Mrs Edwardes interjected.

Mr DONOVAN: That is one.

Mrs Edwardes: There were quite a few, including the September and the November ones.

Mr DONOVAN: However, without the deliberative processes to back them up, they were useless. The member should ask her colleagues, the member for Wellington and the member for Avon, who will tell her how useless those documents were without the deliberative documents.

Mrs Edwardes: If the deliberative documents lead to a Cabinet sheet they are covered by the 15 year rule, not the 10 year rule.

Mr DONOVAN: The Cabinet documents are covered by the 15 year rule, but the deliberative processes are not.

Mrs Edwardes: Unless they lead to a Cabinet decision.

Mr DONOVAN: That is not in the Bill. The 15-year rule applies to clause 1 documents.

Mrs Edwardes: Ask the Minister. The deliberative document that leads to a Cabinet decision is covered by the 10-year or 15-year rule. The Minister told me it is covered by the 15-year rule.

Mr DONOVAN: The member for Kingsley can argue legal procedures with me if she likes. It will not dig her out of the hole that she dug for herself this afternoon. If the member for Floreat and I have dug ourselves into an egg cup, it is nothing compared to the canyon that the member for Kingsley dropped those opposite into. We know we have done the best we could to achieve the best result. If we have erred, the people will criticise us for it - and so they should. This outburst will not save the member for Kingsley from her embarrassment.

I am happy to say that we achieved an agreement. That is true. We did a deal. We did the best with what was available to get the best result for this legislation. Without that deal we would not have been in the position that we were last night. The member for Kingsley knows that. We were going to be saddled with 15 years for both clauses which this future Attorney General in a hopeful Liberal Government wanted to shelter those opposite with. The results that the member for Floreat and I were able to achieve are a lot better than that.

Mr C.J. BARNETT: There are two major issues here. I admit that I have not taken part in the debate, but I am very interested in this part of it. The two issues are the number of years for which the documents should be exempted under the freedom of information legislation and whether there should be a balance between the dichotomy of what is retrospective and what is prospective.

With respect to the number of years, the original legislation had 20 years. It was argued successfully last night that that was too long. A provision for 10 years has been inserted in its place. As the member for Kingsley said, the Opposition is prepared to accept 10 years as long as it is consistent retrospectively and prospectively. In some circumstances 10 years is a little short. Let us take the example of the North West Shelf project where sensitive Cabinet agreements were being negotiated in the late 1960s and early 1970s. If the period had been 10 years, information would have been made public when the contracts were being finalised. We may have a gestation period that goes beyond 10 years. That project probably would never have got off the ground had Cabinet discussions and documentation become public in the late 1970s. The project probably would have failed for no good reason, other than for commercial sensitivity about contract prices, arrangements and reserves. All of that information would have been available to competitors of that project. That is not a hypothetical example; it is an example of a project that had a gestation period of more than 10 years.

I have some concerns about a period of 10 years. That was discussed last night. A problem will arise for this State where we have a dependence on large resource projects. People will shy away from negotiations, knowing full well that documentation can be accessed within 10 years when the project may not yet be under construction or not completed. Nevertheless, that problem is sacrificed on the altar of freedom of information.

We then come to the more critical issue of whether there should be an unbalanced approach. Should we have a different set of rules for what happened in the past compared with what will happen in the future? The member for Morley and the member for Floreat may have a notion that the existence of freedom of information legislation will improve the performance of a Cabinet; or it may minimise Cabinet documentation. That is possible, human nature being what it is. Whatever the reason, a Cabinet will behave according to the integrity of its members. We on this side of the House have decided that there has been a lack of integrity by the members of the Cabinet in the past decade. The existence of freedom of information legislation would not have affected that; it may have uncovered it earlier.

I see no valid reason for different rules to cover what has happened in the past and what will happen in the future. If we believe in freedom of information and if we can decide on the appropriate time period - I would prefer a period of 15 years; however, I accept the collective wisdom of this House that 10 years seems to be desirable. What possible reason can there be to say, "Ten is okay for the future, but not for the past"?

Mrs Edwardes: It was 10 years last night, but not tonight.

