

LAND ADMINISTRATION AMENDMENT BILL 2000

Committee

The Chairman of Committees (Hon J.A. Cowdell) in the Chair; Hon N.F. Moore (Leader of the House) in charge of the Bill.

Clause 1: Short title -

Hon TOM STEPHENS: I thank the officers and the minister whom the Leader of the House represents for making available the detailed response regarding this Bill, which was provided to the House on Tuesday. By and large, many of the issues I raised were more than adequately answered. However, the Government did not respond to my query about the Fossil Downs station, which is leased by the Henwood family. I did not ask about the rollover of the lease, about which the Government put forward its view, but about the other part of the case I put to the minister during the second reading debate. The Fossil Downs station had been advised of the Government's intention to seek a rather ambitious excision from the pastoral lease. The family was subsequently advised in writing by the then Minister for Lands, Hon George Cash, that the Department of Conservation and Land Management's ambition to excise part of the lease was no longer operative. The family took comfort from the fact that the desire to excise the area, which included the homestead, was no longer one of the goals of the Department of Conservation and Land Management. The Government's replies to my queries did not provide any detail or clarification about its future ambition for the Fossil Downs pastoral lease. Is the advice given to that family by Hon George Cash, as Minister for Lands, still operative? Will there be no further excisions, or does the station's inclusion in the list of the Department of Conservation and Land Management's excision ambitions mean those plans are once again operative? If that ambition is operative, what is its nature? Does it include the homestead, as previously described in documentation sent to the family? Does it include the associated yards, fences and paddocks, which are pivotal to the operation of that station?

I also raised the issue of the Osmond Valley pastoral lease. A letter was sent to that family advising that its pastoral lease will not be renewed. The Government did not hear anything more from them, and proceeded with its decision not to renew that lease. It made some defence of its ambition to excise the land, such as its proximity to Purnululu National Park and the small carrying capacity of the land. It is a small station by any standard. However, the Government has gone to great lengths to cater to other station families and leaseholders who also did not respond to the invitation to apply for the rollover of their pastoral lease. It made further efforts to contact them and gave them fresh opportunities to apply. It is inadequate to give up on the Green family of Halls Creek - the owners of the Osmond Valley pastoral lease - after one letter, to which they did not reply, before deciding that their lease will not be renewed in 2015. The pastoral lease has historically been useful to the area, and it continues to be useful to a small family. It is inappropriate for the Department of Conservation and Land Management to seek to remove in 2015 the pastoral lease belonging to the Green family of Halls Creek. To the extent that I will have any say in such a thing, I flag my intentions to ensure the Green family of Halls Creek is treated in the same way as the Green family of Harvey, whose pastoral lease will be renewed. They have more land and more economic clout, but I cannot see why there should be a different way of dealing with the Aboriginal Green family of Halls Creek in comparison with their white neighbours who are having their pastoral leases renewed. As far as I have the opportunity to influence the outcome of that issue, I would encourage the current Government, as I would encourage a future Government - hopefully one of my persuasion - to renew that pastoral lease.

The CHAIRMAN: I trust the member is making comments relevant to the clause. This sounds as though it is a repeat of a set of wishes from the second reading debate. If that is so, we will not go through all those again.

Hon TOM STEPHENS: If the short title were not supported at this stage, it would be the end of the Bill. I indicate that the Bill has Opposition support, although I am left with some questions that form the basis of my support, including my support for the short title.

The Leader of the House indicated that he would make some effort to obtain the heritage survey for the Sunset Hospital site and to have that available for tabling prior to the further consideration of this legislation. I would be anxious, before this Bill proceeds past the short title, to have that heritage survey and its outcomes tabled. It would be sufficient for my purposes if there was a chance of doing that either now or for the Leader of the House to give some indication about when it could be achieved before the rising of the House for the coming recess.

I do not intend to speak again on this legislation, subject to the reply by the Leader of the House, other than to express the various concerns of the group of pastoralist leaseholders I spoke about during the second reading debate. I have taken the opportunity of relaying the minister's response to those people. I sense that within that group of station leaseholders there is not the increased comfort they were seeking, although I see contained within the minister's reply many pointers to arrangements that could perhaps be the subject of negotiations between those leaseholders and a future government about the future operation of the pastoral leases. It is fair to

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say, on the basis of their past experience with the Department of Conservation and Land Management and a shared experience that I have with that agency, that they see the agency as not being equipped to cater for the conservation strategies for the land in that area. That is a widely-held experience about that agency and it points to the need for this Government and any future government to find alternative and innovative ways to respond to the needs of protecting the conservation estate that is currently held in this form of land title, and if it is to be renewed it should be renewed in such a way that explores those alternative and more flexible arrangements, such as those included in the minister's reply.

