

YALLINGUP FORESHORE LAND BILL 2005

Third Reading

HON KIM CHANCE (Agricultural - Leader of the House) [3.38 pm]: I move -

That the bill be now read a third time.

HON GEORGE CASH (North Metropolitan) [3.39 pm]: I oppose the third reading of the Yallingup Foreshore Land Bill 2005. Members will be aware that a third reading debate is extremely narrow and is generally restricted to the bill as it emerged from the committee. Given that the bill was not amended in committee and that it is in the same terms as an earlier 2001 bill, I can speak without great limit on the situation. There were no amendments made during the committee stage because the parliamentary secretary acknowledged that she was not able to provide certain answers to certain questions in part because she admitted that over a period of years information has been lost from the files concerning this particular resumption. She also acknowledged that information had not been able to be located for the purposes of this debate. The inability of the government to produce those documents, which I believe are relevant to ascertaining the facts surrounding the original resumption and the subsequent dealings with the land, is lamentable. It is also a travesty of justice in so much that the plaintiff will never be able to get the answers to the very important questions that he has raised over time. Some of those questions were raised by members of the opposition during the second reading stage of this bill.

The bill has taken five years to get to this stage. In part, that is because during the last Parliament the government was not able to guarantee the position of the Greens (WA). The Greens' position has now crystallised and the government is now pushing for the third reading of this bill.

Much has been said about this bill over a long period. From the opposition's point of view, nothing has changed. We opposed the original bill when it was introduced into this house and we continue to oppose the bill. The principal ground on which we oppose it is that it is a travesty of justice to use a legislative tool in the form of a bill - an act of Parliament once it is assented to - to obliterate the legal rights of an individual. We believe that an individual should have the legal right to petition a court by an originating summons or motion and be able to go before an open court and have the evidence that he wants to lead tested by the court so that, in the end, the court can make a decision on the evidence of the parties concerned. This bill prohibits the plaintiff from presenting his evidence to the court. That is done notwithstanding the fact that the plaintiff claims that he has a number of grounds he would have pursued had he had the opportunity of presenting his evidence in open court. I mentioned on a number of occasions that the plaintiff raises the issue of a concealed fraud. He claims that a concealed fraud was perpetrated against his father some 60 years ago, and that the concealed fraud has been perpetrated by government bureaucracy, in particular, over a long period, and that that has constituted a cover-up of all the evidence that would have been necessary to show what actually happened concerning the resumption and subsequent dealings with the land. I recognise the government's intent behind this bill. It will use the Parliament to prevent the plaintiff from raising the evidence he has. Of course, it will also prevent the plaintiff from having various government offices examined over their dealings with this land over time. I have had some close association with this legal matter. I know that the government is fearful of the true facts ever coming to light. Once this bill is assented to, the government knows that the true facts will never be able to be brought to light. I recognise that the resumption of the land occurred more than 60 years ago and that the passage of time has caused some confusion in the minds of those who have dealt with the land over that time.

In 1993 I was the Minister for Lands. In that capacity I listened to the plaintiff's assertions and claims. I believed that it was proper that he should have the opportunity of taking his case to a court. Because in 1993 - 13 years ago - the case had already been running for many years, I wanted the matter addressed within a very short period. One of the reasons I gave the plaintiff the opportunity to pursue his case in the courts was so that the evidence could be tested. I said on a number of occasions that I did not form an opinion about whether the plaintiff could substantiate his case. I knew that, as a principle of justice, he should be treated no differently from any other person. He should be given the right to take his case to an open court. That is what our democracy is all about. I have made the point on a number of occasions that if the land were at the back of Leonora or on the fringes of the desert, the government would not have introduced a bill to abolish someone's legal rights to pursue a particular claim. I know that in 1993 I made the right decision. My decision was a decision based on principle. That principle has not changed to this day. That is why there are so many people in the community who support a decision based on the principle that I mentioned earlier.

I should also recognise that there are some people in the community, in particular people who have interests in the Yallingup area, who have said to the plaintiff's face and to his family that they do not support this bill and what it is doing. However, I also know, because I have spoken to those people, that behind the plaintiff's back they are quite happy to see this bill get a third reading. Over time, having spoken to those people and watched

their duplicitous actions, I have thought to myself that, one day, they might find themselves in the same position as the plaintiff. It would be only then that they would have to sit down and think about the legal rights of an individual and why it is so important that these matters be tested in court. That will not happen. I am truly sorry that the plaintiff will not get his day in court. However, I should qualify what I said about those who have acted duplicitously against the plaintiff. Other people from the Yallingup area have said to me very clearly that they do not agree with the manner in which the government is proceeding with this bill but, in their view, it is so important that the land be kept in public ownership that they accept that this is perhaps the only way of ensuring that that is the case. They have been the honest ones who have said the same to the plaintiff as they have said to me. It is the dishonest ones who concern me greatly.

