

YALLINGUP FORESHORE LAND BILL 2005

Second Reading

Resumed from an earlier stage of the sitting.

HON GEORGE CASH (North Metropolitan) [5.10 pm]: I have raised a number of issues related to this bill and the procedure that was adopted by the government in the 1930s to resume the land at Yallingup. I have indicated clearly that the Parliament should not assume the role of a court. The doctrine of separation of powers makes it clear that the legislature, the judiciary and the executive have separate and distinct roles to play and that it would be wrong to attempt to merge any of them or require one of them to carry out the responsibilities of a separate, independent organ of government. I have also indicated that this bill is relatively small in size but, in fact, is huge in impact, not just to the plaintiff in this case but also to the people of Western Australia who in due course may find themselves in similar circumstances. I do not believe the Parliament should be used to usurp the proper authority of the courts. I say that on the basis that this Parliament does not have all the evidence before it. I acknowledge that this is a very complex matter but that, in itself, is even more reason for the merits of the case to be determined in the Supreme Court.

This bill is very much in the form of a sledgehammer to crack a nut. I ask members to vote against this bill and to not allow the Parliament to be used by the government to bury what is alleged by the plaintiff to be a concealed fraud surrounding the resumption of his father's land in the 1930s. This is a very serious matter. It is serious not only in respect of the rights of the plaintiff and the land itself but also in respect of the system of justice in Western Australia. This Parliament should not be used to override, abolish or slaughter this plaintiff for the purpose of concealing what may have been a very significant fraud many years ago. I ask members, please, to vote against this bill. If members need any more information, I am sure that the plaintiff or his solicitors will provide that information. I ask members before they vote to be at least informed of the real circumstances behind this case. Do not rely on only one side of the issue that has been put forward by the government in a very political manner. Take into account all the evidence that the plaintiff can bring forward on the actions that have been taken on his father's estate over many years. I ask members to vote against and defeat this bill.

HON BARRY HOUSE (South West) [5.14 pm]: I also vigorously oppose this bill. The conflict surrounding the status of this Yallingup land has been a long-running saga and it pains me that we are in this chamber tonight adding the latest chapter to that saga. I have many bulging files full of documents on this matter both in Perth and in my electorate office collected over the period of time that I have been the representative for the area, which is about eighteen and a half years. I will use some of those documents, certainly not all of them, to add to the extensive legal and chronological history of the case that we have heard from Hon George Cash, the previous speaker. I also hope to provide a local perspective, as I grew up in Yallingup and returned to live in Yallingup, not on the hill near this land but about eight kilometres from there. I know the Hammond family well and have known them all my life. I know the piece of land well and I guess I know the local history of the area as closely as most people know it. There are some very personal aspects to this matter that I hope to avoid in my contribution to the second reading debate and I hope to stick to the facts.

The Yallingup Foreshore Land Bill basically contains three elements, and I ask members to consider those three elements very carefully. It contains a political element; it contains a conservation-type element; and it contains the real element, the true reason behind the bill, which is a denial of justice for one individual in the state of Western Australia. I hope to enlarge on those elements a little more.

I contend that the first two elements I referred to - the political overlay and the conservation references - are lateral; they are side issues in this debate, and I might say are even smokescreens. The real issue is that this is very heavy-handed legislation aimed at denying an individual the right to his day in court. That is the central issue. Whatever is said in this debate and whatever is said in the community surrounding this issue, I ask members to consider that as the central issue, as that is all that really matters at the end of the day.

If members reread the second reading speech, they will clearly see the political overlay. In that speech members will see past ministers Hon George Cash and Hon Doug Shave referred to specifically. I even get a mention, which is pretty unusual in a second reading speech. I got a mention simply because I acted as the local member of Parliament on a constituent's inquiry to take the request to the powers that be to give him a hearing. I did that on a couple of occasions, and I would do it again for any constituent, whether or not I knew the constituent and whether or not I supported the constituent's case. I add right at the outset that I make no judgment about the Hammond family's claim in this case. I cannot; I am not a legal practitioner and I am not a court of law. I am a parliamentarian and I am an electorate representative of that constituent, among many others. I make no claim that I am equipped to make any sort of judgment about the merits of his case or otherwise. I have never attempted to do so and I will not now.