Mr C.J. BARNETT: It is unacceptable. We must be consistent. Let us get down to the practical considerations. I can understand why this Labor Government would be very concerned about the legislation being made retrospective for 10 years. In 1993 Cabinet records relating to decisions made in 1983, the first year of the Labor Government, could be accessed. Every year after 1993 would provide further information. Conveniently, 15 years would give this Labor Government a cushion through to the election following the 1993 election, in 1997.

The deal done by the Independents this afternoon will give this Labor Government - arguably the worst Government in this State's history - the only Government that has necessitated a Royal Commission into its performance - a protection through the forthcoming election and until the subsequent election. What a great deal the Government has struck with the Independents this afternoon! Were the Independents ever sucked in? They were taken for a complete ride. We can have either a period of 10 years or 15 years. The House agreed last night that it should be 10 years retrospectively and 10 years prospectively. If there is to be any integrity in this decision, we must be consistent. There is no reason for not being consistent.

Mr DONOVAN: I do not think the deputy Leader of the Liberal Party understands what has happened here.

Mr C.J. Barnett: I have a pretty good idea, I think.

Mr DONOVAN: I will spell it out again. By my reckoning, 15 years is better than 20 years.

Mrs Edwardes: Ten is even better.

Mr DONOVAN: I may not be very well educated but I see that this result is better than a period of 20 years. By the Minister recommitting this schedule, we would not get that result.

Mr C.J. Barnett: Let us put it to the test. Let us vote on it.

Mr DONOVAN: By one vote we would have had 20 years, not 15.

Mr C.J. Barnett: If you have such a problem, why don't you put it to the test? We can divide and split this motion into two and you can vote with us. You can argue for 10.

Mr DONOVAN: I think we have done that.

Mr C.J. Barnett: Let us put you to the test. Let us do it again. Let us split the motion and change it to 10 years and 10 years. You won't do it. Why not vote on it? You have every opportunity to vote on it.

Mr Taylor: You have the potential to be a school bully.

The CHAIRMAN: Order! There seem to be bullies everywhere at the moment.

Mr DONOVAN: The point was made by the member for Floreat by way of interjection that it seemed strange that the Deputy Leader of the Liberal Party should choose this time to enter the debate. I thought better wisdom would have caused him to listen perhaps to what she said. What he used as an example of the application of the 10 year rule is the gas pipeline. If he had read the Bill he would know that he would not get anything from the gas pipeline because the provisions of commercial confidentiality would simply stop him.

Mr C.J. Barnett: I have an argument for 15 years, but we accept 10 and 10. When we vote we will vote for 10 years.

Several members interjected.

Mr Graham: Incidentally, based on the way this place has been performing, you have just misled the House.

The CHAIRMAN: Order! I advise the member for Pilbara that this afternoon the Speaker drew the attention of members to the casual use of the term he just used and I suggest that if he was not in the House at the time he should read *Hansard* tomorrow.

Mr DONOVAN: The point that is missed somewhat hypocritically by both the Deputy Leader of the Liberal Party and the member for Kingsley is that the situation we had this afternoon was one which has left us tonight with 20 years in both clauses. To achieve the best result we agreed to support the proposition for 15 years, which is at least better than 20 years, on the one hand in order to reduce the time on the other - the deliberative processes part.

I am glad the Chairman of the Public Accounts and Expenditure Review Committee is in the Chamber because he will confirm, as will the other members I mentioned earlier, that deliberative processes were far more revealing in the inquiries that that committee has dealt with than were formal Cabinet documents. That is the situation which we had this afternoon. However, aware of what we had arrived at and fearing for the implications that might mean to a Liberal Government, this member who is protesting so loudly went to the Minister and said, "Forget the Constable proposition and we will go for 15 and 15 on both the clauses" -

The CHAIRMAN: Order! We have heard this argument for quite a while now and I ask the member to get to the issue.

Mr DONOVAN: The issue is simply this: We achieved out of this the best result we believed possible. What the Deputy Leader of the Liberal Party and the member for Kingsley did later this afternoon was to try to undermine that to protect themselves from the application of this Bill in exactly the same way as they dug a canyon for themselves earlier and effectively voted against the Bill.

