

UNIVERSITIES LEGISLATION AMENDMENT BILL 2000

Second Reading

Resumed from 17 October.

HON LJILJANNA RAVLICH (East Metropolitan) [11.04 pm]: The Australian Labor Party supports this Bill. It is a straightforward piece of legislation that aims to do three things: Firstly, to amend the University of Western Australia Act 1911 in relation to the number of members of the Senate and the definition of the university; secondly, to amend the Murdoch University Act 1973 and the University of Western Australia Act 1911 with regard to the role of the Governor as a visitor; and, thirdly, to repeal the University Endowment Act 1904 and the University Endowment Amendment Act 1927 to incorporate the related investment provisions in the University of Western Australia Act 1911 and to make some consequential amendments to those pieces of legislation.

I understand that the proposed amendments have been the subject of considerable discussion within the university's governing body - the Senate - which undertook a review of these matters.

Approximately two months ago, when this Bill surfaced, I took the initiative of approaching the universities to seek feedback about the proposed amendments. There appeared to be very few problems with what was being proposed. Among the changes, there will be a change to the senate structure, which will reduce the number of senate members from 25 to 21. The Bill also attempts to change the definition of a university, because the current definition excludes staff. The definition being sought under this amendment Bill will ensure that students are included and that the university shall consist of the senate, the convocation, staff and graduate and undergraduate students. It is a much more inclusive definition.

On the role of the Governor as a visitor, there is some concern that under the current provisions of the respective Acts of the University of Western Australia and Murdoch University, the Governor appears to have no option but to investigate a complaint when it is presented. This is seen as a duplication. As often happens when problems arise, they may also be referred to other bodies, such as the Ombudsman, which have been set up to hear complaints.

Another aspect of the legislation relates to providing greater flexibility in how the university can expend its funds. Historically, it has been limited to the purchase of land. The proposed amendments in this legislation will give the universities greater flexibility over where they invest university funds.

As I have already put on record, I have been in consultation with the vice-chancellors of all the respective universities. They have given this legislation the all clear. I have received letters of support for this legislation. I have also been in touch with the University of Western Australia's Academic Staff Association and the national tertiary education of students branch. They expressed some concern with the need to review the whole university sector. The current argument is that Western Australia might have too many universities. There could be some argument about rationalisation; that is, perhaps the opportunity provided in the amendment Bill could have been used to have a broader look at the tertiary education sector and bring about some of these changes. However, the Bill before us tonight does not attempt to do that.

I also put on the record the fact that some concern has been expressed about the role of the visitor and the office of the chancellor. However, I have not been inundated with requests from any particular group that amendments be made to the Government's legislation. Because I believe the legislation to be non-controversial, I have been particularly keen to ensure that it is dealt with in an expedient manner. I have given an undertaking that I will assist the passage of this legislation, because of the degree of consensus that this legislation apparently has. I do not intend to take up more of the time of the House. I simply put on record that the Australian Labor Party will not be supporting any amendments to this Bill. As far as we are concerned, the proposal before the House is more than acceptable.

HON HELEN HODGSON (North Metropolitan) [11.14 pm]: It is nice to hear from the opposition benches that this legislation is non-controversial. I think a couple of aspects need to be teased out, and I have already alerted the parliamentary secretary and the Leader of the House that this will require a committee stage, because I have some issues that I want answered.

This is another instance of our cooperation. With the very heavy schedule that we have had in the House today, I have gone from not even having the files with me this morning to being prepared not only to debate the Bill but also to raise some very serious concerns I have with a couple of aspects of it.

As Hon Ljiljanna Ravlich said, there are three basic issues in the Bill: The issue of the visitor, governance issues and investment issues. Those of us who are members of the Standing Committee on Public Administration,

Hon Ljiljanna Ravlich; Hon Helen Hodgson; Hon Dr Chrissy Sharp; Hon Peter Foss; Hon Barry House; Hon Mark Nevill

which includes the parliamentary secretary, have done a great deal of work on the role of the visitor. On 1 June we tabled in this House the committee's report No 15 entitled "Appeals and Review Processes for Western Australian Universities". The committee undertook a considerable review of the role of the visitor in that report, and the recommendations are there for everybody to read.

