

YALLINGUP FORESHORE LAND BILL 2002

Second Reading

Resumed from 11 December 2002.

HON GEORGE CASH (North Metropolitan) [10.53 am]: The Yallingup Foreshore Land Bill is described in the Bill as -

A Bill for

An Act to make provision about the resumption of, and the application of certain provisions to, certain land in the vicinity of the Yallingup foreshore, and for related purposes.

It is a relatively short Bill comprising seven clauses. However, members should not be deceived by its shortness: it is a very significant Bill in its effect. This Bill is not about protecting the rights of an individual but about removing the rights of an individual and preventing him from having access to a court of justice to examine the evidence and determine whether a fraud was committed by the State against his family estate many years ago. Members will be aware that the doctrine of the separation of powers ensures that the liberty of the individual is guaranteed and secure only if the three primary functions of the State - that is, the Legislature, Executive and judiciary - are exercised by distinct and independent organs. The doctrine of the separation of powers clearly distinguishes the independent roles of the Parliament, the Executive and the courts. In particular, there is a clear distinction between the role and functions of the Parliament and the role and functions of the courts.

It is my view that the two great concerns of the law are, firstly, the safety and wellbeing of the individual, and, secondly, the protection of his or her property rights. The courts are required to hear evidence and decide on the facts of a given case to determine whether the law is being upheld and a person's rights are not being infringed, or whether a breach has occurred at the expense of a person's rights. In dealing with this Bill, the Parliament is being asked to make a decision that will remove the lawful right of an individual to have access to the courts of justice to have his case - that is, the evidence he submits and the evidence the Crown submits - tested in court. The Parliament is being asked to make a decision to remove an individual's legal rights, but it is not being provided with relevant information which may disclose a fraud on the part of the State many years ago.

I do not know whether the plaintiff, in the action, is right or wrong in his assertions, nor do I know whether the State by its actions or inaction committed a fraud many years ago and has attempted to cover up the true situation over a period of years. It would seem that the inordinate delaying tactics that have been practised by the State against the plaintiff for many years may be an indicator of the State's unwillingness to have its actions examined and tested by a court of law. I offer no view on the likely success of either party. All I say is that the plaintiff has produced what he believes to be evidence of a pattern of conduct that he claims demonstrates that the State has committed a fraud against his family estate. The plaintiff further claims that the evidence he plans to tender to the court will show that the State formed the view some years ago that its previous actions might be called into question, and that if the State were able to prevent the plaintiff from having his day in court, those actions, which no doubt amount to maladministration, would never come to light. As a matter of our seeing that justice is done, I believe that it is proper that the plaintiff have his evidence tested in court. It is up to a court of justice to determine the law according to the facts. I am confident that a court of justice is the proper place for the evidence to be heard, and that it is indeed improper for the Parliament to remove, by legislation, the right of the plaintiff to his day in court.

If one reads the legislation carefully, one will see that the Bill deals specifically with one parcel of land. I refer to the definitions provided in clause 3, under which land means -

. . . the land at Yallingup that was the subject of a land resumption notice published in the *Gazette* on 9 December 1938 at page 2112;

Clause 4 provides that the land was validly and effectively resumed. That means that, notwithstanding any fraud that may have occurred in the manner or procedure adopted in the past, that fraud, if it existed, is extinguished by this Bill.

Clauses 5 and 6 provide that certain repeal provisions never applied to the land in question, which means that those previously lawful provisions relating to this land are retrospectively extinguished by this Bill.

Clause 7 provides authority for the Treasurer to make payment to the plaintiff for such legal costs incurred in the proceedings that have occurred over a period of years.

I reiterate that it is my strong view that this Parliament is not a court of justice. It is not equipped to hear the evidence of the party and it is not in a position to competently judge in a dispassionate manner the very complex issues involved in this case. I ask the Parliament to recognise the doctrine of the separation of powers and allow

the courts, which have been established by this Parliament for a particular purpose, to judge the facts of this case. The proper place for the resolution of this matter is the Supreme Court of Western Australia. It is up to the Supreme Court to decide the merits of the case, but it seems that the Government is intent on denying the plaintiff his day in court. I suggest that the Government's heavy-handed approach could be interpreted as an admission of the plaintiff's allegation of unlawful use and improper resumption of the land. However, that is a matter that should be decided by a court. My plea to the Parliament is that it recognise that there is a case to be answered and that the Supreme Court is the proper place to hear the evidence and make a decision.

The plaintiff in this action is the son of the former owner of the land that was resumed in 1938. He has presented to me and, as I understand it, other members of Parliament a summary that sets out his views of what occurred since that land was resumed in 1938. I am not representing the views of the plaintiff. I am happy to state his views, but I offer no comment on the merit of those views because, I reiterate, those matters should be tested in a court of law.

I have made my comments as an individual member. I now want to relate to the Parliament the plaintiff's views. They are a summary of some of the issues that he says should encourage the matter to be allowed to proceed to court. When he visited the Parliament, I think more than 12 months ago, to address various members - this Bill has been around for a very long time - he left this document with members, which I am very happy to table if members do not have it. I will hand it up anyway because I want it recorded accurately. He started off by saying

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WHEN I DEPART THIS ROOM TODAY I HOPE TO LEAVE YOU WITH 6 THOUGHTS.

1. THE OWNERSHIP OF LAND IS A CORNERSTONE OF THE AUSTRALIAN WAY OF LIFE.
2. THE GOVERNMENT OF 1938 FRAUDULENTLY OBTAINED 33 ACRES OF MY FATHERS LAND FOR SELF SERVING COMMERCIAL PURPOSES. THIS CRYSTALISED A MASSIVE CONFLICT OF INTEREST BETWEEN THEM RUNNING A HOTEL BUSINESS AND HAVING THE POWER OF THE GOVERNMENT EXECUTIVE.
3. SUBSEQUENT GOVERNMENTS DID NOT ACT WITHIN THE LAW BY USING THE LAND FOR PURPOSES BEYOND THEIR POWER AND WITHOUT FIRST OFFERING IT BACK TO THE ORIGINAL OWNER AS PRESCRIBED AT LAW. (SEE OPINION OF DAVID MALCOLM QC).
4. THE GOVERNMENT, THROUGH ITS AGENCIES DOLA & CROWN LAW, HAVE STALLED AND DELAYED MY ACTIONS AND THEN USED THAT TO DENY ME MY DAY IN COURT. GEORGE CASH AND DOUG SHAVE MOVED TO CORRECT THIS DISGRACEFUL SITUATION AND IN MY VIEW SHOULD BE COMMENDED FOR THEIR ACTIONS.
5. THE PRESENT ATTORNEY GENERAL NOW SEEKS TO CONCEAL THE FRAUD COMMITTED ON MY FATHER.
6. EVERY AUSTRALIAN SHOULD BE ENTITLED TO BE HEARD IN A COURT OF LAW AND NOT HAVE THAT RIGHT LEGISLATED AWAY. THIS IS POSSIBLY THE MOST MEAN SPIRITED, ONE PERSON, PIECE OF LEGISLATION TO COME BEFORE THE PARLIAMENT OF WESTERN AUSTRALIA.

He then proceeded to go through a history of events that he says occurred over a period. With the indulgence of the House I read his words as follows -

HISTORY

On the 9th of December 1938 my Father received a copy of the Government Gazette instructing him to leave his home in the valley at Yallingup as 33 acres of his land had been compulsorily acquired for the stated purpose of "PUBLIC RECREATION GROUNDS" at Yallingup.

Five Queen's Counsel have legally defined "Public Recreation Grounds" as level playing fields or fields upon which games or sports are played. For example Langley Park or Hay Park in Bunbury or Bovell Park in Busselton.

There is a very distinct difference between "Public Recreation Grounds" and general "Recreation" or as one Departmental officer described, "Passive Recreation".

The land lay idle until 1972 when a Caravan Park suddenly appeared on the site. We asked various departments how this could happen, as surely a private commercial operation such as a Caravan Park could not be classified as Public Recreation Grounds. One of my QC's, now Chief Justice David Malcolm, was later to describe this action as "Beyond power".

Of course the people we were asking were those who had done the resuming in the first place so we went nowhere.

I will provide you with a separate sheet which outlines the full history of events associated with this land.

GENERAL

As members of these Houses of Parliament you are being asked to make a JUDGEMENT on a very serious matter.

You have before you a Bill which strikes at the very heart of a DEMOCRATIC SOCIETY.

The YALLINGUP FORESHORE LAND BILL is brought before you in an attempt to prevent me having MY DAY IN COURT.

I am a humble person and believe that a citizen of this State should be allowed to have a very serious matter such as this heard before a Court of Law, and not have that right Legislated away.

I further believe, that my rights as a citizen, are to be taken away in LEGISLATION unheard of in this State until the presentation of this Bill.