Hon George Cash; Hon Barry House; Hon Robyn McSweeney; Hon Nigel Hallett; Hon Norman Moore; Deputy
President; Hon Paul Llewellyn; Hon Ken Baston; Hon Simon O'Brien

As Hon George Cash has already outlined, the full facts of this case are not before the Parliament; we have been provided with some selective points of view and some selective documents. A court of law is charged with assessing the legal merits of this case, not the peripheral issues that have been introduced over the years. That is where, unfortunately, the political overlay has come in. It is no coincidence that this legislation was initially introduced in 2001 under a Labor government and has been reintroduced in this term of Parliament under a Labor government, because Garth Hammond is a member of the Liberal Party. He has been a member since the early 1970s - longer than I have. He hands out how-to-vote cards at the Yallingup Hall for the Liberal Party. He has done so for 20 or 30 years and will continue to do so for a long time. That is no secret. It is also no secret that some of the part-time residents of the Yallingup hill, as it is called - the area now known as Surfside - have affiliations with the Labor Party. The former Labor federal member for Stirling, Ron Edwards, has owned a house on the Yallingup hill for a long time, and is an excellent part-time resident. He is a former president of the Yallingup Residents' Association. He has obviously had some input, over the years, into this situation and I am sure that he has promoted this form of legislation in order to, in his view and that of others in the area, resolve the situation. However, this is not the correct way to resolve the issue and I argue that it will not resolve it anyway.

The second argument relates to conservation. It is said that we must allow the state to eliminate the legal rights of this individual to preserve that pristine area of land in its natural state. That is also a fallacy. That argument was promoted very publicly by the Attorney General, Mr J.A. McGinty, on 14 May 2001, when the lead story in *The West Australian* was headed "Beach land loss looms". The article expressed the point of view put by Mr McGinty and the Labor Party in an attempt to convince certain sectors of the community and certain members of this Parliament that the land had to be retained for conservation purposes in its pristine state and that this was the only way to do it. The article is subheaded "Legal challenge may force State to return site to son of original owner". It reads -

Taxpayers face losing a \$70 million chunk of pristine Yallingup bushland to a private owner for \$3600.

That is an inflammatory statement, and it is false. To continue -

A Yallingup man is taking action in the Supreme Court to regain land the State resumed from his father in 1938.

Real estate industry sources say the land, fully developed, would conservatively be worth \$70 million - but legal advice to Attorney-General Jim McGinty is that the government will get only \$3600 if it loses the legal battle.

The 16 hectares of land has stunning ocean views and is bounded by the Yallingup townsite and the Leeuwin-Naturaliste National Park.

The article goes on to outline some of the facts surrounding the issue. A little map next to the article gives the impression that the whole of that area - 16 hectares - is the subject of this move to conserve it for ever and a day. That is a fallacy because the status of that land in the future will be determined by planning procedures, regardless of whether it is in government or private ownership. The planning status of that land has been determined over the years by various planning documents. The latest planning document is entitled "Leeuwin-Naturaliste Ridge: Statement of Planning Policy" and was released in September 1998. On page 44, in a section headed "Other settlements", reference is made to coastal nodes. Paragraph LUS 1.17 states -

Expansion of Yallingup or Gracetown will be considered providing it conserves the surrounding conservation and landscape values.