Whether the Governor is required as a visitor to investigate everything is an issue that was addressed by the committee, which found some problems with the role of the visitor. However, the recommendation of the committee was quite different to what is proposed in this Bill. The committee recommended that the acts empowering all the publicly-funded universities in Western Australia should be amended to abolish the position of visitor in these institutions as it is inappropriate, outdated and unnecessary. Yet, before us is legislation that considers the role of the visitor and, by saying that the visitor need not investigate everything, the Bill affirms the role of the visitor in universities.

The committee considered a number of models, including the purely ceremonial models that some universities have in other States. There was some sympathy for the view that a ceremonial function should remain; however, whether that ceremonial function should be the role of a person who is appointed as a visitor, or whether it should be carried out by another figurehead of the university, was not a matter on which the committee made a finding. However, there is some discussion on it in the report. The committee found that the visitor is an inefficient means of redress and the person appointed by the empowering legislation, being the Governor, is not in a position to carry out the task at hand.

We therefore have some issues with the legislation in that it still refers to the role of the visitor and it amends that role, but not to the extent recommended by the committee. I am not sufficiently concerned by that issue to move any amendments on the point. First, I have not had time to have them drafted; secondly, I have been told that they would not be supported if I were to move them. However, it is important to have on record that the Bill we are debating tonight is not in accordance with a report on which a committee of this House spent a great deal of time, to which other members of the committee can testify. It is a matter that must come back to the Parliament for a full and formal review.

I note also that it is the only aspect of the Bill that does not relate only to the University of Western Australia. I was intrigued when I heard of the extensive consultation process that Hon Ljiljanna Ravlich engaged in wherein she checked with all the universities -

Hon Ljiljanna Ravlich: I have. I have three letters with me that I can table.

Hon HELEN HODGSON: Certainly; I am not questioning that. I am saying that it affects only the University of Western Australia.

The other issues before us are the issues of governance, the senate and so on. The second reading speech directed us to the Hoare report entitled "Higher Education Management Review" that deals with a review of the university system.

The Hoare report was a national review that looked at a number of issues relating to the university sector, including a number of the matters addressed in this Bill - the issues of governance, the role of the senate, the structure of the senate and issues to do with investment. The recommendations of the Hoare report dealt with the role of the governing body, appointment procedures, accountability and the committee system. On the whole, most of the issues relating to corporate governance and the role and place of the senate are pretty much in line with the recommendations of the Hoare report. I note that there is a change in senate numbers and there is an attempt to make the senate more representative. The Democrats are happy for that to occur. I also note that the appointment procedures and the terms of appointment of the chancellor and pro-chancellor are now more prescriptive than they were in the previous legislation. I would like some clarification on why the Bill seeks to make those roles more prescriptive - is there an underlying policy reason of which I am not aware? I have not been able to pick anything up in the time that I have had available today. On the whole, the Democrats do not have any real problem with the corporate governance issues. The only other comment I wish to make leads to my third point.

It was put to me today, quite forcefully, that the reason the Bill was needed was that it would save the university a lot of money if this new structure was in place at the start of next year. That was the reason it was so urgent that this Bill be dealt with today. I put it to the Chamber that the real reason for the urgency of the Bill is more to do with the third aspect of the Bill - the investment issues. This is where this House moves back into the north metropolitan section of the evening, which I think will take up a number of the matters that are still to be dealt with before the House rises. Some members of this place may remember that I made a speech in this place in December last year, which related to a piece of bushland currently owned by the university - the Shenton Park bushland adjacent to Underwood Avenue. This piece of land is to be subdivided and sold for housing; however,