The Government gave an assurance that the Bill would go through in its current term. I would have liked the Bill to be referred to a standing committee and for the concerns of that community to be taken on board by the committee. It could then consider what alternative clauses could be drafted and take on board the fears and concerns of those sections of the pastoral community; that has not been the case. It will be the task of parliamentary representatives in that area to remain vigilant about the legitimate concerns of that community and to consider whether administrative responses or legislative regimes are required to accommodate those concerns.

It may not be possible for the minister to reply during this debate, but I have one additional specific question. Carlton Hill and Ivanhoe Plain are within the proposed list of stations that are due for renewal on 2015, subject to negotiation over the excisions from those pastoral leases. They are held by the successor to the Hooker company - effectively one of the a Packer group of companies. The stations changed hands from the joint ownership arrangements in the mid-1980s. At that stage the new pastoral lease holder was a part owner, and he later owned 100 per cent of the Carlton lease. A condition of the transfer of the pastoral lease was that a range of excisions from the pastoral lease were understood to be imminent for a variety of purposes. Those purposes included the expansion of the Ord River irrigation scheme, the conservation estate and sections of that pastoral lease and Aboriginal living areas.

I would like the minister to advise me - it may be too difficult before completion of the consideration of this Bill, but perhaps at an early stage following this House rising - whether excisions will be made from those pastoral leases for the purposes originally the subject of the conditions that governed the transfer from one lease holder to another. I hope the minister is in a position to assist with the flow of some of that information and the table about which we spoke.

Hon GREG SMITH: During the second reading debate I expressed some concerns about the content of the Bill. Since then I have researched it more thoroughly and have discovered that I was boxing at shadows to some degree. I am comfortable with the Minister for Lands having control over excisions. In his speech the Leader of the Opposition alluded to the perception that the land would automatically come under the control of the Department of Conservation and Land Management. While the present minister is in Government, I am comfortable to have a system in place whereby negotiations can occur between pastoral lease holders and the Minister for Lands - and any other Government - before CALM gets 100 per cent control. There will be the capacity for joint management of areas, for example, the Ningaloo coast, and different groups could have different responsibilities for those pieces of land. The lease holders of those properties that will be excised will have an opportunity, when their leases are due for renewal, to negotiate the type of excision that will take place. The Green family, to whom the Leader of the Opposition referred, will now have the opportunity to negotiate with the minister to keep a living area, albeit smaller than their small pastoral lease.

The concerns raised earlier have been addressed. I am comfortable supporting the Bill in its entirety.

Hon N.F. MOORE: I thank the Leader of the Opposition for his continued comments on this Bill. I share his enthusiasm for the beauty of Fossil Downs. I do not know what is proposed for that area. However, given its location and its many wonderful attributes, an organisation such as the Department of Conservation and Land Management would dearly love to get its hands on it. I do not know what is planned, but I will inform the leader when I find out in due course.

I do not know the Osmond Valley station, but I understand that it is very small and non-productive. We have had difficulty contacting the lessees, but further attempts will be made to contact them and to discuss whether arrangements can be made.

Hon Greg Smith: Perhaps the Leader of the Opposition can facilitate communication.

Hon N.F. MOORE: He might like to help; no-one is trying to take advantage of anyone in this case.

I share the leader's views about the general concerns expressed by pastoralists regarding future excisions. I have always had sympathy for those concerns. In fact, I was very concerned in the days of the previous Government when CALM was active in setting up reserves all over the place. The then Government had a policy of setting aside a 1-kilometre strip of land around the coast of Western Australia as a conservation area. I found that extraordinary, but that is another story.

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This legislation is intended to ensure that decisions are made within the next two years and that the pastoral leaseholders who will be affected by CALM requirements will have two years during which to negotiate their position. That will be the end of it, except for processes involving compulsory acquisition. It is intended to spend two years working with pastoral leaseholders to work out what areas should be conserved and how they should be conserved. If I were a pastoralist at Ningaloo, Warroora or Cardabia, which are superb stations on the Ningaloo coast, I would be interested in what CALM has in mind because it is such a spectacular part of the world. Many other pastoral properties in the State have excellent natural attractions that CALM would want to preserve. I am interested that the Leader of the Opposition is a little less green tonight than he has been in the past.

Hon Tom Stephens: It is genuine greenness; I am talking about appropriate ways of doing it.

Hon N.F. MOORE: That is fine as long as we understand what the Leader of the Opposition is saying. The fact that the Leader of the Opposition has taken such an interest in these issues is encouraging.

The Government will continue to do what it has always done; that is, seek to protect the interests of the pastoral industry. It needs support and assistance from time to time, and this is one such time. The Government emphatically believes that the pastoral industry provides more than an economic basis for the State; it is also an important element in ensuring that the remote parts of Western Australia are populated and that people are using the State's land.