This is a ONE PERSON Bill seeking to obstruct the TRUTH of the matter ever being disclosed to the People Of Western Australia.

I firmly believe that the nature of this Bill is against the very heart of LIBERAL PHILOSOPHY, as I understand it.

I have battled this matter in the SUPREME COURT for the past 14 years.

At every move the officers of DOLA and Crown Law have set about OBSTRUCTING and FRUSTRATING my attempts to have the matter heard by the Courts.

I ask the question:- WHAT ARE THEY TRYING TO HIDE?

It would seem that the Government of 1938 decided to resume my Families Land for PURPOSES of THEIR OWN HOTELS CONVENIENCE.

Thirty three acres of my families FREEHOLD TITLE lay between the then recently completed CAVES HOUSE HOTEL and the INDIAN OCEAN.

The government of the day was in the hotel business. This socialist experiment created a conflict of interest and finally the experiment failed.

THE GOVERNMENT WANTED THAT LAND FOR IT'S OWN COMMERCIAL BENEFIT.

THE REAL REASON FOR THE RESUMPTION OF THIS LAND was DISCOVERED by way of DOCUMENTS in Departmental Files of the late 1930's.

For example the Government wanted the land to PROTECT THE VIEW FROM THE HOTEL, they wanted the land for the purposes of DISPOSING THEIR SEWER VIA THE CREEK running through the property. They wanted the land to CONSTRUCT A PROPERLY CONTROLLED SEASIDE RESORT TO RUN AS AN ADJUNCT TO THE HOTEL. They MAY WELL HAVE CONSTRUCTED BUILDINGS ON THE LAND, and so the writings continue.

THIS AND MORE IS BEHIND THE PRESENT BILL THAT YOU WILL HAVE TO VOTE ON SHORTLY.

I wish to clear the air with regard to the vicious attack by Mr McGinty on the Hon George Cash MLC and Mr Doug Shave as he is now.

I have met with both of these persons, in their capacity as Minister for Lands, on one occasion only and each time being introduced by my local member Barry House. Both of these meetings were in the presence of Officers of their Staff.

I presented them with various correspondence to support my complaint, as I did not believe I was being treated fairly by DOLA and Crown Law.

The type of evidence I supplied was for instance a LIST OF DELAYS attributable to Officers of those Departments. One delay was of the order of 1 year 2 months and 4 days in answering correspondence from my solicitors, despite many reminder letters of request asking them to respond.

Both of these Ministers had the DECENCY to listen and said only they would look into the matter and let me know in due course.

It is to their credit, having been acquainted with some of the TRUE FACTS, they made a decision to inform me that Statutes of Limitation times not achieved by my Lawyers in the bringing of the matter to trial, for the reasons just given, would be withdrawn, due I suppose, to the unfair manner in which we were being deliberately held out of Court.

Mr McGinty claims that I must be a close associate of these men.

The only other TIMES I have entered their lives would be on the odd occasion when I have seen them in passing and had a few words with them. For instance at a Liberal Party meeting where you are lucky to get 20 seconds of their time as others want to speak to them or they are rushing off to other engagements. I have from time to time sent letters to them in their official capacities.

The only thing they have ever said to me is that they believed that I SHOULD BE ALLOWED TO HAVE MY DAY IN COURT. Let the Courts decide my fate.

I ask that you as Members will also seek out the truth in this matter and arrive at a decision based on the truth and not the hype presented by the Attorney General.

This small piece of land was taken from my Father, never used for the purpose of the resumption, and the Public Works Act, under which it was resumed, provides for it's return when not required for that purpose.

THE HOTEL, THE BASIS FOR THE RESUMPTION IN THE FIRST PLACE, WAS SOLD TO PRIVATE INTERESTS, LONG AGO

In 1997 the LAND ACT AMENDMENT BILL was passed and provision was agreed to by the Labor party to allow my matter to be dealt with by the Courts.

I AM NOT A WEALTHY PERSON. I have battled to give my two sons a good education. I HAVE SPENT MY LIFE SAVINGS IN AN ATTEMPT TO ACHIEVE JUSTICE IN THIS MATTER.

I AM NOT A DEVELOPER LOOKING FOR FAST BUCKS AS MR MCGINTY WOULD HAVE YOU BELIEVE BY HIS INCREDIBLE VALUE PLACED ON THE LAND.

I WAS BORN AT YALLINGUP AND I HAVE SPENT THE MAJORITY OF MY LIFE THERE.

I SIMPLY WANT THIS LAND, WHICH HAS BEEN TAKEN FROM MY FAMILY FOR AN IMPROPER PURPOSE, RETURNED.

MY PRESENT QUEENS COUNSEL DESCRIBES THE EVENTS SURROUNDING THE TAKING OF MY FATHERS LAND AS A FRAUD AND MR MCGINTY WISHES TO SUPPORT THE ACTIONS OF THE PAST BY CEMENTING THEM IN THIS LEGISLATION BEFORE YOU.

WHAT HAS THE LABOR GOVERNMENT GOT TO HIDE?

WHY ARE THEY SO AFRAID TO HAVE THE FACTS REVEALED IN A COURT ROOM?

PLEASE CAN I HAVE MY DAY IN COURT.

Thank you kindly for your time today.

Garth Hammond

I know we have other legislation to deal with; however, with indulgence of the House - I am looking at the Leader of the House - I would also like to read into *Hansard* a statement of what the plaintiff says are the facts and law surrounding this matter. It comprises a number of pages. I could ask that it be incorporated in *Hansard*; however, I think the Parliament is entitled to hear what is in the statement. I take guidance from the Leader of the House. I do not want to waste the House's time, but I want to be fair in the presentation of the matter.

Hon Kim Chance: I would be happy to grant leave, if that were sought, to table the document and incorporate it in *Hansard*. I am also happy to allow you to read whatever part of that document you think appropriate or, if you so choose, to read the whole document. You may do whatever you wish.

Hon GEORGE CASH: I thank the Leader of the House for his indulgence.

The PRESIDENT: Obviously, there would be no need for anything if the member read the entire document.

Hon GEORGE CASH: I think that under the circumstances it is better that I read it, because then the whole Parliament will hear what is said and can make a judgment in due course. I will be as expeditious as I can, but it is a document of some length. The matter is as follows -

**WG HAMMOND v MINISTER FOR WORKS AND ORS:
SUPREME COURT CIV 2567 OF 1998**

CONSOLIDATED WITH NO. 1998 OF 1993
RE: YALLINGUP FORESHORE LAND BILL 2002
STATEMENT OF FACTS AND LAW

Sections 29 and 29A of the Public Works Act

1. In 1938 Caves House was a trading concern carried on by the State Hotels Department pursuant to the State Trading Concerns Act 1916, until about 1961, when the hotel was leased to a private lessee.
2. At 9/12/38 Mr Hammond (Senior) owned 96 acres at Yallingup. On 9/12/38 about 33 acres of that land was resumed under the Public Works Act for the public work of Public Recreation Grounds.
3. The resumption was at the request of the State Hotels Department.
4. Because the land was freehold under the Transfer of Land Act, it became registered in the name of His Majesty in Certificate of Title Volume 302 Folio 200.
5. Pursuant to an amendment to s15 of the Public Works Act in 1957, it became possible to re-vest the land to the Crown and accordingly on 22/1/57 the land was re-vested, numbered as Sussex Location No. 4120 and set apart as Reserve 24622 for the purpose of public recreation grounds, and was vested in the State Hotels Department.
6. On 30/11/62 land was added to Reserve 24622.
7. In consequence of Caves House being leased as described in para 1 above, the State Hotels Department **was no longer concerned in the public recreation grounds Reserve No. 24622 and there is no reason why the vesting order should not now be cancelled ...**, (refer the letter from The Chief Secretary to The Busselton Road Board 24/4/1961 and accordingly on 13/11/1963 Reserve 24622 vested in the Shire of Busselton for the purpose of public recreation grounds.
8. On 22/11/1963 land was added to Reserve 24622 and part of the Reserve was excised, making the area then about 45 acres.
9. On 5/11/1965 1 acre of Reserve 24622 was excised for a new road.
10. On 17/1/1968 the Shire of Busselton was given the power to lease the whole or any portion of Reserve 24622.
11. On 19/11/1971 about 3.6 acres of Reserve 24622 was excised to create Sussex Location 4567 for leasing as a caravan park and camping area.
12. On 1/4/1972 a lease of Sussex Location 4567 was granted to a private lessee.
13. On 30/3/1973 about 1 acre of Reserve 24622 was excised to create Reserve 31917 for parking, vested in the Crown.
14. On 3/8/1981 about 1/3 of an acre of Reserve 26422 was excised to create Reserve 37300 for a fire brigade, vested in the Shire of Busselton.
15. On 24/1/84 the lease of the caravan park and camping area was surrendered.
16. On 18/6/84 a new lease was granted to a private lessee of the caravan park and camping area, under s116 of the Land Act.
17. On 1/10/93 Reserve 31917 vested in the Shire of Busselton for parking.
18. In summary, of the original land of about 33 acres (13.3546 hectares) resumed in 1938, 2.975 hectares has been used for various purposes as above described, and 10.3796 hectares has not been use for any purpose.
19. The 2.975 hectares has been used for roads, parking, the fire brigade depot and a caravan park and camping area.
20. On 7/9/99 the Shire of Busselton adopted District Town Planning Scheme No. 2, designating the unused area of 10.3796 hectares as Reserve for Recreation.
21. The grant of the leases to private lessees were made without regard to s32(1) of the Public Works Act. Viz the power to grant leases of resumed land is limited to land on which improvements exist or which have been erected incidental to the purpose for which the land was resumed; in this case there were no improvements.