Gracetown is further down the coast, south of Yallingup. The map associated with this statement indicates that only a very small portion of these 16 hectares of land would ever be considered for any form of development because of the conservation values overlying the statement of planning policy. For Mr McGinty to run a story on the front page of *The West Australian* that the whole 16 hectares of land will become intensive residential or holiday-type commercial development is a total fallacy. I can assure members that that will not happen under the planning regulations of the day. Mr McGinty's argument was obviously pitched to gain the support of the five Greens (WA) members in this chamber at the time, and it was given a fair bit of public credence. However, I appeal to members to consider it for what it is worth: it is scaremongering and a smokescreen for the whole argument surrounding this legal case and this piece of land. I return to the true reason for this bill: it is a very personal, pointed and vindictive piece of legislation aimed specifically at one individual. I do not know whether any members of this house can recall, or indeed whether the archives of this place record any other form of legislation of this type being introduced into the Parliament. That aspect of it is very distasteful. The main contention is that this is a Parliament of legislators. We are not a court of law. Because of the separation of

Hon George Cash; Hon Barry House; Hon Robyn McSweeney; Hon Nigel Hallett; Hon Norman Moore; Deputy President; Hon Paul Llewellyn; Hon Ken Baston; Hon Simon O'Brien

powers, as previously outlined, we are not charged with the responsibility of making judgments on the law; we are charged with making the law. This legislation is out of place in that sense.

There are also conflicting legal views on the case itself. Former Chief Justice Malcolm, Mr Malcolm McCusker, QC and Mr Justice Miller are on record as providing some support for the case that Mr Hammond has put. However, the legal representatives of the government put a contrary view. Therefore, the government has picked up that view and will incorporate it, like a sledgehammer, into a piece of legislation and ignore any other contrary advice. That surely must raise some questions about procedure in the minds of government members. I hope it does.

The major contention gets back to the fact that an individual - in this case Mr Hammond - deserves his day in court, and it is our job to enable him to have his day in court. He has been frustrated by attrition for many years. He is not the only one who wants resolution of this matter. He, among others, is concerned that the disputed piece of land contains that roadway, a fire station, a car park and a caravan park. The most critical of those is the caravan park, which is leased from the state government, through the former Department of Land Administration, by Mr Ferguson. I know Mr Ferguson well. He is very keen to have this matter resolved, because a question mark is hanging over the tenure of his site. He wants that resolved, and his banks want that resolved, because Don Ferguson wants to get on and do something with that caravan park. He wants to upgrade and renovate it.

It is a very important caravan park in the scheme of things. Those who are familiar with the area will know that many beachside caravan parks in the area have disappeared in recent years and gone to strata title-type units. They have changed the nature of those areas. The affordability of holidays for families has become a little more remote, and these places are some of the few left that provide those holiday opportunities for families. The Yallingup Beach Caravan Park is a very special site. The equivalent of it was just a couple of kilometres away at Smiths Beach. It has now been overtaken and is all strata title units. Therefore, the nature of that has changed, as has the nature of the whole area. However, the lessee of the Yallingup Beach Caravan Park wants to preserve it as a caravan park that is accessible to everybody in our community. It is not rocket science, but he wants to upgrade the wood barbecues to gas barbecues, and he wants to put better, more sustainable facilities in the area. Therefore, he needs some resolution of the matter.

I know, and it was said a while ago, that Mr Hammond is not in the business of trying to shut down that lessee's business, take it over or redevelop the caravan park. He is very willing to maintain, and is amenable to maintaining, that caravan park in its current state, but of course allowing the lessee, with a more secure tenure of title, to do something with the site. Other people want the situation resolved too. The Shire of Busselton wants it resolved because it is in limbo. The shire has responsibility for the road and the car park, and, indirectly, with other agencies, it also has responsibility for the fire brigade shed. That resolution is needed in the area to clear up the matter.

It seems that some progress is being made in the courts. The documents that I tabled at the beginning of this debate refer to that. They were provided to me a couple of days ago by Mr Hammond. As his local member of Parliament and as a conduit, I suppose, I give him an opportunity to provide documents which can be used in debate in this place and which will further members' knowledge of what is going on. It seems that mediation is a real possibility and that Mr Hammond is prepared to negotiate. Therefore, why is the government not resolving this matter in a very sensible, civilised manner, rather than in the manner in which it is acting?