I will have to obtain the information requested about Carlton Hill and Ivanhoe Plain and I will provide it in writing to the leader. I do not have authorisation to table the survey relating to the Sunset Hospital site. I will talk to the Premier about that, because it is his responsibility, and find out whether I can table it between now and when the Houses rise; if not, I will let the leader know.

Clause put and passed.

Clauses 2 to 10 put and passed.

Clause 11: Section 43 amended -

Hon NORM KELLY: I move -

Page 9, line 1 to page 10, line 4 - To delete the clause and insert instead -

11. Section 43 repealed and a new section substituted

Section 43 is repealed and the following section is inserted instead —

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**43. Certain changes to class A reserves and conservation reserves
subject to disallowance**

- (1) A proposal laid before a House of Parliament under section 42(4), 44(1), or 45(4) may be disallowed by resolution of that House.
- (2) Notice of the motion for disallowance under subsection (1) must be given not later than 14 sitting days after the day on which the proposal was laid before the House.
- (3) If notice of motion has not been given within the period provided for in subsection (2), the proposal may be given effect.
- (4) If notice of motion has been given under subsection (2) and the question —
 - (a) is unresolved at the expiration of 30 sitting days after the day on which the proposal was laid before the House; or
 - (b) is unresolved when, within the period referred to in paragraph (a), Parliament is prorogued,the proposal lapses;

- (c) is resolved within the period referred to in paragraph (a) —
 - (i) in the affirmative, the proposal is disallowed;
 - (ii) in the negative, the proposal may be given effect.
- (5) The period of sitting days in subsection (2) is not affected by a prorogation of Parliament or a dissolution or expiry of the Legislative Assembly.
- (6) A proposal to which subsection (3) or 4(c)(ii) applies is given effect by order of the Minister under section 13.

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Members will probably be familiar with the provisions of section 43 of the Land Administration Act 1997, which relates to disallowance procedures for changes to class A reserves. In proposing a further amendment to section 43, I am seeking to provide some degree of clarification. This has been brought about by a ruling from the President on 1 July 1999 in regard to the effect of prorogation on notices of motion which appear on the Notice Paper. I have at various times sought to introduce legislation to make changes, but I appreciate the opportunity provided by this amending Bill to effect those changes, by moving an amendment to the Government's Bill. Members may also notice that motion No 10 on today's Notice Paper relates to an amendment to Standing Order No 143, to add the words “whether or not the statutory instrument has legislative effect”. This is another way of attempting to bring about more standardised disallowance for such instruments that appear before the House. I appreciate that the Government is trying to make an improvement by including clause 11 in the Bill, but the consolidated version of the Act that includes that amendment, has about two pages of very convoluted language about the disallowance procedures. Section 43(1)(b) reads -

is given in either or both of the Houses of Parliament within 14 sitting days of that House, or each of those Houses, after the proposal was laid before it, but that resolution is not lost in that House or each of those Houses within 30 sitting days after the proposal was laid before it, the proposed reduction, excision, cancellation, change, grant or permission lapses; or

I have been in this place long enough to understand what that subsection means, but when making legislation we must bear in mind that the general public will need to access this legislation. With changes to A-class reserves they will wish to look at the legislation to see what rights and powers are available for disallowance procedures. I have worked at bringing about a simplified form of section 43, which provides adequate disallowance procedures and simplifies it in a way that makes it easier to understand for all concerned, whether they be in or outside Parliament. The effect of my amendment would mean that any motion of disallowance would be disallowed on prorogation if it had not been previously resolved. This is a change to the existing legislation, which allows for sitting days to continue on, as would have been provided by the Government's current Bill. The change I propose is very easily administered by the Government, because the Government is already familiar with the urgency of disallowance motions in regard to regulations, when there is a need to resolve them if there is a danger of their being disallowed by prorogation. My proposal fits in with that sense of urgency in a disallowance procedure.

I notice that also on the Notice Paper that with motion No 14, we are once again presented with a disallowance motion for a submission in regard to a class A reserve. This is a commonsense approach that simplifies and standardises disallowance procedures, and I urge all members to support this amendment.

Hon N.F. MOORE: I understand that the original section 43(1) of the Land Administration Act was put together by a committee of this House, while it was debating the Bill. I have a suspicion it was a horse designed by a committee. I acknowledge that it is not drafted all that well, but the amendment does nothing more than give effect to the original purpose intended in 1997. The level of scrutiny by the Parliament does not change. If we agree to Hon Norm Kelly's amendment, it will have the effect of slowing down changes to class A reserves. Before the Land Administration Act 1997 came into force, these types of changes to class A reserves could be done only by way of a separate Act of Parliament. The intention of the new legislation is to streamline this procedure. Some of the benefits of the streamlining would be lost if we proceed with these amendments, in the sense that not only will the proposal have to be laid before both Houses of Parliament again after prorogation, but also there is some question of whether it must be re-advertised, thereby adding to the time and the cost involved.