Mr C.J. BARNETT: I wish to apologise to the member for Morley because I used the expression, "payoff" and the Deputy Premier rightly picked me up on it. It had an unfortunate connotation which I did not intend; I meant to imply a connotation of trade off. If the member misinterpreted it I apologise to him. However, I do not apologise for the direction the member is taking now. In terms of the member's argument to achieve the best possible result last night we had 10 years and 10 years and now a deal has been done to have 10 years and 15 years.

Several members interjected.

The CHAIRMAN: Order!

Mr C.J. BARNETT: The member for Kingsley who has led the debate for the Opposition said that we will support 10 and 10. That is the best deal, but the member for Morley is saying that he wants a better deal and he wants freedom of information going from 10 to 15 years. We are offering the member 10 and 10, so let us vote on it and see which way he votes. He has the chance to put freedom of information legislation to the test.

Mr WIESE: This has been an interesting exercise. Only one group in this Parliament should be condemned for what has happened; that is, the Government, including this Minister. Last night we achieved a situation which was directed at putting in place freedom of information legislation. We achieved it quite by accident because the Minister did not realise that he did not have the numbers in this place to defeat the proposition of 10 years. The coalition supported the proposition put forward by the member for Floreat as a means of achieving meaningful freedom of information. We are all aware of what happened in the Parliament last night: The Minister lost the vote to delete the figure and then he called for a division when the vote to substitute a figure was put. The division was lost and the figure of "10" was included in the legislation. I think we all remember what happened after that: The Minister called off the debate and we ceased debating this Bill. The Minister stuffed it up. Unfortunately I was not in the Chamber this afternoon but a situation was reached where the Minister was prepared to recommit the Bill to amend this clause to read 20 years. We have achieved the situation where that figure was negotiated to 10 years. I support the proposition of a limit of 10 years on deliberative motions. I have no problem with that because it is in accordance with what we voted for last night.

What we have here tonight is a Government which has been talking about passing freedom of information legislation as a means of achieving accountability and some of the things which came out of Part II of the Royal Commission report. This Government wants to amend this clause to read 15 years to ensure that its record over the past 10 years is not brought to light for another five years. That is what stinks about what is happening in this place tonight. This situation is appalling and the Government's attitude to this legislation is appalling.

I support the concept of 10 years' freedom of information for a past Government, 10 years' freedom of information for a future Government and 10 years' freedom of information for deliberative motions. That is what we should come out of this Parliament with. The fact that this Government is about to put yet another cover-up in place following on the other cover-ups it has implemented during the past 10 years is a total and utter disgrace and the Minister and the Government stand condemned for it.

Mr D.L. SMITH: It is surprising how active this debate has become. If one wants to know the real reason for that one has only to look at *The West Australian* of this morning. The reason is that the Independent members got a good wrap-up in that paper this morning and the Opposition, the Government and I got what one might call a very poor report. Members opposite are not used to getting a poor report from *The West Australian* and their chagrin is overflowing. They now seek to attack the credibility and integrity of the Independent members, and to do all the things we have become used to in the hope that tomorrow they will get a good report from *The West Australian*. I have news for members opposite: If they want to make good decisions in Government, they will pay little regard to what appears in *The West Australian*.

Let us look at where we are at. How does this freedom of information legislation compare with what happens elsewhere to Cabinet minutes? The fact is that with full retrospectivity and a 20 year Cabinet exemption, as put forward by the Government originally, we would have the best and freest freedom of information legislation available for Cabinet minutes. The only situation in which we are any different from other States is where those States have no retrospectivity in their legislation and have made the period related to future documents 10 years. The present situation is that Cabinet documents are unavailable for 30 years.

The real pity about the debate we have just had is that the member for Cottesloe does not believe a word he has said. He started to explain that a good reason exists for a 20 year exemption in the same way a good reason exists for a 15 year exemption. There will be

occasions when information is made available through this process which will be harmful to the State because it enters into long term arrangements, the Collie power station and the DOLA lease at Midland being examples of why we need that length period. That is why the Commonwealth still has its 30 year provision, and most of the other States have such provisions; it is only in the new Bills where there is retrospectivity that the 10 year period is being used.