22. In the existing Supreme Court action, Garth is exercising the rights granted by sections 29 and 29A of the Public Works Act 1902 (also known as Land Acquisition & Public Works Act).
23. Those sections were inserted into the Act in 1955.
24. In substance the Public Works Act was repealed by the Land Administration Act 1997. However, pursuant to submissions made by Garth's then solicitor in 1996-97, s200 was included in the Land Administration Act which in substance provides that if a procedure has been begun but not completed under a provision of the Public Works Act, that procedure may be continued and completed as if the Public Works Act had not been amended by the Land Administration Act.
25. Accordingly Garth's rights under the Public Works Act were preserved, and his action maintained.
26. In the media statement published by the Attorney General on 21/3/02 incorporating the second reading speech, it is noted:
The Australian Labor Party supports this amendment. It allows for processes already commenced under the compulsory resumption of land under the Land Administration & Public Works Act to be transferred across. I understand that although the original clause was intended to make that provision there was some doubt about whether it would achieve this. The Opposition supports this amendment, which I understand puts that beyond doubt. (Hansard p3785), this being a statement made on 11/6/97 by the Hon. Mr Neville.
27. The Bill, if enacted, will result in sections 29, 29A and 29B of the Public Works Act having no application to the Land Resumed under the Public Works Act on 9/12/38.
28. The result of that would be, the existing action or *procedure* could not be continued or completed contrary to the intention of section 200 of the Land Administration Act.
29. The Bill further provides for sections 190 and 191 of the Land Administration Act to have no application to the resumed land. Those provisions in substance replace sections 29 and 29A of the Public Works Act, whereby a qualified person is entitled to obtain an option from the Crown for the purchase of resumed land where the land has not in fact been required for public work.
30. In short, the Bill proposes to extinguish Garth's rights under the Public Works Act and under the Land Administration Act relating to the land resumed on 9/12/38.
31. A consequence of the Bill is that s200 the Land Administration Act does not apply to the land; the reason why that section is not expressly repealed in relation to the land is unstated, but it can be observed section 200 was inserted into the Land Administration Act with the support of the Australian Labor Party.
32. If the Bill is not enacted then it would enable Garth to continue and complete the existing action.
33. By section 29 of the Public Works Act, before resumed land can be used other than as public recreation grounds, the Governor must form an opinion on the advice of the Executive Council that the land is not required for public recreation grounds, and the Minister the Works must publish that opinion in the Gazette.
34. Upon compliance with those provisions, Garth in the name of his father is entitled to the grant of an option to repurchase the resumed land for an amount equivalent to the compensation paid to his father in 1938 of about £300 plus interest, which the Attorney General has calculated to be a current sum of about \$3,600.00.
35. The Minister for Works has not published that opinion, which Garth contends is because the Executive Council has not requested the Governor to form the required opinion.
36. The omission to comply with s39 is germane to each of the Acts by the Crown in its use of the 2.975 hectares of the land.
37. It is not in issue that no part of the resumed land has ever been used as public recreation grounds.
38. Alternatively, under s29A of the Public Works Act, Garth has the right to request the Minister for Works to obtain the opinion of the Governor about whether the resumed land is required for public recreation grounds.

39. If the Governor forms the opinion the land is not required for that use then Garth is entitled to an option to purchase the land upon the same terms as is provided for in s29 described above.
40. Although sections 29 and 29A were inserted into the Public Works Act in 1955, in Supreme Court action no. 2567 of 1988 White A.J. ruled those sections applied to the resumption in 1938.
41. On 9/3/87 Garth requested the Minister for Works to comply with s29A and by letter dated 13/5/87 the Minister responded, denying that request. Accordingly Garth caused a writ to issue in the Supreme Court on 14/11/88 seeking orders to compel the defendants to comply with sections 29 and 29A.
42. In the defence to that action, reliance was placed on s47A of the Limitation Act which in substance required that an action against the Crown be brought within 1 year from the date on which the cause of action accrued.
43. In so far as the action derived from s29, White A.J. did not decide whether that action was time barred.
44. To the extent the action derives from s29A, White A.J. found the cause of action accrued with the reply letter dated 13/5/87 and accordingly decided the s29A action was out of time.
45. The decision of White A.J. was delivered on 5/6/91; it was the subject of an appeal to the Full Court which gave its decision on 21/7/92 confirming the orders made by White A.J.
46. As a result, Garth caused a new request to issue to the Minister for Works by letter dated 29/6/93 asking for the Minister to again comply with s29A; by letter dated 2/8/93 from the Minister for Lands at the request of the Minister for Works, Garth was informed his request would not be referred to the Governor for his opinion.
47. Accordingly on 17/9/93 Garth caused a further writ to issue in the Supreme Court seeking relief in terms of s29A.
48. It follows that the question of whether Garth's claims deriving from s29 are time barred is moot.
49. We contended there is no issue that to the extent the claim derives from s29 it is not time barred because the substantive part of the land (77% as per para 18 above) has not been used for any purpose and to the extent the claim derives from s29A, it is not time barred because the 1993 writ issued within 12 months of the date of that cause of action accruing.
50. In May 1993 Garth conferred with the then Minister for Lands the Hon. George Cash, which eventually resulted in the Minister in his capacity as Minister for Lands and on behalf of the then Minister for Works, the Hon. Graham Kierath issuing a letter to Garth dated 2/8/93 specifying in substance the Crown would not rely upon s47A of the Limitation Act.
51. Garth has prosecuted the existing action in reliance upon the integrity of that statement.
52. In the course of the existing action, Garth applied to amend the statement of claim by inserting a plea based on improper purpose; in support of that application Garth relied amongst other things upon a confirming affidavit from the Hon. Mr Cash about the defendants not relying upon the Limitation Act nor the defences based on time or delay.
53. The affidavit of evidence from the Hon. Mr Cash did no more than reconfirm to Garth what he understood the position to be since 2/8/93.
54. In summary, the rights granted by sections 29 and 29A of the Public Works Act apply to any person who is aggrieved by a resumption, but in this case, in the event the Bill is enacted, Garth will be denied those same rights, this in turn being we contend, the product of the Crown not complying with its obligations under those provisions.

Improper purpose

55. Also Garth contends the land was resumed for an improper purpose. This is established by correspondences discovered by the defendants in the existing proceedings in late 1996, and inspected by Garth's solicitors in early 1997.
56. The particulars which support this contention are:
 - (a) The letter dated 12 February 1938 from the Town Planning Commissioner to the Under Secretary for Lands states:

I attach a copy of a memorandum forwarded to the Under Secretary, Premiers Department.

You might care to take cooperative or concerted action to have the matter looked into.

It would be rather late for resumption to be made if the private owner decided to present a plan of subdivision to the Town Planning Board for approval.

- (b) The letter dated 12 February 1938 from the Town Planning Commissioner to the Secretary, Premiers Department (being the memorandum referred to in paragraph (a) above) states:

It has been brought to the notice of the Town Planning Board that the privately owned Lot 269 lying immediately to the west of the Caves House is about to be developed as a weekend resort for campers and semi-permanent buildings erected.

It was resolved by the Board to bring this under your notice and the notice of the Department of Works and Land with a view to the land being resumed.

A road has recently been completed through this land and certain of the improvements at the Caves House are very close to, if not on the land itself.

Further, if shacks or weekend cottages were erected along the water course it would mean the view from the Caves House would be spoilt.

A recommendation for the resumption of this land was made some nine or ten years ago and no action was taken.

The recent purchaser paid somewhere about £300 for the land.

I would urge and strongly recommend that immediate resumption of this area take place, otherwise the value of public expenditure at the Caves House will, to a great extent be minimised, and the value of the locality weakened for tourist attractions.

It will also be clear that beach development and a properly controlled seaside resort as an adjunct to the Caves House would be undertaken by the State.

- (c) The letter dated 21 February 1938 from the General Manager of State Hotels to the Under Secretary for Lands, states:

You recently were making inquiries regarding the acquisition of land fronting the Caves House Yallingup.