there is a lot of community concern about the proposal. A group called "The Friends of Underwood Avenue Bushland" was formed to keep members of Parliament in the north metropolitan region informed about what was going on with this bushland. I am sure that other members have a file of letters, as I do, on that group's views about the sale and subdivision of that part of university-owned property. There are plans to sell 22 hectares of a 32-hectare area of land that is currently owned by the University of Western Australia, for a housing subdivision. Of the remaining land, it is proposed that 8.5 hectares remain as bushland and 1.5 hectares be cleared parkland. A lot of these problems relate to the fact that this land is part of the Bushplan, which has never been properly implemented by this State Government.

I appreciate that this land is part of the university's endowment, which is why it is relevant to this Bill. This Bill looks at the treatment of land owned by the university as part of its endowment. I believe that the real urgency to get this Bill through is to facilitate the subdivision and future dealing of this land. When this matter was first brought to my attention a year ago I was told that there were future plans - the subdivision that was known about at the time and other matters that were under way. People were still trying to find out exactly what was going on. I have since received more correspondence and it appears that further large-scale subdivision of land holdings is likely to happen in the area, much of which will be within the buffer zone of the waste water treatment plant.

I have a copy of a letter from the Department of Environmental Protection stating that it is very concerned about this proposal by the University of Western Australia to subdivide and sell part of its endowment lands. It represents a change to the system by which endowment lands are managed and made available for sale at about the time that the university is seeking to deal with some of its endowment lands in a way that the community finds unacceptable. This is why I find it fascinating that the Australian Labor Party considers this matter to be noncontroversial, because if we are dealing with endowment lands, we are dealing with an area where the community has been vocal about having problems. If anybody else was at the Shenton Park dog home open day a couple of weeks ago -

Hon Peter Foss: I never miss it.

Hon HELEN HODGSON: We did our bit, and we walked the boxer dog, Emma, that nobody else would take, but a stall was set up there by the community concerned -

Hon Peter Foss: How did you get your invite? I missed out.

Hon HELEN HODGSON: I happen to know one of the people who were organising the publicity for the event, but the media did not turn up, so I did not get the photograph taken anyway. I will return to the point of the Bill because I do not think that the finding of a home for Emma is a priority in this legislation.

The Friends of Underwood Avenue Bushland had a stand set up with all the information about what was going on. They are very active and concerned. The problem is that, because this area is already within the endowment land, it is not a matter that can be dealt with through the metropolitan region scheme and through disallowance of an MRS. I am sure we will be talking more about the disallowance of metropolitan region schemes later this evening, but because it is already zoned residential and within the university endowment area we cannot deal with it in that way. When I saw this provision in the Bill I became curious: Why are we having to change this legislation at a time when something is going on about which the community is upset? That is the main reason I am concerned about this Bill. That is why I signal to the minister that, although I will be prepared to deal with it, I want some more information made available. My concerns are basically whether the changes to investment power which deal with endowment lands will make it easier for the university to deal in a certain way with the lands it currently holds.

When I spoke a year ago on this issue I was basically opposing the sale of the lands, but I was willing to say that the main reason the university needed to sell the land was the whole problem of funding, whereby universities now must raise funds internally because their grant system is not adequate to cover the provision of services to students. I was quite supportive, in a sense, not of what the university was doing, but of the lack of funding. I am concerned when I see this provision coming up now for endowment lands and I will be seeking some further explanation during Committee.

HON CHRISTINE SHARP (South West) [11.29 pm]: I looked at this Bill several weeks ago and sought some simple consultation with university contacts. I felt satisfied that the Bill was good legislation and that there would not be any difficulty with the provisions. I have, however, noted the comments of Hon Helen Hodgson; she has raised some matters of concern and I will listen with interest to the debate during Committee.