Mr Hammond also provided me with a small summary sheet, which I am sure provides a very succinct summary of his views. It is addressed to all members of Parliament and states -

Yallingup Foreshore Land Bill

PLEASE CONSIDER THE CONSEQUENCES OF PASSING THIS BILL

There are five dot points. The first one states -

Malcolm McCusker QC claims the Government of the day took the Hammond land in a manner that was **FRAUDULENT**. They set about intentionally deceiving the owner of the land.

The second dot point states -

By the Government introducing this Bill into Parliament it is a blatant attempt to **CONCEAL THE FRAUD** by not allowing the evidence to be heard in a **COURT of LAW**.

The third dot point states -

The Bill further serves to **PERVERT THE COURSE OF JUSTICE** by preventing me (as the only person in Australia) from having a matter brought before a Court of Law.

Hon George Cash; Hon Barry House; Hon Robyn McSweeney; Hon Nigel Hallett; Hon Norman Moore; Deputy President; Hon Paul Llewellyn; Hon Ken Baston; Hon Simon O'Brien

The fourth dot point states -

I will have had my **PRIVATE PROPERTY RIGHTS** taken away by the Bill.

The fifth dot point states -

The Bill is **TOTALLY UNCONSONABLE** in every respect.

Finally, it states -

Thank you kindly for taking the time to read these facts.

That is signed by Garth Hammond and dated 22 March 2006. I said that I would use this debate to relay that message from him to the Parliament of Western Australia, because it seems as though the government is trying to deny him any other opportunity to have his case heard. Quite frankly, that is not fair and is not Australian. At the very least - I am sure we will address this later in the debate - I hope this matter is referred to a parliamentary committee, because there needs to be some further consideration of the argument surrounding this case. However, I will not pre-empt that argument, because that is bound to come in the next couple of days.

On Friday, 9 May 2003, I tried to outline the history of this issue in the second reading debate on the bill that was presented to the Parliament a few years ago. It is worth repeating some of the points that I made during that debate so that members will have a better understanding of exactly what this whole issue is about. The first issue is that this land is intrinsically linked to the Caves House Hotel. Until 1965, the Caves House Hotel was a state hotel. The government ran the business. Just as the government ran other businesses at that time, such as butcher shops in some cases, it ran a series of hotels. It ran this hotel until 1965. The history of the Caves House Hotel goes back to the very early 1900s. The Caves House Hotel was built to provide a holiday and tourism opportunity for people who wanted to visit Ngilgi Cave, which was discovered in 1899. In those days, as it is now, it was a very significant tourist attraction. Added to that, the Caves House Hotel became known as a honeymoon mecca for many people, particularly Western Australians. One of the more famous people who honeymooned there was Bob Hawke, a former Prime Minister of Australia. There were many others. In the early 1900s there was a very sophisticated - for its time - tourist operation running between the Esplanade in Perth and my grandparents' paddock. The aviation pioneer Sir Norman Brearley flew his plane, loaded with honeymooners and holidaymakers, down to land on a golf fairway on my grandparents' property at Glenmore, which is about five kilometres from Caves House. He would discharge his passengers, and my grandfather - who had one of the first cars in the district - would pick them up, taxi them to Caves House and return with another lot who had finished their holidays, and Sir Norman Brearley would fly them back to Perth.

Hon Barbara Scott: Better service than today.

Hon BARRY HOUSE: Well, that is right - a far better service, in some ways, than you get today.

Hon Paul Llewellyn interjected.

Hon BARRY HOUSE: Well, yes.

Hon Margaret Rowe interjected.

Hon BARRY HOUSE: Yes, that is right. Sir Norman Brearley, of course, had an association with a lot of places in Western Australia, including Geraldton where the terminal records his name.