You will notice from the file that this is matter which has been repeatedly given consideration for over 30 years past. The situation today is far worse than ever it was, and the acquisition of the land is a public necessity.

I should be glad if you would advise me what action you propose taking in the matter, and in due course return this Department's file.

- (d) The letter dated 23 February 1938 from the Under Secretary for Lands to the Hon. Minister for Lands, states:

The Town Planning Commissioner referred to me the question of the resumption of certain private land adjoining the Yallingup Caves House. This is freehold land, and if resumed would be resumed by the Public Works Department, but the question of whether the State is required is a matter for the State Hotels or Tourist Department. The Town Planning Commissioner apparently referred it to the Secretary of the Premier's Department.

I understand from the State Hotels Department that they endeavoured to have this land resumed some years ago, but nothing was finalised.

As the Caves House is being rebuilt, it certainly seems that the erection of shacks and weekend cottages nearby would be undesirable, but it is not actually a matter for this Department.

- (e) The letter dated 25 February 1938 from the Minister for Lands to the Hon. Minister Controlling State Hotels, states:

The Under Secretary for Lands' minute on page 11 is forwarded for your information. If you desire resumption, the matter must be taken up with the Works Department.

- (f) The letter dated 3 March 1938 from the Chief Secretary to the Hon. Minister for Works, states:

The matter of the resumption or acquisition of this land has been under consideration for over 30 years.

The land comprises Sussex Location 269 and is situated immediately in front of Caves House. It is, in fact, the gorge or valley between the House and the ocean.

The acquisition of this valley of 96 acres is most desirable from every viewpoint, but really becomes an actual necessity when viewed from the point of view of our sewage disposal, which has for many years past polluted the stream which runs through the property.

Now that a large sum of money is about to be spent on the enlargement of Caves House, it is evident that the added sewage disposal will become a matter of much gravity.

The land, from almost a State aspect, should be acquired either by resumption or purchase.

Please see the minute of the Town Planning Commissioner (Page 9, 6365/02).

I forward for your full information, File State Hotels 87/1927.

I hope you may be able to finalise this matter speedily.

- (g) The letter dated 24 March 1938 from the Under Treasurer to the Under Secretary for Works, states:

This file was left with me by Mr Williams of the Land Resumption Office, who wished to know whether or not the Government desired to proceed with the resumption of a block of land adjoining Caves House at Yallingup.

I submitted the papers to the Hon. The Treasurer, who stated that it was not desired that the resumption be proceeded with.

- (h) The letter dated 14 April 1938 from the Minister for Works to the Under Secretary, states:

The decision of the Hon. Treasurer settles the proposition of the Chief Secretary for the time being.

The owner of the block recently called upon this office. He asked that something definite regarding resumption and was informed that it was not the Government's intention to proceed at present. I pointed out that I could not speak with certainty regarding any future proposition bearing in mind that portion of the block may be required in the near future in connection with the septic installation for the new Caves House. I mentioned that a small area may be taken and indicated the locality.

Mr Hammond was in full agreement with the proposal and would fully support same. The object of his visit was to ascertain the position in order to decide his own policy.

- (i) The letter dated 27 August 1956 from the Under Secretary for Lands to the Under Secretary for Works states:

The purpose of the proposed resumption was for 'Public Recreation Grounds' at Yallingup . . .

- (j) The letter dated 29 August 1956 from the General Manager, State Hotels Department to the Under Secretary, Lands Department states:

. . . that the original intention was for the State Hotels Department to have control of this land, viz. Sussex Location 269;

- (k) The letter dated 5 September 1956 from the Under Secretary for Works to the Under Secretary for Lands states:
- As, however, the land was resumed at the request of the State Hotels Department which also provided the funds, the control of the land should remain with that Department;**
- (l) The letter dated 7 August 1958 from the O.C. Roads & Reserves states:
- Mr Murray, the General Manager of the State Hotels Department, confirmed that when he wrote his letter dated the 11th March, at page 16 of file 687/58, he was under the impression that class "A" Reserve 8427 also included Sussex Location 4120, and had overlooked the fact that it had been set apart as a separate Reserve No. 24622 for the purpose of "Public Recreation Grounds", and had been vested in the State Hotels in trust for that purpose. He, therefore, advised that he desired to obtain control of Reserve 24622 in addition to Reserves A. 8427 and 17695;**
- (m) Reserve No. 8427 is set apart for the purposes of preservation of caves and flora and for a health and pleasure resort;
- (n) The letter dated 24 April 1961 from the Under Secretary for Lands to the Busselton Road Board states:
- At the present time Reserve 26422 is vested in the State Hotels Department but in view of the fact that the Yallingup Caves House is now vested in the Chief Secretary, and is leased by him, it is evident that the State Hotels Department is no longer concerned in the Public Recreation Ground Reserve No. 24622 and there is no reason why the vesting order should not now be cancelled and a fresh vesting order be issued in favour of your Board.**
- (o) The letter dated 30 September 1963 from the Chief Secretary to the Minister for Lands states:
- You will no doubt be aware that following the Government's decision to dispose of State Hotels, under which authority Caves House was operating, action was taken to lease this hotel to private enterprise.**
- (p) Caves House was disposed of to private enterprise under the Caves House Disposal Act, 1965.
- (q) At no time has the resumed land been used as public recreation grounds.
- (r) At no time have any plans or specifications or proposals been prepared for the use of any part of the resumed land as public recreation grounds.
- (s) The history of the land as above described.
- (t) The State Hotels Department was at all material times a trading concern under the State Trading Concerns Act, 1916, with 'trading concern' being defined in s.4(3) of that Act as 'any concern carried on with a view to making profits or producing revenue, or of competing with any trade or industry now or to be hereafter established, or of entering into any business beyond the usual functions of State Government', which is not within the definition of Public Work as defined in s.2 of the Public Works Act 1902.
- (u) The business of the State Hotels Department as specified in The Schedule to the State Trading Concerns Act, 1916 is that of a Licensed Victualler, which is not within the definition of Public Work as defined in s.2 of the Public Works Act 1902.
- (v) There was no decision to execute any work or undertaking on the resumed land prior to the resumption relating to Public Recreation Grounds.
57. Garth applied to amend the statement of claim by incorporating a plea of improper purpose consistent with the above particulars, but on 25/10/01 Master Sanderson refused to allow that amendment, fundamentally because he accepted the submissions by the defendants that if the land had been improperly resumed, it was not therefore under the control of the defendants, instead it was land under the direct control of the Crown.

58. It was said it therefore followed if relief is to be granted based on an improper purpose of resumption, Garth would need to maintain that cause of action against the Crown, either by adding the Crown as a fourth defendant to the existing action or issuing a fresh writ against the Crown, with that to be consolidated with the existing action in due course.
59. For procedural reasons, for Garth to sue the Crown will require that he issue a fresh writ against the Crown. However, irrespective of whether Garth is permitted to issue a writ against the Crown, he proposes at the trial of the current action to rely upon the evidence contained within the particulars of improper purpose to assist in establishing the defendants have not complied with their obligations under sections 29 and 29A.
60. It is a moot point whether Garth can issue a fresh writ against the Crown alleging improper purpose of resumption, because it is contended by the Crown that cause of action accrued on 9/12/38 and is therefore time barred because of s47A of the Limitation Act.
61. The Crown also contends the statements made by the Hon. Mr Cash do not extend to bind the Crown, only the existing named defendants.

General

62. There are no documents to suggest the resumed land has any particular utility or heritage value.
63. The instructions by Garth have at all times been limited to reversing the resumption in the exercise of his rights in the name of his father as prescribed by the Public Works Act and the Land Administration Act.
64. The Public Works Department contend that **the fact the land does not appear to be used for active recreation in no way gives rise to a claim for return under the provisions of the Public Works Act. The contrary is very often the case, i.e. it is desirable that the land remains in its natural state for what is generally known as an “passive recreation”**; refer the letter from Public Works Department to Keall Brinsden & Co 27/11/1975.
65. The position of the defendants is that the land is worth millions and that **Mr Hammond (Junior) is apparently trying to obtain land on the cheap to establish a business that his father sold out years ago; refer the letter from OC Roads & Reserves to Under Secretary for Lands 26/5/1976.**
66. The land is currently a reserve for recreation; the zoning of the land in the event the land is repurchased by Garth cannot be stated.
67. Pursuant to the Leeuwin-Naturaliste Ridge Statement of Planning Policy adopted by the Shire of Busselton in the District Town Planning Scheme No. 2, **expansion of Yallingup ... will be considered provided it conserves the surrounding conservation and landscape values.** It is trite to observe Garth is bound by that TPS.
68. In so far as Garth relies upon his rights pursuant to sections 29 and 29A, being the subject of the existing Supreme Court action the action is in substance ready to be entered for trial.
69. It is contended the enactment of the Bill will improperly extinguish those rights retrospectively and on a uniquely discriminatory basis.
70. There is no issue at this date Garth has legitimate and lawful claims pursuant to the Public Works Act which are properly before the Supreme Court of Western Australia for determination.
71. The Bill if enacted will extinguish those claims.
72. Every member of the public that has been affected by a resumption under the Public Works Act is or has been entitled to exercise the rights provided by sections 29 and 29A and where necessary to have those rights determined judicially, except Garth.