We are at the third reading stage. It is clear to me that the bill will succeed in its passage through the Legislative Council. I am sure that it will gain the Governor's assent in due course. I tell the plaintiff that he should be commended for the time and effort that he has put into attempting to prove his case in this matter. He stood up for his legal rights. Whilst he may be right in his assertions and it may be that he has the evidence to prove them, the government will use the might of the Parliament to ensure that the evidence never sees the light of day. This bill represents a travesty of justice; it destroys the rights of an individual in Western Australia. It is totally wrong. That is the reason I oppose the third reading.

HON MURRAY CRIDDLE (Agricultural) [3.50 pm]: I was not present for the earlier debates on the Yallingup Foreshore Land Bill. The Nationals voted in favour of this bill in the other house. Hon George Cash pointed out that this is a difficult situation. The Nationals have come to the conclusion that in passing this legislation, with all the impediments that have gone before and that still exist, we will allow this important piece of land to be used for public purposes. This issue will progress after the passing of this legislation.

I understand that the equivalent of \$502 was paid many years ago as compensation for the land in question. A range of issues have arisen over the years that have muddied the waters, and resolution of the issue through legislative means is something that the Nationals have decided to support. I do not see this as a property rights issue. Rather, it is more about people being able to take an issue to court for resolution or to have it dealt with by Parliament. I do not have a legal mind; in fact, I have limited legal knowledge. I cannot say that the Nationals are happy with the outcome of this matter, but the bill will give finality to this issue.

HON BARRY HOUSE (South West) [3.54 pm]: I oppose the third reading of the Yallingup Foreshore Land Bill 2005. I am very disappointed with the second reading debate and with the votes that were taken a couple of weeks ago at the end of the second reading debate and during the committee stage. I anticipate that I will also be disappointed with the vote on the third reading, which will occur in a few minutes.

My first point is that there will be ramifications for our representative democracy because I was personally mentioned in the second reading speech as the member who took this matter to the government on behalf of the constituent. Raising an issue with the government on behalf of a constituent is something that all 91 members of this Parliament do every day of every week of every year. A fundamental part of our representative democracy is that politicians are community representatives who avail themselves to constituents who have a grievance or a concern. We become the conduit in those situations because we raise people's concerns with the government or government agency, make it a part of our particular political party's policy development, or take it up as a community issue. That is our role in a representative democracy. That is what I did in this case. A constituent came to me with an issue and asked whether I could get him an audience with the government of the day so that he could explain his situation. I have said many times that I formed no opinion at the time and that I have formed no opinion since about the claims of that constituent. I am not qualified to do that. However, I am qualified - it is my duty as a member of Parliament - to arrange for a constituent an audience with the government or the agency to which he intends to outline his point of view. Members of Parliament do that every day. Where will we be left if we adopt this legislation? Some time down the track members who try to help a constituent with an issue can expect that issue and the member's part in it to be broadcast in this house by way of a second reading speech and to become part of a piece of legislation. That is an unhealthy precedent. That is my first point.

At this stage, the third reading of this bill is deemed to succeed. Therefore, the opposition's position will be opposed by the Legislative Council. As I have said already, that will be a disappointing outcome. The opposition's position will be opposed by the Labor Party, the Greens (WA) and, seemingly, the National Party representative. The Labor Party's position is understandable in part because it has been blindly led by the opportunity to politically persecute one individual because he was a member of the Liberal Party. It has been fed by the prejudices and the personal agendas of Labor Party connections whose properties on the hill at Yallingup adjoin the property in dispute. Added to that, of course, was an opportunity that the Labor Party could not resist; namely, to score political points and to politically target two former Liberal ministers for lands. The Labor Party could not resist doing that. That highlights the fact that the Labor Party is generally more interested in the

politics of a situation rather than good public policy or the merits of an argument. There is also an element of a cover-up because of the government bureaucracy's disgraceful mismanagement of this issue over many years. This mismanagement has been designed to delay the situation and to wear out the plaintiff by attrition. Every action seems to have been taken to confuse the situation and to muddy the waters with little purpose other than to deny the man in question his day in court. The government bureaucracy certainly did not want to be exposed to scrutiny. It did not want to be exposed to scrutiny in a court of law and in a parliamentary committee in which it would have been required to produce and table documents and to explain its actions. The government bureaucracy feared that its incompetence and outright obstruction might be exposed. I also suspect that if that is the case, some of the documents that might have been unearthed in a court of law or during a parliamentary committee process would have suggested that the plaintiff, Mr Hammond, might have a case after all. I do not know. If that were the case, perhaps some of the legal advice floating around government circles would line up with some of the advice that Mr Hammond has obtained over the years from very pre-eminent legal persons in this state, such as Justices McCusker, Miller and Malcolm.

