

YALLINGUP FORESHORE LAND BILL 2005

EXPLANATORY MEMORANDUM

Clause 1: This provides for the Act to be cited as the *Yallingup Foreshore Land Act 2005*.

Clause 2 Provides for the Act to come into operation on the day on which it receives Royal Assent.

Clause 3 This clause is self explanatory.

Clause 4 In 1938 land near the foreshore and Caves House, was resumed by the State Government for purposes of “Public Recreation Grounds at Yallingup” under the *Public Works Act 1902* (WA) as notified in the 9 December 1938 Government Gazette page 2112.

Clause 4 will ensure that, to the extent (if any) to which that 1938 resumption of land was invalid or ineffective, the rights and liabilities (both retrospectively and prospectively) of all people will be (and, be deemed, to have been) the same as if the 1938 resumption of the land had always been valid and effective.

Clause 5 This clause specifies four (4) former provisions of the *Public Works Act 1902* (WA) all of which have been repealed by subsequent legislation.

Originally, in the 1902 Act, section 29 provided that if land which had been resumed for public works was no longer required for such public work, the Governor could sell that land by public auction or private contract or the land could be used for any other public work.

In 1955 new sections 29 and 29A were inserted in that Public Works Act 1902 providing a right, in specified circumstances, to re-purchase land previously resumed under that Act.

Under section 29 where the Governor in Council considered that resumed land was no longer required for the purposes for which it was originally resumed, then that land could be sold or used for other public purposes. In that event, the previous owner was, in specified circumstances, to be given the option to re-purchase before the land was sold or used for another purpose.

Under section 29A, if the resumed land was not being used for any public work, the former owner of the resumed land could apply to the Governor in Executive Council for a decision as to whether the land is required for the public work for which it was resumed. If the land is not

so required, that former owner may be given the option to repurchase the land by paying the initial compensation plus 10% of that compensation (not compounded) for each year since the land's resumption.

In 1965 new section 29B was inserted in the *Public Works Act 1902* (WA) providing that where land resumed for a public work

- was used for that work 10 years or more after its resumption and subsequently is no longer required for that work, then sections 29 and 29A do not apply to the land and with the Governor's approval the land may be sold at public auction or private contract or used for any other public work;
- was not required for that public work, then after 10 years or more since its resumption sections 29 and 29A apply to that land but the purchase price payable by the original owner is a reasonable price determined by the Minister.

Sections 29 and 29A (inserted in 1955) were repealed in 1997. However, the effect of these provisions was continued by transitional provisions in section 200 of the *Land Administration Act 1997* (WA). There are no transitional provisions for the original section 29 or for section 29B.

Clause 5 ensures that the rights and liabilities (both retrospectively and prospectively) of all people will be (and, be deemed, to have been) the same as if section 29 (inserted in 1902), sections 29 and 29A (inserted in 1955) and section 29B (inserted in 1965) had never applied to the Yallingup land resumed in 1938.

Clause 6

This clause refers to sections 190 and 191 of the *Land Administration Act 1997*.

These provisions did not apply to the Yallingup land when it was resumed in 1938.

This clause ensures that the rights and liabilities of all people will be (and be deemed to have been) the same as if sections 190 and 191 had never applied to the Yallingup land.

Clause 7

This clause provides that the Treasurer may pay appropriate legal costs incurred in proceedings referred to in section 200(3) of the *Land Administration Act 1997* in relation to the land.