I appreciate the indulgence of the House in allowing me to read in the statement of particulars that were provided to me. As I have said, I read them into the record because they are the claims of the plaintiff. The other point I should indicate is that some years ago a statement of claim was served on various members of the then Government. It was action No CIV 2567 of 1988 consolidated with CIV 1998 of 1993. It involved William Garth Hammond as executor of the estate of Thomas Garfield Hammond, deceased, and the Minister for Works and the Minister for Lands as first and second defendants. The other ministers were listed as third defendants. An amended consolidated statement of claim was filed and served. The document is extremely lengthy and I do

not propose to read it into *Hansard*. It is a public document; the State has copies of it. It sets out the particulars claimed by the plaintiff in respect of the matter. My major concern is that it is alleged by the plaintiff that the land was improperly resumed; that is to say, it was not used for the purpose for which it was resumed. More than that, within the documentation provided - not all read into *Hansard* - the plaintiff also claims that the information provided to his father at the time was such that his father was misled into believing that the intent of the Government was not, in fact, the actual intent that occurred in practice. If the resumption was founded on improper motives at the time, that is obviously a serious matter that should be the subject of a court action. That particular claim is contained within the action anyway. It is a matter that will be pursued and tested in court.

The Bill before the House is specifically directed against one parcel of land and one citizen of Western Australia. It is intended to extinguish the rights of that person over that land. It is also intended to deny to the land certain rights that were existent since their creation in 1938. I, as a member of this House and as a member of the community, believe justice in Western Australia should be dispensed on an equal basis to all citizens. I do not believe it is proper to single out one citizen and legislate away his rights because he asserts that in the past the State acted improperly against his father's estate. I say again that it is for the plaintiff to prove his case in court. My objective has always been to see that the plaintiff gets his day in court but, regrettably, he has been frustrated for many years, and continues to be frustrated. It could be argued that he was making some progress. I believe it was discovered that the State's position might have been in jeopardy because of the actions taken a long time ago by public servants and, perhaps, ministers. I do not know who those people were and I presume that they are now dead; however, it is alleged that improper motives lay behind the resumption of the land. It is proper that the individual who makes that claim be given the opportunity to have it tested in court.

I said earlier that this Parliament is not a court of justice. It is not equipped to deal with the complex matters that comprise this case. However, we should not discriminate against an individual just because there is some fear of the outcome. More than that, I believe justice is all about maintaining legal rights, ensuring equity and fairness and guarding against discrimination and persecution. Indeed, we have specific laws that deal with discrimination. It is illegal in Western Australia to discriminate against a person on the basis of race, religion, disabilities, age, sex and all manner of things, yet this Bill is designed to discriminate against one person in a most serious way: it will remove from one person the legal rights that every other person in Western Australia has to pursue a matter through the courts. It is totally wrong to deny this plaintiff his day in court. He is entitled to have his assertions tested.

The only other legislation in Australia that I can think of that specifically targeted one person was legislation passed by the New South Wales Parliament against a prisoner by the name of Kable. That legislation was passed to remove Kable's right to be released from prison because the Parliament of New South Wales believed he was a person not worthy of release. In due course that legislation was struck down on the basis that it was not for the Parliament to make laws to determine whether someone should remain in prison; it was for the courts to decide, given his crime, how long he should remain in prison.

In this case it is totally wrong for this Parliament, on the limited information it has, to make a judgment against one of its citizens that would deny that citizen access to our system of justice in Western Australia. If the matter proceeds to court, in due course it may be settled without great expense to the State; that is only a presumption on my part. It is up to the plaintiff and defendants to work that out.

This case is all about a question of justice, not a piece of land. I venture to say that no-one would argue about it if it were a 33-acre block of land out the back of Leonora. However, the question of personalities and the value of the land have now been introduced into the equation to distort and, indeed, demolish an individual's legal rights. That is totally wrong.

Without being extreme, it is the sort of event that is occurring in Zimbabwe. I have had the opportunity of visiting Zimbabwe and I know of the claims that have been made by some white farmers who have had their rights legislated away and, as a result, their land taken from them. I hope in this Parliament we do not stoop to that level of activity. I hope we will afford this individual the same rights that every other individual in Western Australia is entitled to; that is, free and unimpeded access to the courts that have been established by this Parliament for the very purpose of interpreting the law and dispensing justice. I hope members will oppose the Bill.

HON CHRISTINE SHARP (South West) [11.57 am]: This is a very interesting Bill. It appears to involve many different, complex perspectives. It involves government duplicity; it involves the principles of individual rights and individual property rights; it involves issues of good planning; it obviously raises the whole nature and purpose of the statute of limitations; and it deals with real estate worth millions of dollars. It is a fascinating tangle of different issues for a member like me who does not have a lot of background to the case to integrate and to come to a view on whether the Bill has merit and should be supported.

In preparation for debate on the Bill, I visited the site at Yallingup last year so that I would be aware of its exact location and nature. When I saw the actual site at Yallingup I realised, although I was visiting the site for that express purpose, that there would not be a member of this Parliament who does not know that site. It is an extremely important and prominent site, which almost every Western Australian would know because of its prominence right next to Yallingup Beach, with a view that is indescribably magnificent and beautiful. It is also right next to one of the favourite public recreation spots on the Yallingup foreshore for the whole cape to cape region. The site is very visible from the next major public node along the coast, Smiths Beach. We all know that marvellous experience when we come around the bend to go to Yallingup and all of a sudden the Indian Ocean and the glory of that coastline comes into view, and then we go around the bend towards the township of Yallingup, with the small car park and lookout on the ocean side. That is the land we are talking about. It is absolutely extraordinarily beautiful to many people and beloved by them.

From my perusal of the documentation that has been provided to me on the transaction that took place between the Hammond family and the State Government in 1938, I am inclined to agree that the Hammond family has had a raw deal. In fact, more than give the family a raw deal, the State has acted improperly towards the family in the transaction that took place, in which it seems to me that Mr Hammond's family was essentially tricked and lost its freehold title to this extraordinarily important piece of land.

However, I looked at the Bill last year in preparation for the debate and I received a briefing on it from someone who is a friend of Mr Hammond and is an advocate in the case, Mr Noel Crichton-Browne. I also received further information from Mr Hammond this week. I was of a mind last year, and I remain of the same view this morning, that the Greens (WA) will support the Government's Bill, because the events that occurred in 1938 are not the only events that the House needs to consider in this matter, important though they are. The statute of limitations is an incredibly important principle, too. It is there to avoid chaos, because if every decision that was made by the State in the past were constantly revised, reviewed and revisited, clearly government in the present would become almost impossible. The statute of limitations is a very important legal principle and that also is at stake. Overall, I am convinced of the benefits brought about by the notion that, at a certain point, past injustices are accepted as part of the big story of history. The whole history of our State and, indeed, the world is one big story of multiple injustices in multiple areas. That is why, at a certain point, we must let bygones be bygones and deal with the needs of the present.

That brings me to my second consideration, apart from the issue of the principle of limitation; that is, in considering the present and the importance and the strategic nature of this piece of land, I am very concerned to protect the public values of this piece of land. I note, for example, that Yallingup is virtually invisible when viewed from the principal view elsewhere along the coastline; that is, from Smiths Beach, which again has an absolutely extraordinary view of our beautiful cape to cape region. Yallingup is now quite a sizeable township - I do not have the figures with me; I did not have enough warning of today's debate to dig them out - with several hundred permanent residences now, as well as restaurants, a caravan park and various short-term accommodation. It is a real holiday resort now. The magnificence of the view from Smiths Beach, which is also very famous and important, has been protected over recent years through the excellent planning development of Yallingup. That planning has now been confirmed by the Leeuwin-Naturaliste Ridge statement of planning policy. To my mind, the Leeuwin-Naturaliste Ridge statement of planning policy is an extraordinarily important document for ensuring that we maintain the conservation values and the public amenity of the cape to cape region, and that development in the region conforms to planning standards that are as high as the landscape and conservation values of the region. In other words, this is one of the most beautiful places in the world and we need good planning that is second to none.

The land does have some development on it. It has a small depot for the local bush fire brigade, a car park and a road. Nevertheless, most of the land is still in its natural state and allows the amenity of Yallingup to be protected, and that should be the case. I am most concerned that in focusing on matters of the past and on individual benefit in relation to past decisions, we should weigh those matters against current public values. I believe that now is more important than then and public is more important than private.