Caves House Hotel was a tourist mecca in those days. It is not surprising, because the Aboriginal word "yallingup" means "place of love". I suppose that had something to do with its getting a reputation as a honeymoon destination. It was, and is, an outstanding place in the history of Western Australia. It has been through several metamorphoses. The first hotel was built in the very early 1900s - I think it was 1902 - and it was a predominantly wooden hotel. That burnt down in 1932. It was replaced in 1935 by the structure that is still pretty much there today. The third major change came as recently as last year, when Caves House Hotel was bought by the Seashells Hospitality Group. It has redeveloped the hotel to some extent, although it has conformed to heritage values and retained the historical context of the hotel and, I might add, done an outstanding job. It has also redeveloped some of the land that surrounds the hotel, to make it more viable.

Caves House Hotel has always been a symbolic hotel, certainly in the Yallingup district, and I think it is symbolic for many people in Western Australia. We all have associations, through generations, with the sessions at Caves House Hotel. I have many other associations. Growing up in the area, as young blokes, we cut our teeth socially, in many respects, in the surroundings of the Caves House Hotel. I guess that is straying a little bit from the point.

The point is that the second Caves House Hotel was built in 1935 to replace the one that was burnt down in 1932. It was a state-run hotel and there were sewerage problems; sewage was disposed of into the adjacent creek. That creek flowed down past the Hammond household which took water from that creek, which was not

Hon George Cash; Hon Barry House; Hon Robyn McSweeney; Hon Nigel Hallett; Hon Norman Moore; Deputy President; Hon Paul Llewellyn; Hon Ken Baston; Hon Simon O'Brien

very palatable. They negotiated an easement to put a pipe through to the sea. That was agreeable to Mr Hammond, but the crux came when the cost of that pipe came back at something like £500. Instead of putting the easement through and correcting the sewerage problem properly, the government resumed the land. This is the point at which the Hammond family claim the fraud was perpetrated. That is the claim and that is for a court to decide; it is not to be decided in this house today. There are other historical associations with Caves House which may not seem important to some. The property next to the property I grew up on is Millbrook. That property contains a heritage-listed waterwheel timber mill, where the timber for both the first and second Caves House Hotel was cut by Bob Donald and his son Jack. That property is currently owned by Kevin Merrifield and his family. There is another link; Kevin Merrifield was one of the pioneering surfers in the area. The relationship between the early surfers and the locals was pretty frosty for quite some time. However, they were welcomed into the Caves House Hotel by the last lessees, Bill and Teddy Copley. They were welcomed in for meals and to share the bar facilities. There was a bit of a stand-off between the surfers and locals for quite some time, until one day there was a bit of a stoush with a group of bikies. The locals and the surfers found themselves on the same side, and from that day on, there was always friendship and cooperation.

Hon Paul Llewellyn: Now you can hardly tell the locals from the surfers.

Hon BARRY HOUSE: That is right. Many of those people have returned to the area as businesspeople, for lifestyle purposes, and the area has changed dramatically.

The sequence of events is outlined in a document that I do not think was read earlier. This was supplied to me by Mr Hammond. It is worthwhile reading for an understanding of the full history, and it states -

SEQUENCE OF EVENTS - LAND AT YALLINGUP

1870'S FORWARD

1. During the late 1800's the resumed land was used as a farm for grazing.
2. By 1900 the property had been titled and records show two prior owners until 1936 when Thomas Garfield Hammond purchased the Freehold Title.
3. The original Caves House Hotel was constructed (around 1903) on land behind the Hammond property.
4. The hotel was constructed by the Government and managed by the then State Gardens Board and later by State Hotels.
5. In late 1938 (the main part of the Hotel having been lost in a fire a couple of years before) was rebuilt and about to be reopened.
6. My Father was living in the Homestead in the valley and drawing water from a stream that passed through the Caves House land, down to the Indian Ocean through his property.
7. A dispute arose due to the Caves House dumping Sewer into the stream that was the only surface water available to him.
8. My Father was most unhappy as his only source of fresh water was polluted.
9. Eventually surveyors arrived to survey a proposed line to run a pipe down to the ocean but running through his land. In order to accommodate this he was to permit a chain wide strip to be excised from the Title. He was in full agreement with this proposal.
10. The survey was completed and tenders were called for the construction of the pipeline. It is a matter of record that the tender price was in the order of some 500 Pounds, so it was far cheaper to resume his land.
11. On the 9th of December 1938 he received a copy of the Government Gazette of the day and a cheque for a Couple of Hundred Pounds and was told to get off all 33 Acres of his property.
12. He was astonished to read that the land was being resumed for "Public recreation grounds" at Yallingup. It was obvious that construction of a football field or cricket pitch could not occur due to the steep sloping nature of the property.