I have no hesitation in saying that the members for Cottesloe and Kingsley know in their hearts that a good reason exists for the 20 year exemption period. That is why the member for Kingsley was willing this afternoon - and I do not like to talk about what is said behind the Chair, but this has now come out in the open - to accept 15 years and 15 years. I do not believe anyone should criticise the member for Kingsley for that because I believe that period should be 20 years and 20 years. The reason that the member for Kingsley and the member for Cottesloe think that period should be 15 years and 15 years is reasonably valid in the sense that such a period provides some of the protection needed for Cabinet documents.

Mr C.J. Barnett: Are you suggesting 15 and 15?

Mr D.L. SMITH: I made it clear this afternoon that a period of 15 years and 15 years or 15 years and 10 years did not make any difference. The member for Kingsley and the member for Cottesloe both well know that when this Bill goes to the upper House they will be able to write into it whatever they wish. What we have seen so far has been a half-hearted commitment by the Liberal Party and the National Party to this legislation. Members should look at the Notice Paper -

Mrs Edwardes: If you want to start on that -

The CHAIRMAN: Order! If I cannot get order I may need to leave the Chair so that all members can have a cup of tea.

Mrs Edwardes: A lot of the things we accepted you accepted. They were put to your staff in April and May, so don't come to me and talk about the agenda and the Notice Paper being limited because a lot of these amendments you assented to previously; your argument is narrow and limited.

The CHAIRMAN: Order! There should be one speaker at a time. There will be plenty of opportunities during the debate for all members to have their say.

Mr D.L. SMITH: If one looks at the conduct of Liberal Party and National Party members in relation to this legislation one sees that they put almost no amendments on the Notice Paper and simply drifted along on the coat-tails on the member for Floreat, copping whatever amendments were made and seeking to take the high ground when they well knew that they could have whatever they wished once this legislation reached the other place.

From the Government's point of view this is the freest legislation of its kind in the land and takes us from a 30 year position to a 15 year and 10 year period. It does not preclude any other traditional means of access. Let us look at what this Government has done. It made all of its Cabinet records available to the Royal Commission irrespective of when they were created. If the Opposition seriously thinks that the Government is trying to hide something, and if it is in Government next year, all it has to do is set up a Royal Commission, give it whatever terms of reference it likes and pass legislation through this place; it can then access any Cabinet documents it nominates. This legislation does not prevent any of the means that have already been used to access Cabinet documents being used.

This Government at least had the guts to make available to the Royal Commission all of its Cabinet records which came under the terms of reference. There is nothing at all to stop that happening in the future. If we really wanted to misuse this legislation and had the sort of malicious political intent of the member for Cottesloe we would simply leave in the 10 year period because that would mean we would have access to the Court and O'Connor Governments' documents as soon as the election is held next year. The Opposition has had access to all the Government's important Cabinet minutes through the Royal Commission. We could have access to the worst of the O'Connor and Court Government records next year. Why do we not take advantage of that position by leaving the figure at 10 years?

Mr Bradshaw: Because there is nothing wrong with their records; that is why!

Mr D.L. SMITH: The member for Wellington and I both know that if we went into all the

Cabinet records of the Court and O'Connor Governments we would find much more there than has been revealed anywhere. If the members opposite were being honest, they would say it is not a question of political advantage but of the best decision making and the best interest of the State. That is why the other States and the Commonwealth have 30 year periods and do not have retrospectivity. Whatever we do here, we all know the Bill could be changed in another place if the Opposition wishes to do so, but it will not.

Dr CONSTABLE: It is interesting to see so many people interested in the subject at this hour of the night and to see such an active Committee when so many people have been silent on the subject. We have seen a wonderful song and dance act from the members for Kingsley and Cottesloe who have suddenly decided to get together and tell us how much they are in favour of FOI, having earlier been silent on some crucial areas of this Bill. It must be made very clear that with this compromise - I agree it is a compromise struck in good faith - we shall have the best result of any jurisdiction in this country. That is a major achievement

Mrs Edwardes: We had a good achievement last night.

Dr CONSTABLE: Only by accident because the member thought it would be lost.

Mrs Edwardes: You had your biggest win last night and you are now going back on it.

