ROYAL COMMISSION (CUSTODY OF RECORDS) AMENDMENT BILL

Second Reading

Debate resumed from 2 December.

MRS EDWARDES (Kingsley) [9.30 pm]: I am pleased to support this Bill. The Opposition believed, after the debate last time around, that the custody of and access to documents are two separate issues. Any documents that form part of the report of the Royal Commission into Commercial Activities of Government and Other Matters should be retained, and appropriate measures should be put in place to ensure that confidentiality is protected. The amendments that the Government brought forward, and which have been passed in the other place, do that and the Opposition is pleased to support the Bill.

MR D.L. SMITH (Mitchell - Minister for Lands) [9.31 pm]: I thank the member for Kingsley and members opposite for their support of the Bill and commend it to the House.

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 D.L. Smith (Minister for Lands), and passed.

FREEDOM OF INFORMATION BILL

Returned

Bill returned from the Council with amendments.

Council's Amendments - In Committee

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

The amendments made by the Council were as follows -

No 1

Clause 8, page 4, after line 25 - To insert the following subclause -

(4) The application of subsection (1) is subject to **The Royal Commission (Custody of Records) Act 1992**.

No 2

Clause 38, page 25, after line 18 - To insert a new paragraph (c) as follows -

(c) it ceases to apply by reason of an order under section 85 (4),

No 3

Clause 38, page 25, line 20 - To insert after "Subsection (1)" the words "other than paragraph (c),"

No 4

Clause 45, page 29, lines 7 to 11 - To delete the lines.

No 5

Clause 45, page 29, line 12 - To delete ", out of date".

No 6

Clause 56, page 37, line 7 - To delete "The" and substitute the words "Subject to the approval of both Houses of Parliament, the".

No 7

Clause 63, page 43, line 5 - To delete "agency -" and substitute the words "agency but is not a Minister".

No 8

Clause 63, page 43, line 6 - To delete "is the" and substitute the words "is a".

No 9

Clause 63, page 43, line 8 - To delete the line.

No 10

Clause 85, page 56, line 14 - To delete "a" where it first occurs and substitute the word "any".

No 11

Clause 85, page 56, lines 15 to 24 - To delete all words after "application" and substitute the following -

(2) An appeal lies to the Supreme Court from a decision -

(a) of the Commissioner against an access applicant pursuant to section 77 (3); and

(b) by the Premier confirming a certificate pursuant to section 77 (4).

(3) The Supreme Court shall be entitled to access to and to view documents for the purpose of determining an appeal pursuant to subsection (2).

(4) The Supreme Court may on an appeal pursuant to paragraph (2) (b) order that an exemption certificate no longer apply to a document or to a class of documents.

No 12

Clause 85, page 57, lines 7 and 8 - To delete the lines.

No 13

Schedule 1, page 85, line 17 - To insert after "officer" the words "or person".

Mr D.L. SMITH: I move -

That amendment No 1 made by the Council be agreed to.

Question put and passed; the Council's amendment agreed to.

Mr D.L. SMITH: I move -

That amendments Nos 2 to 5 made by the Council be not agreed to.

Question put and passed; the Council's amendments not agreed to.

Mr D.L. SMITH: I move -

That amendment No 6 made by the Council be not agreed to.

Mrs EDWARDES: Where independent appointments are made to agencies that are for the public interest, the Opposition believes, as do the Royal Commissioners, that it is important such appointments be subject to the approval of both Houses of Parliament. It is not sufficient that the nominations for those appointments are by way of consultation with the Opposition because, as members know, that consultation has not occurred in an approved manner in the past. It is not acceptable to make those appointments as has previously occurred. The Opposition still believes that that is the way the Freedom of Information Commissioner's appointment should be made.

Mr D.L. SMITH: The amendment is opposed, firstly, because the Government is anxious to implement freedom of information legislation in the State as soon as practical. If this amendment were applied today, no appointment of the commissioner could be made until the Parliament resumed next year. Effectively that would mean that the applicants who had already applied for the position advertised would have to be advised accordingly and the position would have to be re-advertised with the information that any successful applicant would have to have his or her application scrutinised by the Parliament in the same way as the American legislators do. Any good applicants who believe that they may not be able to be appointed for some time and that they will have to subject themselves to the scrutiny of Parliament will simply not apply. I am also concerned that nowhere in the proposed amendment does any system of process exist about how we may go through the procedure for appointment by the Parliament. For instance, will it be only the one name that comes before the Parliament on the advice of the Minister or will the names of all applicants be

surveyed by the Parliament or parliamentary committees in some way? Will a selection be made by that process or will a panel of names come before Parliament? None of that detail is provided by the amendment. It would be an unsatisfactory process, whatever the Royal Commissioners say about this matter. The Government would use the system which has been offered to date in this case, namely that before an appointment is made the recommendation of the panel would be communicated to the Leader of the Opposition, the Leader of the National Party and the Independents, to ensure that the person who was selected was approved by all political parties. I am sure that by that process we could achieve a consensus and ensure the right person for the job. Even if in the longer term people are still convinced that appointments should be made by the Parliament, rather than delay the introduction of the freedom of information legislation in this State the first appointment should be made in response to the findings that have already been made via the process that I have suggested by consultation with leaders of the other parties and the Independents.