I can verify that fact. To this day, there is no semblance of any public recreation grounds on that area of disputed land. It is overgrown coastal scrubland. It continues -

13. He recorded his protest, but obviously to no avail - the deed was done. All of the above facts were as related to me by my Father.

Hon George Cash; Hon Barry House; Hon Robyn McSweeney; Hon Nigel Hallett; Hon Norman Moore; Deputy
President; Hon Paul Llewellyn; Hon Ken Baston; Hon Simon O'Brien

14. Nothing happened with the land until April 1st 1972. The land had remained untouched for 34 years.
15. The Caves House Hotel was subsequently sold to private interests, the Emmott Family, in the 1970's as the Government had decided to exit the business statewide.
16. In early APRIL 1972 my Father and I arrived from Perth to find bulldozers working on the resumed land. As it was late in the evening and they were packing up for the day, I approached the drivers who informed me they were clearing the land near the waterfront for a Caravan Park. We could not believe what we had just heard, building a Caravan Park on land resumed for "Public recreation grounds".
17. This seemed incredible so I began asking questions of Government Departments and got nowhere. I continued by approaching my Members of Parliament and still got nowhere. All of this took some years of frustrating activity.
18. We pondered the problem for some time but unfortunately my father passed away in 1976. I promised him I would continue the fight.
19. I decided that the help of a lawyer was needed and moved to try to find someone who may be able to assist. This was a lengthy procedure as once again the lawyers were dealing with the same people and getting the same answers.
20. Eventually I gave my by now quite thick file to McLeod & Co., who immediately took an interest and after researching the matter and obtaining the opinion of then David Malcolm QC, believed we had a very strong case as Malcolm clearly indicated that the manner in which the land had been dealt with "was beyond power".
21. Statements of claim were issued and of course we were still dealing with the same people so their best line of defence was to do nothing. Months and months of writing more letters asking them to respond brought little.
22. Years were now ticking by and still more delaying tactics clearly in the hope that I would "go away".
23. A schedule of these delays has been prepared and is attached. It is utterly unbelievable and must be bordering on dereliction of duty. Despite many follow up letters being written there is no excuse for delays of more than a year in obtaining a response.

I referred to that schedule of delays in my speech in 2003; members might like to refer to *Hansard* to get the details. The schedule of delays covered only the period from 1985 to 1997. If that schedule was updated to the current day, it would probably be twice as thick now. It details some alarming delays on the part of government in dealing with this individual's inquiries; for example, four months, 22 days; one year, two months and four days; 47 days; six months and 16 days; 48 days; two months; 64 days; 20 days; 57 days; 66 days; 92 days; and 133 days. That is just a sample of the frustrating delays to which Mr Hammond and his lawyers were subjected. It was a war of attrition. The government agencies involved in this matter were clearly keen to delay Mr Hammond until the day when he would either go away or die. However, I can assure this house that Mr Hammond's case is being carried on by his son Garth. It will also be pursued by his other brother, Jack. Garth has two sons, and they will be pursuing it as well. The case will not go away. They want their access to justice and their case to be heard, so they will keep pursuing this matter.