Having said that, I acknowledge that the Hammond family was subject to improper treatment by government. Nevertheless, as that was not dealt with within the limitations posed by the statutes at the time, the time for doing something about it has now passed. It was an unfortunate decision of the previous Government to waive the statute of limitations. It should not have done that because it is always a better principle to let bygones be bygones; otherwise, this would not be the only bygone we would be dealing with. We would be absolutely inundated with bygones.

In trying to weigh up all those issues against other equally important principles, and not just concentrating on the very important principles that Hon George Cash has advocated this morning, I have decided that the Government's Bill has merit, and the Greens (WA) support it.

HON BARRY HOUSE (South West) [12.10 pm]: Hon George Cash gave a comprehensive and thorough legal and chronological history of this situation. Perhaps I can provide a little more of the background of this situation as it pertains to me.

I know this area extremely well. I grew up in the Yallingup district and returned to live in the Yallingup district. I have known the Hammond family virtually all my life. Garth Hammond, who is involved in this situation, is about seven years older than I. I attended the Yallingup Primary School and Busselton Senior High School with his brother Jack, who is about two years older than I. I know both the family and the geographical history of this situation very well. I also know a fair bit about its general history. The point has already been made that this land is intrinsically linked to the Caves House Hotel. However, it is worth reiterating that the Caves House Hotel was a state hotel until 1965. The State undertook that business, along with other activities, such as running butcher shops. Thankfully the State has moved away from much of that type of involvement. I read in *Hansard* an interesting debate on the Caves House Disposal Act 1965; it provides an interesting background. The Caves House Hotel was initially developed following the 1899 discovery of the Ngilgi Cave at Yallingup. The cave was developed as a tourist facility and became a mecca for people from Perth, particularly for honeymooners. One of the most famous honeymooners at the Caves House Hotel was Bob Hawke.

Hon Norman Moore: Which time was that?

Hon BARRY HOUSE: The first time I think. The other day there was a photo in *The West Australian* of three couples who met when they were on their honeymoon at the Caves House Hotel. I think the couples were celebrating their fiftieth wedding anniversaries. There are many similar stories. Caves House Hotel became a honeymoon mecca because the Aboriginal name for Yallingup is “place of love”. That is some of the history behind the development of Caves House.

Hon Christine Sharp: We hope some of it is rubbing off on you.

Hon BARRY HOUSE: It is.

My family has also had some involvement. Sir Norman Brearley, Western Australia’s aviation pioneer, used to fly planes from Perth that were full of honeymooning and holidaying couples who were destined for Caves House. He would land on a fairway of a golf course that had been developed on my grandparent’s property, which is on Caves Road about five kilometres from Caves House. My grandfather had one of the first cars in the district and he used to taxi the tourists to Caves House. At that stage, he also ran a butchering business that serviced Caves House and the group settlements around the area. That property, which still exists, is called “Glenmore”. My father took over the butchering business after his father’s premature death, and that is how he met my mother.

Another connection is that the property that neighboured the property on which I originally grew up, which is now the site of the Gunyulgup Galleries and the Lamont Winery restaurant, is Millbrook. That property has an old waterwheel timber mill, at which the timber for the two Caves Houses was milled by Bob Donald and his son Jack. I say two because the original Caves House, which was built in the early 1900s, burnt down in 1932 and was rebuilt in 1935. I have a fairly strong connection with this issue.

For many of us young guys growing up in the district, Caves House Hotel provided us with much of our personal and social education. Caves House Hotel always had good staff quarters, and many people were caught crawling through the windows of staff quarters.

Hon Nick Griffiths: Were you caught?

Hon BARRY HOUSE: No, other people were caught. During my university days I worked behind the bar at Caves House Hotel because I figured that, as I spent most of my time there, I might as well work there rather than spend all my money on the other side of the bar. Incidentally, the property at Millbrook has been owned by Kevin Merifield and his family for quite a while. There is another historical connection with Caves House, because the last lessees of Caves House Hotel when it was a state hotel were Bill and Ted Copley. They were pioneers of the surfing industry in many ways because Kevin Merifield and other associates of that era were surfies who came to Yallingup to pioneer the surfing industry. The surfing industry in the south west was pioneered at Yallingup, not Margaret River. Bill Copley and his family welcomed the surfies into the fraternity. A stand-off originally existed between the locals and the surfies but that was soon sorted out during a session when some bikies arrived. There was a bit of a punch-up during which the locals and the surfies ended up on the same side. They have been mates ever since.

Hon Paddy Embry: Was that in your time?

Hon BARRY HOUSE: I was only a young fellow. Caves House soon developed as a hub of the local community. It remains the social hub of that south west corner of the community for most young people who

visit. Indeed, the tradition of Sunday sessions has continued at Caves House Hotel. My children hang out to get to the Sunday sessions or to sessions on public holidays, as do many people from Perth.

The land, of course, is associated closely with Caves House Hotel because, as we have already heard, when Caves House Hotel burnt down and was rebuilt, the land was resumed shortly afterwards in 1938. This was done because there were plans within the Government - the Government owned Caves House at the time - for a development that could be built in conjunction with Caves House on that land. However, at the time, that land was privately owned. Further, for years Caves House had experienced sewage problems. It used to pump sewage into a limestone cave. When I used to walk around the bush as a kid I would suddenly discover where the raw sewage was going. In turn, that sewage leaked into the Yallingup Brook, which runs through the contested land area. The Hammond family home was originally on the southern side of that brook. There is nothing to indicate that at the moment. I heard the previous speaker say that that area is pristine and untouched. It is largely untouched, but it was not always that way, because that is where the Hammond family home was built. The Hammond family drew their water from the creek. They were forced to relocate their property to the northern end of their land, where they developed tearooms and holiday cottages. Of course, that area is now called Surfside and was originally developed by an organisation called Reid Murray, which went broke. 'It could not sell the blocks of land. Now I cry because if I had bought even a couple of them, I might have been okay. The developer of the Surfside subdivision who made it successful in the end was Alan Bond. He sold the blocks, and of course it is history now that if people want a block in that subdivision, they pay a lot of money. People who live in that area are very protective of the values of their properties, and that may be another reason for some of the views that are held in that part of the world.

The history of Caves House and this land exposes a massive conflict of interest within the State, as the owner and operator of that development. My understanding is that the land was resumed under the Public Works Act in 1938. I interjected recently when Hon Christine Sharp said that Mr Hammond senior was tricked. He may well have been tricked. My understanding is that there was no consultation and no negotiation. He just happened to read in the *Government Gazette* that, hey presto, his land had been resumed. I do not think that would or could happen in this day and age. Mr Hammond senior - Ting Hammond - objected at the time, because he thought that a massive fraud had been perpetrated upon him and his family. The family has objected ever since, and the issue has been taken up by his son.

I became involved, as a local member of Parliament for the area, because Mr Hammond, as a constituent, came to see me. Even though I have known the Hammond family for years, that does not prevent Mr Hammond, as a constituent, coming to see me. Therefore, I became aware of his claims, his allegations and his actions over the past 15 or so years. I organised a couple of meetings with ministers of the day; they were Hon George Cash and Hon Doug Shave. I have never proffered an opinion to Mr Hammond or anybody else about whether he is right or wrong, or whether his case has any validity, because I am not qualified to judge that. However, he requested access to ministers to at least put his case, and I, as a local MP, helped him to do that.

My view all along has been that this is a matter for the courts to decide and not this Parliament. The Government's actions in this matter have been appalling. This is a classic case of wearing down an individual by attrition. The State's actions for many years have been aimed squarely at ruining Mr Hammond financially, emotionally and physically so that he will go away and leave his case, or die. However, I know the determination of Mr Hammond. He will not go away. Even if he dies, he has two sons who vow they will continue this fight. They deserve their day in court. The court is the place in which disputes of this nature should be raised and determined.