Dr CONSTABLE: We are making sure that we shall have a 10 year limit in future which is the least restrictive option we could find, and is the least restrictive situation in any jurisdiction in this country. We also have access retrospectively to Cabinet documents and that is not the usual case. That access would not be possible in other jurisdictions. We have achieved a great deal in good faith. We have come to this arrangement and we were very concerned to make sure that we would achieve that 10 year period in the future amendment dealing with the deliberative process. The member for Kingsley knows what she was looking for and it was not nearly as open as what we shall now achieve.

Mrs EDWARDES: This amendment is related to making Cabinet documents and records prospective for 10 years and retrospective for 15 years. They will not be available for those periods of time. The Bill as amended last night provides for 10 years retrospectivity and 10 years prospectivity. The amendment proposed by the Minister is to increase the retrospectivity to 15 years. What does that mean? It provides this Minister and the Government with five more years of Cabinet secrecy. That is a major amendment to what has already been amended in the Bill. It does not matter whether the Minister made a mistake in counting the numbers. That happens on occasions but it is not important. The Minister has been told by his Cabinet colleagues to get the best deal he can. He reached a deal with the members for Morley and Floreat and they must be very pleased with themselves because they have given this Government five more years of Cabinet secrecy. The Opposition will not support the amendment. If the Minister wanted to be consistent he could change the periods to 15 years retrospectivity and 15 years prospectively. If he does not do so, the Opposition will support the Bill in its currently amended form.

The CHAIRMAN: I draw to the attention of members Standing Order No 142 which deals with tedious repetition. We have heard the same explanation in a slightly different form half a dozen times now, and I suggest members go back to the reasons for supporting the motion rather than why things have turned out the way they have.

Mr DONOVAN: I support the amendment because, as has been said in so many ways that it is difficult to avoid repetition, to get the best possible result on deliberative processes, which are far more important in many ways than Cabinet processes, we reached an agreement that could achieve the best that was available to us to achieve. Bonnie and Clyde on the Opposition benches may not agree but fair minded people in the community will recognise that we did the best we could to produce better provisions for freedom of information legislation. That was our aim and I believe we have done that with good conscience and in good faith. I support the amendment.

Mr D.L. SMITH: Without risking tedious repetition, it must be said that this freedom of information legislation has already been subject to scrutiny by the Royal Commission which made no criticism of the periods set down. The Royal Commission made only four specific criticism of the Bill. That is because it recognises, as I and the Government recognise, that there is very good reason for 20 years plus 20 years. The notion that the Government does

deals with the Independent members in this place is a nonsense, bearing in mind that the Government does not have the numbers in another place. The Government works in this place for what it believes in and, unfortunately, when the Bills go to the other place the Opposition has an opportunity to amend them as it sees fit, whether it is this legislation or other legislation. The real challenge to and the proof of the sincerity of the Opposition's comments will be what it does in another place. Opposition members know that the Opposition will not do anything in the other place because this is the best Bill nationwide.

Mr C.J. BARNETT: When the Minister spoke a moment ago, he made a number of comments about what he thought the Liberal Party believed. He did not say anything about what he believed, which I would have found more interesting.

Mr D.L. Smith: I believe that 20 plus 20 is the right way to go, and I have said that a number of times.

Mr C.J. BARNETT: I was about to say that was the one thing that the Minister did say. The Minister believes that 20 retrospective and 20 prospective is what he wants.

Mr D.L. Smith: It is not what I want. It is what I think is right.

Mr C.J. BARNETT: I therefore believe that the Minister would also think that 19 years either way is better than 18, 18 is better than 17, 17 is better than 16, and so on. Therefore, I would have to believe that the Minister would also think that 15 years retrospective and 15 years prospective is better than 10 years retrospective and 10 years prospective. If 20 is better than 10, 15 must also be better than 10.

Mr D.L. Smith: We also want to be in a position to say that this legislation is as good as the legislation in any of the other States, and some States have 10 years prospective.

Mrs Edwardes: But three States have 30 years, so you cannot use that argument.

Mr C.J. BARNETT: On the Minister's own argument, 15 years has to be better than 10 years. However, the Minister did not even attempt to address why a discriminatory rule should be applied here. He did not say whether he believed there should be a discrimination between what was retrospective and what was prospective, yet he is now proposing it. Why does the Minister propose discriminatory rules? Why discriminate between the past and the future? What possible justification can the Minister find for that? There can be none at all.