To continue with the sequence of events -

24. Over the ensuing years a Trial of preliminary issues was conducted. The outcome of this was challenged as we had been deliberately taken past a limitation date directly attributable to Crown delays. We had to write another letter of request and recommence the action.
25. On a number of occasions we had to apply to the Courts to make the Crown respond to various parts of our action.
26. When the Freedom of Information Act was passed, things changed.
27. We applied to view files in and around 1938. We were surprised to discover the real reasons the land was wanted for in the first place.
 - To protect the view from Caves House.

Hon George Cash; Hon Barry House; Hon Robyn McSweeney; Hon Nigel Hallett; Hon Norman Moore; Deputy President; Hon Paul Llewellyn; Hon Ken Baston; Hon Simon O'Brien

- If the present owner was to construct dwellings along the watercourse it may somewhat diminish the value of the new Hotel being constructed after the fire.
- If the present owner was to present a plan of subdivision it may be somewhat too late to resume the land.
- Some of the Hotel outbuildings may even be constructed on Mr Hammonds land.
- In order that the Government could construct a properly controlled seaside resort to run as an adjunct to the Hotel.

28. After considering the revelations contained in the initial documents discovered I approached my member -

That is, me -

He arranged for me to meet with the Minister for Lands in his presence and also a member of the Ministers staff, to discuss the matter. I informed The Hon George Cash that I believed we were not getting a fair go. He subsequently sent me a letter stating that he had instructed Crown Law to withdraw any defence to our court action based on time or delay.

29. Sometime later and again on the introduction of Mr Barry House MLC I met with the then Minister Doug Shave and he apparently formed the same opinion. I should not be held from my day in Court by any limitation of time. He wrote to me accordingly.

30. Both of these Ministers appeared to believe I should be allowed to have the Courts determine the case on its merits and accordingly I should be allowed "my day in Court".

31. At both of these meetings I made it clear that in the event of a successful outcome in the Court I would give to the State the Road into the Town, the Parking areas, the Fire Station site, the Waterfront Picnic Area and would be prepared to extend a lease to the Caravan Park operator upon the same terms and conditions as presently in place. A "win - win" situation for all concerned.

32. There was a change of government and I wrote to the present Minister for Lands seeking a meeting to discuss the matter. Aside from a letter confirming her receipt of the letter I have had no further communication.

The previous speaker gave an update of that situation. He believes that attempts are being made to meet with the Minister for Planning and Infrastructure. It continues -

33. My solicitor proceeded to add to the original statement of claim with new issues based on "improper purpose" or "fraud".

34. Before this draconian single purpose Bill was introduced into the Parliament, there have been two prior attempts using either new Government legislation or new Shire Council resolutions to prevent me from pursuing this case. (1) By inserting new provisions into the Land Administration Act, the government was to force the payment of monies not contemplated by the original Public Works Act under which the land was resumed. After strong lobbying by my family, amendments to this Bill were made in order to accommodate our action already before the Courts. (2) Through the Department of Conservation & Land Management (CALM) the current Government presented requests to the Shire of Busselton to transfer the management of the land to CALM, further removing it from our reach. The Shire actually passed a resolution to this effect until we lobbied every Councillor who, upon having the true meaning of the resolution explained to them, would no longer support this back-handed move

SUMMARY

NOT ONCE IN THE FOI DISCOVERIES WAS THERE ANY MENTION OF THE LAND BEING REQUIRED FOR "PUBLIC RECREATION GROUNDS" AT YALLINGUP.

MY PRESENT SENIOR COUNSEL MR. MALCOLM MCCUSKER Q.C. DESCRIBES THE TAKING OF THE LAND IN THIS MANNER AND FOR THE REASONS STATED AS BEING A FRAUD COMMITTED ON MY FATHER IN 1938.

I have obtained the OPINION of the following Queens Counsel as to the definition of a Public Recreation Ground and without exception they all give the same description: "a field upon which games or sports are played", "a level playing field".