It has been a terrifically long, drawn-out case. We have already seen from some of the documents that have been quoted from how long and drawn out it has been. I have with me another document from which I will quote. In quoting from it, I indicate to members that this is a classic case study relevant to the major land inquiry currently being conducted by the Standing Committee on Public Administration and Finance. I would certainly like to, at the very least, have this case referred to that committee as a case study. I will give the House an example of the history. This is a set of notes that was put together to indicate some of the history. It is headed "Instances of delay by agencies of the Crown and by the Crown Solicitor's Office in the conduct of Hammond -v- Minister for Works" and states -

20/08/85	Letter sent to the Under Secretary for Works, Public Works Department requesting details concerning Recreational Reserve 24622 - Yallingup.
20/12/85	Letter received from the Under Secretary providing answers to enquiries.
DELAY -	4 months. During that time, the Under Secretary wrote on two occasions -
30/08/85	Informing that investigation had been instigated; and

Extract from Hansard
[COUNCIL - Friday, 9 May 2003]
p7417b-7435a

Hon George Cash; President; Hon Dr Chrissy Sharp; Hon Barry House; Hon Peter Foss

- 29/11/85 Indicating that advice was being sought from another branch of the Department.
- 24/12/85 Letter to the Under Secretary for Works, Public Works Department requesting appointment.
- 17/01/86 Letter from the Under Secretary inviting a representative of our client to make an appointment.
- DELAY - approximately 22 days.
- Over Christmas and January, that delay is probably reasonable. It continues -
- 09/03/87 Letter to the Minister for Works and Services requesting him to ascertain whether in the opinion of the Governor, the balance of the resumed land or any part of that balance is or is not required for the work of "public recreational grounds at Yallingup".
- 13/05/87 Minister for Works and Services declines offer to negotiate and indicates that "there is a strong case for the reserve to retain its status quo".
- DELAY - 1 year 2 months and 4 days. During that time there was a letter dated 13/03/87 from the Private Secretary to the Minister indicating that our request was under consideration. There was also a letter dated 03/04/87 from the Minister indicating that a report was being prepared by the Department of Land Administration for his consideration.
- 14/11/88 Writ of Summons and Statement of Claim in the second action filed and served by Plaintiff.
- 16/11/88 Memorandum of Appearance in the second action entered by the Defendants.
- 26/01/89 Defence filed and served.
- DELAY - 47 days after expiration of time for filing a Defence.
- 22/03/89 Plaintiff's request for Further and Better Particulars of Defence.
- 10/05/89 Further and Better Particulars of Defence supplied by Defendants.
- DELAY - 48 days. During that time, the Crown Solicitor by letter dated 03/04/89 sought an extension of time to comply. By letter dated 04/05/89, we pressed the Crown Solicitor to comply.
- 16/08/89 Plaintiff seeks Answers to Interrogatories from Defendants.
- 02/03/90 Defendants supply Answers to Plaintiff's Interrogatories.
- DELAY - 6 months and 16 days. By letter dated 08/08/89, we indicated that reasonable time would be allowed for answering interrogatories.

I will not read all of that section. It continues -

- 16/10/89 Having proposed that the parties meet to investigate the possibility of a portion of the resumed land being purchased, we forwarded a Conceptual Development Proposal to the Crown Solicitor, requesting consideration thereof by the Crown.
- 19/12/89 Letter from the Crown Solicitor indicating that the Crown was not prepared to consider a negotiated settlement.
- DELAY - Approximately 2 months. During that time, by letter dated 08/12/89 to the Crown Solicitor, we made a further request for consideration of the materials forwarded.
- 11/01/90 Plaintiff's Request for Discovery and Notice to Produce.
- 26/03/90 Defendants give discovery.
- DELAY - 64 days after expiration of the time limited for giving discovery in accordance with Order 26 Rule (1). During that time, the Plaintiffs obtained a Order for Discovery from the Supreme Court on 12/03/90 that the Defendants give discovery within 14 days. Discovery was given on the 14th day.

BETWEEN APRIL 1990 AND JULY 1992, PROCEEDINGS FOR A TRIAL OF PRELIMINARY ISSUES (SOUGHT BY THE DEFENDANT) AND AN APPEAL FROM THAT DECISION TOOK

PLACE. ANY DELAY INVOLVED AT THIS TIME WAS GENERALLY DUE TO THE SUPREME COURT CALLOVER AND LISTING PROCESS.

10/09/92 Letter to the Crown Solicitor concerning whether the Crown would agree to waive the section 47A limitation point.

02/10/92 Response from the Crown Solicitor - not prepared to waive limitation point - will apply to strike out the Writ in the second action.

DELAY - 20 days.

16/12/92 Request to the Crown Solicitor to reconsider waiving limitation point. There was never any response to this letter.

29/06/93 Letter to the new Minister for Works seeking a further determination by the Governor as to whether the balance of the resumed land or any part of it is or is not required for the work of "public recreation grounds at Yallingup." -

I understand the term "public recreation grounds" is a critical part of the application because the area has never been used for public recreation grounds and is currently overgrown. People do not access it because it is too dense. The document continues -

17/09/93 Writ for third action filed and served.

28/09/93 Letter from Minister for Lands:

- 1 The action will be defended;
- 2 Does not accept that delays in litigation have been due to the Defendants. Claims that the delays were due to the appeal process and to the circumstances that it was open at all times to our client to make application under section 47A of the Limitation Act but such application was not made until well after the dismissal of the appeal concerning the trial of preliminary issues.

08/10/93 Upon application by the Plaintiff, the Supreme Court orders that the second and third Actions be consolidated.

20/10/93 Defendants serve Summons for Orders striking out Statement of Claim.

21/10/93 Supreme Court orders that pleadings in the Consolidated Action be exchanged before any consideration of whether the Statement of Claim should be struck out.

28/10/93 Plaintiff files and serve Statement of Claim in the Consolidated Action.

08/11/93 Defendants file Defence in the Consolidated Action.

DELAY - 4 days after expiry of time for filing of the Defence.

On 02/03/94, the defendants amended their defence by taking up the limitation point again.

There followed an exchange of correspondence between the Crown Solicitor and us concerning the interpretation to be placed upon the letter from the Minister for Works dated 02/08/93 as to the limitation point.

There is a lot more of this documentation.

The next series of actions and correspondence invoked a delay of -

57 days during which time, we wrote reminder letters dated 30/09/94, 02/11/94 and rang Crown Solicitor's Office on 17/10/94.

There followed another series of negotiations and correspondence between August and November 1995, and a delay of 66 days occurred during which time follow-up letters were written. From September 1995 through to July 1996 there was a delay of 92 days in which follow-up letters and telephone calls were made to the Crown Solicitor's Office. From September 1996 until May 1997, another series of follow-up letters were sent and telephone calls were made. There was a delay of 133 days during which time three letters of reminder were sent.

All the notes I have cover the period up to 21 May 1997. Six years have elapsed since that time. I presume that the full documentation of that history contains as many pages again as have already been provided. I am happy

to table that document for members to see what the situation is and to show how appallingly an individual has been treated by the State when trying to get his day in court.

During that time, positive opinions were obtained from several people, including Hon David Malcolm, AC and Malcolm McCusker, QC. As I said, it is not up to me and nor am I in a position to judge those opinions or the case in any way whatsoever. However, it is up to the Supreme Court in Western Australia to hear this case, not this Parliament.

There is a political dimension to this legislation. I very much fear that the Parliament and the strength of the position of the Government of the day is being used to play out personal and political agendas - even vendettas. This is the most pointed, vindictive, nasty piece of legislation that has ever entered this Parliament. It will go down in history along those lines. It is aimed specifically and personally at one individual. It has been driven by the political agenda of people very close to the action in Yallingup - people who live on the Yallingup Hill - and it is no coincidence that this is occurring under a Labor Government. A former federal Labor member of Parliament has been a part-time resident on the Yallingup Hill for many years - Mr Ron Edwards, the former member for Stirling, who now has several jobs with the Government. He has vocally espoused his view on this matter for ages, and it is no accident that it is personally directed at a person who happens to be a member of the Liberal Party. Garth Hammond was a member of the Liberal Party well before I was. His involvement is not much more than handing out how-to-vote cards at the Yallingup hall - he has done that forever and he will continue to do so. The fact that that may have been seen as a motive is doubly appalling.

The Attorney General, Mr McGinty, has obviously seized on this opportunity to try to make some political mileage out of the fact that two former Ministers for Lands who happen to have been Liberal Party members - Hon George Cash and Hon Doug Shave - entered this situation at one point or other merely to reinforce the view that Mr Hammond was entitled to his day in court. At no stage did they give away any of the State's rights in defending that action. This has been seized upon from a political viewpoint and nothing else.

There has also been a concerted media campaign. Front-page articles have appeared in *The West Australian* attaching a fanciful value of \$70 million, or something like that, to this piece of land. If this land were to be fully urbanised along the same lines as Surfside Village, where the opponents of this situation happen to live and where land values are increasing all the time, then it would be something of that order, but there is no chance of this land ever being developed, certainly to that extent. I doubt that there is any chance of development. We have seen the concerted campaign next door to restrict the level of development at Smiths Beach, and this has been privately-owned land for many years. I agree with the community on that point. Significant development will occur there, but at least it will be contained within reasonable limits. The piece of Yallingup land in contention is dense coastal scrubland and there is no hope in Hades of this development, even given the Leeuwin-Naturaliste Ridge statement of planning policy, which identifies this land as a possibility for an extension of the Yallingup node. That concerted media campaign was aimed squarely at developing the view and the perception that a greedy individual was trying desperately to take over the public's rights on a piece of land for his own purposes. That is far from the truth.