Mr D.L. Smith: The justification is simply that I want our Bill to be the most open in Australia.

Mr C.J. BARNETT: Then support 10 years. The member for Morley and the member for Floreat had a little victory last night. Indeed, the Minister is right. *The West Australian* congratulated them and wrote them up very well.

Mr Wiese: What will they do tomorrow?

Mr C.J. BARNETT: I do not know. They had a small victory last night because they got the legislation from 20-20 to 10-10, which in their eyes was a major victory, and they were congratulated for that victory. However, what do they do tonight? They come to this Chamber and say that they have had some negotiations and have come to an arrangement with the Government, and the member for Morley, who can make even the most simple argument complicated, and can convince himself, through a tortuous process, that he is actually making a wise decision, goes through the incredible process of saying, "We won 10-10 last night", and the member for Floreat is very happy, but now somehow, 24 hours later, 15 backwards and 10 forwards is better than what they won last night! If a footballer kicks a goal, he does not immediately run and get the ball and take it out to the middle and kick a point, yet that is what those members have done. They kicked a goal last night, and now they have kicked a point tonight and are congratulating themselves! What an absurd situation! They had a win. Good luck to them. We were not all that thrilled about it but we were willing to support it, yet they now want to go back on 10-10 and kick a point. Knowing the member for Morley, he will handball it out of bounds!

Amendment (words to be deleted) put and passed.

Division

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

Ayes (25)

Dr Alexander
Mr Michael Barnett
Mrs Beggs
Mr Bridge
Mr Catania
Dr Constable
Mr Cunningham

Mr Donovan
Dr Gallop
Mr Graham
Mr Grill
Mrs Henderson
Mr Gordon Hill
Mr Leahy

Mr Marlborough
Mr McGinty
Mr Read
Mr Riebeling
Mr D.L. Smith
Mr P.J. Smith
Mr Taylor

Mr Thomas
Mr Troy
Mr Wilson
Mrs Watkins (*Teller*)

Noes (20)

Mr Ainsworth
Mr C.J. Barnett
Mr Blaikie
Mr Bloffwitch
Mr Clarko

Mrs Edwardes
Mr Grayden
Mr House
Mr Lewis
Mr McNee

Mr Minson
Mr Nicholls
Mr Omodei
Mr Shave
Mr Strickland

Mr Trenorden
Dr Turnbull
Mr Watt
Mr Wiese
Mr Bradshaw (*Teller*)

Pairs

Dr Watson
Mr Ripper
Dr Lawrence
Mr Pearce
Mr Kobelke

Mr Court
Mr Cowan
Mr MacKinnon
Mr Kierath
Mr Fred Tubby

Amendment (words to be substituted) thus passed.

Mr D.L. SMITH: I move -

Page 79, line 19 - To delete "20" and substitute "10".

Mr DONOVAN: As a consequence of what has happened today, through an elaborate process, a 20 year embargo on the most important records available in this State - the ones which really count - has been reduced to 10 years. That was really worth achieving even if it meant compromise to get there.

Mrs EDWARDES: If any of the deliberative documents are utilised for Cabinet minutes or for decision making by Cabinet, are they covered by the 15 or the 10 year rule?

Mr D.L. SMITH: Clearly, if the document is prepared for presentation to Cabinet, it will be restricted for 15 years retrospectively and 10 years prospectively. In all other cases deliberative documents will have a 10 year restriction.

Amendment put and passed.

Clause 9: The State's economy -

Mr D.L. SMITH: I move -

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

Limit on exemption

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

Amendment put and passed.

Schedule, as amended, put and passed.

Report

Bill again reported, with further amendments, and the report adopted.

Third Reading

MR D.L. SMITH (Mitchell - Minister for Justice) [1.06 am]: I move -

That the Bill be now read a third time.

MRS EDWARDES (Kingsley) [1.07 am]: We have had an extensive debate on the

Freedom of Information Bill, which is an extremely important piece of legislation to this State. That is because not only its need was highlighted by Part II of the Royal Commission report, but also it has been promised for a long time. I remind the House that the Opposition has long supported freedom of information legislation to the point that the former member for Cottesloe introduced a Freedom of Information Bill in 1989. He also introduced a Bill on data protection, which we have yet to see introduced by this Government. Therefore, the Opposition has had a long and firm commitment to such legislation.