HON PETER FOSS (East Metropolitan - Attorney General) [11.30 pm]: I put on record, because I did not at the time the committee report came out, that I do not agree with the committee's suggestion that the jurisdiction of the visitor should be moved. I have had some experience with jurisdiction of the visitor. During my time of

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acting for the various universities I did all the visitorial cases, and I was certainly involved in the only case that has been to the Supreme Court in Western Australia with regard to the jurisdiction of the visitor.

I have researched the history and the basis of the visitorial jurisdiction quite thoroughly. It is an ancient, charitable jurisdiction. It is unusual in the way it works. It excludes the jurisdiction of common law courts entirely. The idea that matters of a domestic nature are handled through a visitorial jurisdiction is an excellent way to proceed. All too often when decisions are made to throw out an ancient institution, it is because a modern problem has occurred and people do not like what happens but they do not bother to find out the worth of the thing that has occurred. It is done in various areas. It is done with institutions of a cultural nature, as well as institutions of a physical nature. I remember the 1950s as a time when it was done to physical institutions - they were all knocked down because they were considered inconvenient and ugly. If we had kept most of the things that were knocked down in the 1950s, we would probably have a much richer society.

Having read the report, I feel that the basis upon which it treated the visitorial jurisdiction was somewhat superficial given its history. It was very much related to a particular matter that had been dealt with over a period. I have had nothing to do with it and nor have I had any influence over the decision on visitorial jurisdiction. The Bill was in that state when I first saw it. I caution members that merely a committee of this House has recommended that the abolition of something that has worked extremely well in Britain for more than 800 years. I believe it has worked extremely well in this State. The research that went into the report was extremely shallow, and it appears to be motivated by a particular case that I do not think any court would have been able to solve simply. It is an unfortunate recommendation. I would hate to think that the House later would push ahead and 'fix it', as that would be like fixing up Westminster Abbey because it is looking a bit shabby. It is a very good jurisdiction and in my role as Attorney General, in which role I have overall oversight of the charities, I think it should be retained.

HON BARRY HOUSE (South West - Parliamentary Secretary) [11.32 pm]: I thank members for their support and their comments on the Bill. A section of the Bill deals with the size of the University of Western Australia senate. There is a belief that, even with a reduction from 25 members to 21, the senate will still be quite large. Many people in the university community believe that the purpose of the Bill is to make it more inclusive of the full university community. That is what the Bill seeks to achieve. Comments on the visitor are pertinent. I was involved with the Standing Committee on Public Administration and, before that, with the Standing Committee on Government Agencies, which produced the report earlier this year. As the Attorney General said, it arose from a particular case and it ended with a report on the review processes of the university. With the benefit of hindsight, many committee members would have done it differently. The committee agreed that it got involved in the issues more than the processes. In a sense, the committee delved into aspects that were not the province of the committee. The committee took its role seriously, as there was a case that seemed to have not been handled well by the university. The university would probably admit that. Some issues of justice needed to be pursued.

Coming out of that was an analysis of the role of the visitor.

This Bill only goes to the extent of bringing the four Western Australian public universities into line. It does not go as far as the Standing Committee on Public Administration report suggested that it might. However, there has already been quite a bit of disagreement in the Chamber about whether that is the correct way to go. I understand that the universities intend to review the matter further, but at this stage they are not in a position to take that extra step. There is a feeling in some quarters that the visitor is an anachronism in modern universities, but the Attorney General put another way of looking at it. My view is that if it suits the university and it comes up with a fair and equitable system of review, and if that is what universities want, fine. They are reluctant to overthrow that age-old institution overnight, because the Governor has much more credibility than the Ombudsman in the eyes of the university community.

The investment provision is basically to allow the University of Western Australia to reinvest in assets other than land. Hon Helen Hodgson speculated that the reason for the haste relates to some land in the north metropolitan area. I cannot comment on that because I am not aware of any of the details. It seems to satisfy modern investment practices that an institution with assets at its disposal should be able to reinvest in a whole range of other assets and not be tied simply to investing in land. I do not think any motive is involved in the legislation other than to modernise investment practices. I once again thank members for their comments and commend the Bill to the House.