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The Government is aware that this wording is not all that flash. We have had advice from senior parliamentary counsel in the drafting of this amendment in the Bill that this is the best way to go, albeit that there may be other ways to do it. We are in the hands of the Chamber with the amendment moved by Hon Norm Kelly. The Government would prefer support for its Bill rather than the amendment moved by the member.

Hon N.D. GRIFFITHS: What is currently in the Act is not flash; what is in the Bill is not flash; and what Hon Norm Kelly proposes is better. I do not want to try to improve on it. I note what the minister says, but I do not think he says it as if it is a barricade matter. The interests of the community would be better served if we went along with what Hon Norm Kelly proposes.

Hon GREG SMITH: It seems to be a simple process to get land into reserves in this State, so it concerns me that this amendment would make the process more onerous because there would be more instruments to allow for disallowance.

Hon Norm Kelly: Disallowance is already in the Act.

Hon GREG SMITH: If the Parliament is prorogued, at present a disallowance motion just drops off the Notice Paper, whereas if the amendment is passed, someone could drop a few disallowances in on the second to last day of the Parliament and if they are not debated the disallowance motion will be passed. I have tried to get areas out of class A reserves. The process seems to be quite simple for getting areas in class A reserves but quite awkward for getting out even small areas for other purposes. I would have trouble agreeing with anything that makes it harder to reverse the process.

Hon NORM KELLY: I am somewhat confused by Hon Greg Smith's comments because I am seeking to achieve a more simplified process. I urge members to read section 43 of the Act as it stands now or as it will read if the Government's proposed amendment to section 43 is passed. It is a very clumsy, convoluted way of drafting legislation. The Leader of the House mentioned how the original wording was formed by a committee of this place. I remember when the Act, then a Bill, was being debated in 1997. About halfway through the debate, the new Council membership came into being on 22 May. I am sure that the wording of the Act must have been composed before 22 May, prior to the present membership.

As we deal with some of the last Bills of this Parliament, I hope to give them the Democrats' stamp of commonsense, straightforward and easily understood legislation. When I sought legal advice on forming an amending Bill, it was evident that section 43 of the Land Administration Act was ambiguous. I was also told that the Government's proposed change would still cause confusion on how motions will be determined. When I asked the Leader of the House about the motion currently on the Supplementary Notice Paper, I was told that the effect of prorogation on the motion is still to be determined. I realise that the Government's Bill is trying to fix that to some degree. However, it is making it even clumsier. I know that at times, quite unfairly, the Democrats are accused of making legislation more complex. However, I am sure members will appreciate that on this occasion we want to streamline legislation, to simplify it and make it easier for the public to understand and bring it into conformity with other disallowance procedures in this House. I urge member to support this amendment.

Hon J.A. SCOTT: The Greens (WA) will support this amendment. It is a sensible amendment. I understand that Hon Greg Smith thought this would mean that when Parliament was prorogued the matter would have to be debated. Proposed new section 43(5) reads -

The period of sitting days in subsection (2) is not affected by a prorogation of Parliament or a dissolution or expiry of the Legislative Assembly.

I do not think that applies, and this amendment covers that concern. It is a better proposition than that which has been put forward in the Bill.

Amendment put and a division taken with the following result -

Extract from *Hansard*
[COUNCIL - Wednesday, 22 November 2000]
p3517c-3522a

Mr Tom Stephens; Hon Greg Smith; Hon Norman Moore; Hon Norm Kelly; Hon Nick Griffiths; Hon Jim Scott

Ayes (13)

Hon Kim Chance	Hon N.D. Griffiths	Hon Ljiljanna Ravlich	Hon Bob Thomas (<i>Teller</i>)
Hon J.A. Cowdell	Hon Tom Helm	Hon J.A. Scott	
Hon E.R.J. Dermer	Hon Helen Hodgson	Hon Christine Sharp	
Hon G.T. Giffard	Hon Norm Kelly	Hon Tom Stephens	

Noes (13)

Hon Dexter Davies	Hon Barry House	Hon B.M. Scott	Hon Muriel Patterson (<i>Teller</i>)
Hon B.K. Donaldson	Hon Murray Montgomery	Hon Greg Smith	
Hon Peter Foss	Hon N.F. Moore	Hon W.N. Stretch	
Hon Ray Halligan	Hon Simon O'Brien	Hon Derrick Tomlinson	

Pairs

Hon Ken Travers	Hon M.J. Criddle
Hon Giz Watson	Hon Max Evans
Hon Cheryl Davenport	Hon M.D. Nixon

Amendment thus negatived.

Clause put and passed.

Clauses 12 to 52 put and passed.

Schedule 1 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 N.F. Moore (Leader of the House), and passed.