In terms of the Greens' position, I recall that I appealed to the Greens' spokesman on this matter, Hon Paul Llewellyn, to be reasonable in the debate and to make an assessment based on the merits of the argument. I said that he has appeared to have done that in debates on other issues since he has become a member of this house. However, I am very disappointed that that does appear to be the case with this issue. The Greens are very quick to spout rhetoric in support of the little man against the might of the state. They are quick to jump on the human rights' bandwagon and to support democracy. However, I seriously question the actions and logic of the Greens (WA) in this case. I do not believe they will have any credibility at all after this debate, as they will have failed to produce when given the opportunity to do so. Words are cheap; but when they have the opportunity to make a difference by a vote, they fail the test. I am bewildered by their logic, quite frankly, especially with regard to the motion for referral of this bill to a committee. The motion for referral to a committee, I would have thought, would have been -

Point of Order

Hon KEN TRAVERS: I have been listening to this debate for some time now - almost 10 minutes. It is a third reading debate and the member is now re-canvassing issues to do with the referral motion. I felt that some of the earlier points did not go to a third reading debate, but I was interested to listen to them. However, the member is now testing the bounds of the third reading debate, and I ask you, Mr President, to call him to order.

The PRESIDENT: Members should be aware that the third reading is a very narrow area of debate. However, Hon Barry House's comments are in line with what is permitted in the third reading. He is advancing a reason for why the bill should not be passed. However, as this is a third reading debate, he should not go into great detail on a particular reason, and I do not believe he is doing so.

Debate Resumed

Hon BARRY HOUSE: Thank you, Mr President. I was explaining that the ordinary, espoused logic of the Greens' party would have, I believe, lined it up with the same position that the opposition took in this debate. That is why I say that I am bewildered by the logic of the Greens. I appeal to them that they have the last opportunity in the third reading to deliver on this situation. However, if they do not, the next time I hear calls from them on bleeding heart issues, they will forgive me if I am a bit cynical. I think you, Mr President, would probably rule out of order another matter I had intended to mention, so in that case I will move on to another point.

The logic of the Greens' vote on the third reading of this bill will line them up squarely behind people such as Robert Mugabe on the land rights issue in Zimbabwe; that is a badge the Greens will have to wear.

Hon Paul Llewellyn: I just have to put a bit more weight on!

Hon BARRY HOUSE: Perhaps I could be a bit more cynical. If a wind farm were proposed for the property at Yallingup, the Greens' view might have been different. We have heard a lot from the Greens and others regarding, for instance, the extended imprisonment of David Hicks in Guantanamo Bay, Cuba. The Greens' criticism is that he has not been afforded an opportunity for justice. I agree with them; he has not had his day in court. However, he is a guy who is accused of terrorism. Here we have Mr Hammond who has sought to have his day in court; he is a law-abiding citizen and a resident of Western Australia who has sought nothing more than to have his day in court.

As for the position of National Party members, I say that they have been totally sucked in by the erroneous lateral arguments, which I referred to in my contribution to the second reading debate, regarding the political agendas and conservation and planning issues that do not go to the core of this matter.

Hon Kim Chance; Hon George Cash; Hon Murray Criddle; Hon Barry House; Hon Ken Travers; President

Here we have a case of one peaceful, law-abiding citizen of Western Australia who merely seeks to have his day in court and to get answers to his claim through the justice system of WA. Garth Hammond's father has been fighting this issue since 1938; and Garth Hammond and his family in particular since 1985 - that is, 20-odd years. This Parliament is denying him even the right to his day in court to get an answer to his claim. I will certainly be opposing the third reading on the basis that this house appears to be about to endorse an absolutely disgraceful travesty of justice. I maintain that this Parliament has been used for incorrect purposes: to determine, even adjudicate, on an individual's dispute with the Crown, which should be decided in the courts. Mr Hammond is entitled to his day in court. I am not sure, quite frankly, that we have heard the last of this matter. We probably have heard the last of it in this chamber, but I happen to know of the determination of Mr Hammond and his family. I cannot pass any judgment on their actions and whether they are wise or otherwise, but it is possible that they may pursue this matter further and it is possible that this issue will one day end up in the High Court. It is a very unsatisfactory outcome, Mr President, for this Parliament today, and it does the institution of the Parliament of Western Australia and this house, the Legislative Council, no credit at all to pass this bill. I oppose the third reading very strongly.

Question put and a division taken with the following result -

Ayes (15)

Hon Shelley Archer	Hon Kate Doust	Hon Paul Llewellyn	Hon Ken Travers
Hon Vincent Catania	Hon Adele Farina	Hon Sheila Mills	Hon Giz Watson
Hon Kim Chance	Hon Jon Ford	Hon Louise Pratt	Hon Ed Dermer (<i>Teller</i>)
Hon Murray Criddle	Hon Graham Giffard	Hon Sally Talbot	

Noes (12)

Hon Ken Baston	Hon Donna Faragher	Hon Barry House	Hon Simon O'Brien
Hon George Cash	Hon Anthony Fels	Hon Robyn McSweeney	Hon Margaret Rowe
Hon Peter Collier	Hon Ray Halligan	Hon Helen Morton	Hon Bruce Donaldson (<i>Teller</i>)

Pairs

Hon Ljiljana Ravlich	Hon Norman Moore
Hon Sue Ellery	Hon Nigel Hallett
Hon Matt Benson-Lidholm	Hon Barbara Scott

Question thus passed.

Bill read a third time and passed.