Question put and passed.

Bill read a second time.

Committee

The Chairman of Committees (Hon J.A. Cowdell) in the Chair; Hon Barry House (Parliamentary Secretary) in charge of the Bill.

Clauses 1 to 7 put and passed.

Clause 8: Sections 10, 10A and 10B replaced -

Hon HELEN HODGSON: The clause inserts a new section 10, which deals with the new composition of the university senate. I totally agree with the need to make the senate more inclusive, and in most situations I would believe it appropriate that the people listed should be there. My particular concern is about who forms membership under the following paragraph (k). The clause reads -

The Senate shall consist of the following members -

...

(k) 3 persons selected and coopted as members of the Senate by the other members of the Senate;

This relates to some issues raised in this place continually for three and a half years. What is the reason for the coopting provision? What qualifications would a coopted person require? What are the circumstances under which a person could be coopted? We are moving to a more inclusive system by which the majority of members of the University of WA senate will be elected in a representative capacity. Therefore, what is the need for cooption?

Hon BARRY HOUSE: I am advised that the reason is only historical and to fully reflect the university community.

Hon HELEN HODGSON: That is a very interesting answer. I wonder whether it means three jobs for the boys on the UWA senate!

Clause put and passed.

Clauses 9 to 11 put and passed.

Clause 12: Section 14A inserted -

Hon HELEN HODGSON: I acknowledge the comments of the parliamentary secretary in reply to the second reading debate. If the reasons he gave are the only ones to make the changes necessary, it puts my mind somewhat at rest. I hope we can tease this issue out further now the adviser is here. The parliamentary secretary said there is no provision for the university to hold its assets in anything other than land.

Hon Barry House: In re-investment.

Hon HELEN HODGSON: The endowment is given in land. Under what circumstances currently can land be sold, and are circumstances to change substantially as a result of this Bill?

Hon BARRY HOUSE: The incorporation of this proposed section in the University of Western Australia Act 1911 deals with the University Endowment Act; it is to be inserted to deal with the sale of endowment land. The university may, with the consent of the Governor, sell any land granted or demised to, or vested in, the university, any land acquired from the proceeds of the sale of that land, or any land acquired under section 2 of the University Endowment Act Amendment Act 1927. The proceeds of the sale of any land referred to above is to be sold analogous to trust funds under part 3 of the Trustees Act 1962. I hope that clears up the matter for the member.

Hon HELEN HODGSON: It does not clear it up. The parliamentary secretary stated the new situation. What is the change? Under the existing University Endowment Act, must universities keep all their property as land or can they convert it to cash? If they can make those sales, why do we need a new provision?

Hon PETER FOSS: The University Endowment Amendment Act 1927, section 2, reads -

Subject as hereinafter provided, it shall be lawful for the University of Western Australia, with the consent of the Governor, to sell any land granted or demised to the Trustees of the University Endowment or to the University of Western Australia by way of permanent endowment, and to transfer such land to a purchaser freed and discharged from any trust.

Provided that the proceeds of the sale shall be applied to the purchase of other land, or the purchase and improvement by the erection of buildings or otherwise of other land, or the improvement as aforesaid of land already owned by the University.

Provided also that the land and buildings so acquired by investment of the proceeds of the sale of endowment lands, shall be held and used for revenue producing purposes as permanent endowment, upon the same trusts as the endowment lands are held.

The university has all types of investments, but its endowment land must go back into land under those circumstances.

Hon Derrick Tomlinson: Land, buildings or approvals.

Hon PETER FOSS: That is right. When the legislation is changed, the land could be sold. Then it must be invested as if it were a trust fund, whereas now it goes back into land or fixed improvements for land.