Question put and passed; the Council's amendment not agreed to.

Mr D.L. SMITH: I move -

That amendments Nos 7 to 9 made by the Council be agreed to.

Question put and passed; the Council's amendment agreed to.

Mr D.L. SMITH: I move -

That amendment No 10 made by the Council be not agreed to.

Question put and passed; the Council's amendment not agreed to.

Mr D.L. SMITH: I move -

That amendment No 11 made by the Council be not agreed to.

Dr CONSTABLE: This amendment relates to a matter that was discussed at some length in Committee in this Chamber previously. The arguments put at that time still hold. The need for another avenue of appeal against the veto of the Premier was forcefully put in another place.

Mr D.L. SMITH: The reason the general appeal rights are disagreed with is that it goes against the whole thrust of the Bill. The Bill is about providing access as expeditiously as possible and at least cost. That is achieved by appointing a commissioner who has the power to make those decisions cheaply and expeditiously. To allow every decision of the commissioner to be appealed against would mean that the only persons who could take full advantage of this legislation would be those who could afford to sustain themselves through the appeal process in the Supreme Court. It would involve undue delays in those appeals being determined.

It is difficult for me to understand how the member for Floreat has been convinced by lawyers who will benefit enormously from these provisions to support these amendments rather than her supporting the stance she took on almost every other area of the Bill, that there should be cheap and expeditious means of obtaining access to appeal. Under amendments 10 and 11 there would be a right of appeal against all decisions of the commissioner.

In relation to the Premier's certificates, we have argued here a number of times that this Parliament must make up its mind whether it wants to be in control of these situations or whether it wants to put them out to the judiciary. My view is that the more we allow these matters to go off to the judiciary to determine what is in the public interest and what is in the State's interest, without qualification - it is not just a matter of law that is involved but in many cases is a do novo opinion being given by the Supreme Court - we are really handing to the judiciary what should be the role of the Parliament and, to some extent, the Executive. We should be reluctant to do that. It is time that the Parliament as an institution began to stand up for what it is; that is, the absolute supreme court of the land where the ultimate power resides and where we have the power to remove Governments and Ministers, and even to remove Premiers on occasions when they are misbehaving. If we try to shift our responsibilities as parliamentarians to other non-elected persons who are, in many cases, appointed by the Executive it will detract from the basic power of this place and ultimately

that will be to the detriment of the people. The essence of the Westminster system is that we, as parliamentarians, represent the people and the ultimate power lies with the people through the power we exercise on their behalf in this place.

We must be careful, despite what the media may do with these statements, to maintain our rights as parliamentarians but, more importantly, to make sure that everyone understands that the ultimate power in the land is not the Government of the day, the Ministers, the Executive, or the judiciary, but Parliament. It is Parliament and not the Supreme Court which should deal with a decision by the commissioner disagreeing with a decision of the Premier made in the interests of the State of Western Australia or in the interests of the people of Western Australia. As I have said a number of times, that ultimately should be decided here and not by lawyers on the basis of some judicial opinion about what is in the interest of the State or the public or in the interests of individuals in the community.

Mr WIESE: I totally disagree with the Minister about this amendment. His explanation was glib and passed over the real guts of what the amendment is about. This amendment deals with a ruling by the commissioner that he cannot see that a document contains exempt matter or would, if it existed, contain exempt matter.

Mr D.L. Smith: That is not so. The general right of appeal here is not restricted to matters of law.

Mr WIESE: I am not talking about matters of law; I am talking about the Premier's exercising a veto. If the commissioner rules that a matter does not contain exempt matter and the Premier overrules him and issues a certificate to say that it is exempt, there is no appeal to the Supreme Court or to any other body. Therefore, we are not talking about matters of law or anything like that.

This Bill is about freedom of information and accountability. If the commissioner rules that the document has matter that is not exempt, I cannot see what is the problem. However, if the Premier overrules it - that is certainly allowed by the Bill - there is no avenue of appeal. Therefore, I believe the Minister is closing off freedom of information rather than opening it up, which is what the Minister and the Government have said all along this Bill is about. If the Premier can overrule the commissioner who is the person appointed to make the decisions and we provide the claimant with no avenue of appeal we are closing the door on freedom of information rather than opening it.