Hon Christine Sharp made her party's view clear. I am very disappointed that she has taken that course of action. Obviously, she weighed up several factors, but unfortunately, true to form, the conservation issue always comes out on top. None of the other issues is ever given weight by the Greens (WA). Of the litany of issues that she outlined as involved in this legislation, all the others were ultimately buried under the conservation agenda, which is effectively the only one that counts. Her attitude towards individual land rights in this case is not true to form, when I see the Greens (WA) vigorously defending Aboriginal land rights. That does not quite add up to me. The sacredness of the statute of limitations seems to be convenient on one hand but not on the other.

The only sniff of recompense or compensation to Mr Hammond appears in clause 7 of the Bill, which reads -

- (1) The Treasurer of the State may make payment in such amount as the Treasurer considers to be appropriate in respect of legal costs incurred in proceedings of a kind referred to in section 200(3) of the *Land Administration Act 1997* in relation to the land.
- (2) Any money payable under a decision of the Treasurer under subsection (1) is to be charged to the Consolidated Fund which to the extent necessary is appropriated accordingly.

That is an extremely subjective approach, which allows the Treasurer of the day to assess what he may feel is adequate recompense in this case.

I know Mr Hammond and his family have pursued this issue for many years, and they have spent a lot of money on it, although I do not know how much. They have fought this personal campaign since 1938, and they cannot be denied their fair and rightful day in court. This has been a longstanding dispute between the State and one individual, and I am the first to agree that it needs resolution. On this land, described as a beautiful area - which it is - there is a car park, a road, a bush fire brigade shed and a picnic area, all constructed by the local authority, and all probably done without legal status over the years. There is also a caravan park. I know the owner of that

caravan park, and he has been concerned about this issue for years, as would be expected, because he has been in limbo, like the other people involved in this process. It has been a very difficult situation on the Yallingup hill for quite a while, because Garth Hammond is the main man in the fire brigade in the Yallingup district. Garth Hammond puts in an enormous effort, and has done for many years. The fire brigade depot is on the land that he is disputing. Everybody assumes that they are public facilities on public land, but they have no idea that the land has been subject to dispute for more than half a century. I can certainly feel for the caravan park owners who do not have any effective security of tenure while the situation remains unresolved.

My fear is that if this Bill is passed, it will not resolve the issue anyhow. I do not know the complete situation, but I do know the resolve of the Hammond family to pursue this matter whatever it takes, and they will pursue this matter whatever it takes. If this Bill is passed, I do not know whether any avenues will be open beyond this Parliament, but I know that if any avenues are open, the Hammond family will explore them and pursue them if they have any opportunity to do so. Therefore, the issue may or may not be resolved by passing this Bill.

This is an extraordinarily heavy-handed action to take against one individual to try to get a resolution of this matter. I believe that everybody agrees that there should be a resolution. If this matter is pursued down a legal path, there may, and probably should be, some negotiation, mediation or even arbitration to decide a settlement. That would be a good outcome, but the matter needs to be sorted out. This Parliament is not the place to do it. This is grossly unfair and has a very distasteful personal dimension to it. I believe that if we continue along this path and ultimately pass this legislation, it will reflect upon this Parliament for a long time. I certainly oppose the legislation from a personal point of view and I oppose it very vigorously from a philosophical point of view. I join with the Liberal Party in urging all members to oppose the Bill.

HON PETER FOSS (East Metropolitan) [1.48 pm]: I am very pleased that Hon Chrissy Sharp has remained in the Chamber to hear the argument. I was very saddened to hear her say that the Greens (WA) have decided to support this legislation. I would have hoped that they would hear the argument in this Chamber before making that decision. I trust that it is a decision they have made pending the debate and is not a totally unchangeable decision. It will be a very sad day when the Greens, for whatever reason, allow themselves to agree to this legislation. The reason is that I believe we must carefully dissect a number of issues before we decide to support this legislation. First, this legislation could not be passed by the Commonwealth Parliament. It has always been argued that perhaps the provision in the Constitution, that there is no acquisition except on just terms, could or should be extended to the States.

Hon Kim Chance: Hear, hear!

Hon PETER FOSS: The Leader of the House might say "Hear, hear", but this is an acquisition and it is not on just terms.

Hon Kim Chance: It would have prevented the problem occurring in the first place.

Hon PETER FOSS: The fact is that we could not pass this legislation if we were the Commonwealth Parliament because being the Commonwealth Parliament would require us within the legislation to provide just terms. This act is an expropriation; it is taking away such rights as this person has and is not providing just terms for them. I do not know what rights he had. When I was the Attorney General, I had to consider this case. I will tell members what my involvement was. The first thing that occurred to me was that it was litigation of which no Government and no judicial system could be proud. It had continued interminably without resolution. I do not know how many members have read *Bleak House*. It seems to me that, at this stage, the Hammonds' situation is very much like that of the lady in the book and her papers. They have been subject to the processes of the courts for far too long. The inherent delays in the judicial system apply probably more to this case than many other cases before it. Of course, there is always a reason for the delay. I have never known a case that has not been delayed because of a reason, an excuse, a justification. It seems that once a case gets into that grind of delay, everything happens to it. What can go wrong, will go wrong. What can be delayed, will be delayed. It is very difficult to explain to clients many years later why they do not have justice. How can we explain to the Hammonds that an Act of Parliament has been passed to deprive them of their rights, without providing them with any recompense whatsoever, which has not yet been determined by the court? How do we explain that the full majesty of statute law has been brought to bear to deprive them of their day in court?

The issue was brought to me partly because of the statute of limitations issue. I took the view that only one minister could waive it, and it was not the Minister for Lands. As the Attorney General, I was the only minister who had the legal authority on behalf of the State. I declined to waive the statute of limitations, although there were certainly very good moral arguments for its being waived. I said that the case should go to trial as soon as possible. It might sound trite to say that justice delayed is justice denied, but the one thing we owe those people is their day in court. What will this do to those people, who, after all this time, will not even have the chance to go to court to find out whether their case was justified? The only thing we are offering them by way of recompense is what the Government thinks is fair payment for their costs. I do not know how many members

have been involved in litigation. When real people, as opposed to people representing companies, came to me and said that they wanted to sue, I asked them how much they would pay not to have their teeth drilled every day by a dentist. When they asked why, I said that for most people, being involved in litigation is like having their teeth drilled by an old-fashioned, slow drill. The litigation becomes something that cannot be left. Once a lot of one's life and money have been spent, how can the matter be left? For the Hammonds, the hearing of the case has now become the most important matter, and this Bill will take that away from them without compensation.

The Government would be prevented from this action if it were the federal Government, because the Constitution states that there can be no acquisition without just terms. This is an acquisition; however, it is not on just terms. The Government should not entertain any ideas that it is righting a wrong; rather, it is carrying out an expropriation without compensation. Whatever mistakes the Government believes were made by former Ministers for Lands, they are the mistakes of the people of Western Australia. They are the mistakes of the Government of Western Australia for which the Government must pay, not the Hammonds. The point that has been lost in all this is that even if the Government believes that Hon Doug Shave or Hon George Cash made an error, we must pay for that error in the same way as if I had appointed an incompetent judge to the Supreme Court - I refer to someone who is not up to standard and not someone who is incompetent to the extent that they should be removed. In those circumstances, it would have been necessary, in the interests of an independent judicial system, for that person to remain because it would have been our fault that the wrong person was appointed. We have the right to choose and, although we may make mistakes, we must bear the responsibility of those mistakes. It may be that the Government of the day is a different Government; however, it is still the State of Western Australia. The Government cannot change that responsibility by casting it on the Hammonds simply because it believes somebody made a mistake. One of the absolute essential elements of government is that Governments honour the fact that they have merely taken over the reins, even though the vehicle that is being driven remains the same. This Government cannot duck from the responsibility of the actions of previous Governments. In arguing the reason that the Bill should be passed, the Government has virtually denied any responsibility for the agents of the State of Western Australia.

It is important that ministers do what they think is right. I believe that the ministers did what they thought was right. I did what I thought was right, which was to insist on the statute of limitations. However, it does not matter whether I, Hon George Cash or Hon Doug Shave were right, because at the time that each of us acted, we were a part of the Government of the State of Western Australia. The current Government of Western Australia is obliged to stand by the rights and wrongs of what we did when we were in government.

I was concerned by Hon Christine Sharp's statement that the beauty of the land was one of the issues that moved her the most. With respect, and although I understand, that is not relevant. We covet many places in Western Australia, even though we do not necessarily do so for ourselves. We can describe it any way we like, but if we want to do something with a piece of land that belongs to someone else, we covet it. We can mince words and split hairs; however, the reality of the matter is that the Government has seen something it wants for Western Australia.

Debate interrupted, pursuant to sessional orders.

Sitting suspended from 1.00 to 2.00 pm