Hon HELEN HODGSON: I accept what the Attorney General said. It goes some way towards proving my case. Currently, if the Shenton Park land is sold, because it is endowment land, that money can be used only for more land or buildings. However, if the university wants to use it for any other form of income-generating investment to provide future funds, this legislation must be passed. If the people who are trying to look after the Shenton Park area are concerned about this sale, they should know that this provision will facilitate the sale because it will make the funds more readily available for the university to use for other reasons.

Hon BARRY HOUSE: As I said before, I do not know any details about the land in the north metropolitan area. The words "conspiracy theory" were running through my mind as the member spoke. The advice provided by my advisers, the Attorney General and a former university lecturer behind me, should provide enough information for the Chamber.

Hon HELEN HODGSON: I agree that it does provide enough advice to the Committee; however, I do not agree that it will provide any peace of mind to the people who are concerned about the sale of that land.

Hon Peter Foss: I agree with the member on that point; nothing would give them peace of mind.

Hon HELEN HODGSON: The parliamentary secretary is proving my case that this provision facilitates the sale of university land, including that parcel; that is the real reason for the urgency behind this Bill.

Hon PETER FOSS: If that proves something to Hon Helen Hodgson, she obviously has a more convoluted and devious mind than I thought possible. It is clear that it is an archaic provision. I had been a solicitor to the university for a long period. It did not lead to modern investment practices. The idea that that proves the Shenton Park land is the reason for the provision is bizarre. I agree with the member that nothing will quieten the minds of these people. If they see a conspiracy like that, everything tends to prove it. One of the wonderful things about conspiracies is that no matter what is done, the conspiracy is proven to the mind. I totally agree with Hon Helen Hodgson that it does not give her or the conspiracy theorists peace of mind. Anything the Government did would prove the conspiracy; that is the wonderful thing about a conspiracy theory.

Hon MARK NEVILL: I have another conspiracy theory. Is the University of WA getting rid of its endowment lands so that it does not have to share its rather grand endowment with other universities? The University of Texas inherited massive land grants because it was the only university at the time, and was challenged many years later by other universities in Texas. The other universities were successful in getting a share of the generous land grants for the University of Texas. Some of the other universities in Western Australia should get a share -

Hon Derrick Tomlinson: Murdoch University tried that and failed.

Hon MARK NEVILL: Perhaps the University of WA is trying to flog it before the other universities get their hands on any of it.

Hon LJILJANNA RAVLICH: I am sure that the University of Western Australia owns many parcels of land. It is an old institution and has been run under archaic legislation since it was established. We must shift the mind set. The issue is not necessarily about that piece of land; it could be about many pieces of land. We do not know. The return on investment in land compared with other more lucrative investment options is probably not very good. I do not know whether UWA is exempt from the payment of land tax.

Hon Helen Hodgson: It is.

Hon LJILJANNA RAVLICH: Nevertheless, I am sure that a range of other investment options could provide a much better return than land. I think that is motivating this amendment. One of my concerns is the extent to which universities might make high-risk investments. That is always at the back of my mind due to my experience in TAFE. However, section 21(3) of the Trustees Act provides the checks and balances to protect the university and the public interest. I am confident that this amendment has been proposed for the right reasons. It will achieve a good outcome. UWA has a long history of effective financial management, which I have no reason to doubt will continue.

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Hon BARRY HOUSE: It is no secret that UWA is very well endowed with land. The other public institutions, particularly in Western Australia, have been envious of that for some time. People are drawing a very long bow about the purpose of this change. It is merely to update the investment practices available to the university. For instance, it may want to invest in a research institute in which it has an interest. Universities, particularly UWA, are very conservative institutions. Unless there is a massive mind shift overnight I cannot imagine a conservative institution such as the University of Western Australia suddenly becoming entrepreneurial in its investment practices and careless in the process. I hope that will allay some of members' fears.

Clause put and passed.

Clauses 13 to 18 put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

Bill read a third time, on motion by Hon Barry House (Parliamentary Secretary), and passed.