Mr D.L. SMITH: It may be okay for the member for Wagin with his income and assets to say that these rights of appeal are real. For most people, they are not. We will simply finish up with a differential system whereby those who have the means and the power get the access and those who do not will not get access in the way they are entitled.

Mr Wiese: That is not what this is about. The argument is about whether you will give freedom of access to appeal.

Mr D.L. SMITH: I suggest the member read the amendment we are dealing with in the context of amendment No 10. This amendment would not provide access; it would, in the end frustrate and delay access and that is not what we are about. The Government through this legislation is trying to achieve a cheap and expeditious means of providing access, and the way to do that is on the basis of the current legislation and not as suggested by the other place.

Question put and passed; the Council's amendment not agreed to.

Mr D.L. SMITH: I move -

That amendment No 12 made by the Council be not agreed to.

Question put and passed; the Council's amendment not agreed to.

Mr D.L. SMITH: I move -

That amendment No 13 made by the Council be agreed to.

Question put and passed; the Council's amendment agreed to.

Report, etc.

Resolutions reported and the report adopted.

A committee consisting of Mrs Edwardes, Mr Thompson and Mr D.L. Smith (Minister for Justice) drew up reasons for not agreeing to amendments Nos 2 to 6, and 10 to 12.

Reasons adopted and a message accordingly returned to the Council.

EQUAL OPPORTUNITY AMENDMENT BILL

Second Reading

Debate resumed from 1 December.

MRS EDWARDES (Kingsley) [10.11 pm]: I support the general thrust of this Bill which deals with three major areas: First, sexual harassment; second, family responsibility; and third, and the one which has been long awaited by many people in the community, age discrimination.

The sexual harassment amendment provides that a common employer will no longer be necessary in lodging a claim. This will overcome the problem we have had, say, in the education area as teachers are employed by the Ministry of Education and non-teaching staff are employed by the chief executive officer. If a claim of sexual harassment arises between a teacher and a non-teaching staff member, the amendment will mean that a person will have the opportunity to be able to make a complaint to the Equal Opportunity Commissioner. It will still be necessary for the person to demonstrate objection to sexual conduct and the fact it resulted in disadvantage in connection with that person's employment. We do not agree with the retrospectivity aspect of this amendment; we do not believe in retrospectivity per se. An amendment to delete this reference in the Bill was not accepted in the other House, and I will not be moving it here. Retrospectivity has a repugnant side and it should not be accepted easily as it makes something illegal at a time when it was legal.

The family responsibility amendment is very important as it relates to the changes in the community. We have more women and men caring for elderly parents or taking responsibility for their children, and sometimes people need to be in a position to take care of their family responsibilities. A Sydney case reported a few days ago comes to mind in which a man wanted to take time off work to be with his wife when she gave birth to their child. The man tried to change his roster so he could have the day off on which the baby was due. The baby started to arrive on the day it was due - which is most unusual - but the employer did not permit him to take time off. The man took time off anyway, and was dismissed. The birth suffered complications and the baby was born unconscious, but fortunately it was revived back to health. A pull is evident between our family responsibilities and our workplace responsibilities. I was pleased to see that in this example the remedy was found through the Industrial Relations Commission in Sydney and the man received damages, as he should have done. This person should not have been sacked for wanting to be at his wife's side at the birth of their child. Therefore, these amendments are important.

The area on which I will concentrate is the age discrimination amendments, which are very important to many people. Many people are approaching the retirement age or have reached that age during the past couple of years. Although this legislation has been discussed for some time, it has been a long time coming. I am sure people in the Public Gallery will say the same about the adoption legislation. Why should somebody retire at the age of 60 or 65 if that person still has the capacity to carry out his or her job? That is unfair, particularly if we look at some of the current statistics: Those born today will live to the age of 110 or 120, which is something we cannot appreciate at the moment. Therefore, as time goes by the aged groups will increase as a proportion of the population. The proportion of the labour force in the 45 to 65 years age group will increase from the current 65.5 per cent to 72.3 per cent by 2001. Many arguments exist for prohibiting compulsory retirement. The compulsory 65 years retirement age was set in 1908 when the pension qualification age was 65 years. The life expectancy of a person at that time was 55 for a man and 65 for a women. With today's extended life span due to good health services and eating habits, the reasons that the age limit was set at 65 years no longer are relevant.

By 1988 men were living to an average age of 73 years and women 80 years. Even though people were living longer, the work participation rate was declining. Not long ago we saw a push for early retirement and compulsory retirement at 55 years. The Australian Bureau of Statistics did a retirement survey in 1976 that indicated that 27 per cent of people retired