The legislation before the Chair is far-reaching, and is something of which Western Australians will be extremely proud as we move into the next century. The legislation relates to information which the public will be able to access, and this relates to parts I and II of the Royal Commission report. Some agencies will be exempt from this access on the basis of protecting individual rights and privacy. Also, as this State does not have privacy legislation, this legislation will enable individuals to access personal information held by any agency and to amend the information if it is wrong or out of date at no cost.

I take exception to the Minister's comments about the Opposition doing very little work in relation to freedom of information legislation. When the 1991 Bill was introduced to Parliament, we consistently negotiated with the Minister's staff and with people in the community with an interest in this matter. When we discussed matters with the Minister's staff - on numerous occasions - we put points of view about what was lacking in the Bill. To the credit of the Government, it adopted many of the amendments proposed by the Opposition. As a result, when the 1991 Bill was withdrawn and the 1992 Bill introduced, the Opposition achieved the incorporation of the majority of its amendments. Therefore, the small number of Opposition amendments on the Notice Paper at the time did not indicate a lack of commitment to freedom of information. I take exception to the Minister's suggestion that that was the case because he knows full well how many times his staff met with the Opposition over a lengthy period. When he makes such a suggestion, he is not being truthful.

Our commitment to freedom of information has been demonstrated by the former member for Cottesloe's 1989 legislation. If the Government had supported the Bill in 1989, the public would already have had access to information which was held by the Government at that time. The Government did not support the Bill in 1989, therefore it is wrong of the Minister to say that our lack of commitment to freedom of information legislation was displayed in the small number of amendments on the Notice Paper.

MR WIESE (Wagin) [1.10 am]: I can see that the Minister is anxious to leave the Chamber as quickly as possible, but he must endure and pay for his sins.

Mr Graham interjected.

Mr WIESE: The member for Pilbara should pay for his sins also, and listen a little longer. Two or three points need to be made. Despite the comments by the Minister about our commitment to freedom of information legislation, and the other slurs he made during debate in this place over the last four or five hours, the reality is that FOI legislation was brought to this Parliament first by the former member for Cottesloe about two years ago. The Government brought the legislation back about 12 months ago and then withdrew it in order to incorporate a lot of material and suggestions put forward by this side of the House. We have now dealt with that legislation.

The SPEAKER: Order! I should point out that the third reading stage is not one where members can canvass the sorts of matters which have been canvassed by the members who have spoken so far. This is an opportunity to address matters within the Bill only, not to address far reaching areas as one can do during second reading debate.

Mr WIESE: I did not intend to digress from the areas within which I should remain, Mr Speaker. The legislation has been brought before the Parliament and debated, resulting in a considerable improvement in the legislation and going a long way towards ensuring that the legislation provides more freedom of information than previously was the position. Tonight we have witnessed an admission by the Government and by the Minister that the Government expects to lose the next election because one of the most disgraceful things during debate occurred tonight when the Government put in place a mechanism to protect its record for another five years. That was done because it believes it will lose the next election. Again, the Government stands condemned.

I am very pleased to see the legislation proceed. I am happy to see many of the amendments brought forward by the member for Floreat incorporated in the Bill because they have strengthened the legislation. I am also pleased that members on this side of the House, in general, supported the majority of amendments and played a major role in ensuring that better legislation flowed from debate; much better than that brought to the Parliament in the first place.

MR D.L. SMITH (Mitchell - Minister for Justice) [1.15 am]: This is a historical night. This legislation is important for the accountability of Government. Despite what *The West Australian* may report tomorrow or the day after, this Bill will be the best freedom of information legislation in Australia. The member for Floreat in particular deserves credit for the legislation. Any claims by the Opposition to the effect that members opposite were substantially involved in the amendments to the second version of the Bill are far-fetched. Nonetheless, I thank them for their general cooperation. Finally, members can say that whatever their contribution was we have arrived at the best freedom of information legislation in the country.

Question put and passed.

Bill read a third time and transmitted to the Council.

House adjourned at 1.18 am (Thursday)