David Malcolm

Now Chief Justice in the Supreme Court

Hon George Cash; Hon Barry House; Hon Robyn McSweeney; Hon Nigel Hallett; Hon Norman Moore; Deputy President; Hon Paul Llewellyn; Hon Ken Baston; Hon Simon O'Brien

Roger Macknay	Now Justice Macknay of the District Court
Darryl Williams	Now Federal Attorney General
Geoffrey Miller	Now Justice Miller of the Supreme Court
Ian Viner	

That is some of the history. I hope members will consider that history when they make a decision on this bill. I hope members will decide that it is not our role as legislators to make judgments as though we are judges in a court of law. Neither is that the role of this Parliament. This legislation should not be in this place for our consideration. The proper place for consideration of this matter is a court of law. Along with other people, I do not make any judgment about whether this man's claim has validity. That is up to the courts to decide. I am not legally qualified. I am not a judge. However, there is a divergence of opinion even among people who are legally qualified. Therefore, who are we to make a decision on this piece of legislation? This bill is a deliberate attempt to remove the right of one individual to justice and his day in court. I urge members strongly to reject this bill.

Sitting suspended from 6.00 to 7.30 pm

HON ROBYN McSWEENEY (South West) [7.30 pm]: I congratulate Hon Barry House for his determination to seek justice for our south west constituent Garth Hammond, and Hon George Cash for his determination to see the law upheld. Some years ago I attended a briefing in Parliament House given by Mr Garth Hammond, the son of the previous owner of the land in question. He presented us with all his documentation, which I have with me now. In his second reading speech, the Attorney General said -

This bill will ensure that the people of Western Australia retain approximately 13.5 hectares of beachfront land, much of which remains in its natural state, at Yallingup near the foreshore and Caves House. This land was resumed from Thomas Garfield Hammond by the state in 1938 for the purposes of "public recreation grounds at Yallingup". The resumption was carried out under the provisions of the Public Works Act 1902.

The Yallingup Foreshore Land Bill 2005 is a relatively short bill comprising seven clauses, but within those seven clauses it seeks to take away an individual's rights. It is not about giving rights to Garth Hammond or protecting his rights; it is about taking them away. It prevents Garth Hammond from having access to a court of justice to examine the evidence and determine whether the state committed a fraud against his family estate many years ago. He is no orphan in that matter. We would find many frauds committed by this state if we looked at history. Garth Hammond is determined to put this fraud right.

I remember some of my family history from not so long ago, probably in about 1950, when my great-grandfather died. He owned Goodwood and Belmont racecourse. Before he died he told the state government that it could buy the racecourse for many thousands of pounds. The state government knew that he was very old, so it did not accept his offer of the racecourse. When he died some years later, the estate sold Goodwood and Belmont racecourse for some £59 000. I know that this is a different case, and maybe our family could have taken its case to the government at that stage. The government had said to my great-grandfather that the racecourse would not get any more races unless he sold the racecourse to the government, so there was the threat. Garth Hammond has said that what the government has done is not good enough; it has taken his family's land under the Public Works Act, and he will not accept that Big Brother can simply take it, as many other people would. He is taking the case to the nth degree, and good on him for that. I have been a great advocate for the protection of private property rights, as has Hon Barry House. For me, it was private property rights in farming and farming legislation that affected agricultural land that were of concern. A big protest was held in Bunbury over the land grab, or the greater region scheme. The government has still not learnt anything. It is still taking people's land and still, in my opinion, committing fraud.

Liberal philosophy upholds the right to own private property as the basis of economic freedom and personal liberty. That is why I stand tonight to protect the rights of Garth Hammond. On 14 November 1988, Mr William Hammond Jnr commenced an action in the Western Australian Supreme Court. Mr Hammond sought first a declaration of his entitlement to have his application under section 29A of the Public Works Act 1902 referred to the Governor in Executive Council. Mr Hammond had applied to the then Minister for Works for his referral to occur. The issue has, therefore, had a long history. He commenced his action on 14 November 1988, and more than one year elapsed between his application under section 29A and the commencement of court proceedings. In those circumstances Mr Hammond would have been prevented by the Limitation Act 1935 from pursuing his claim. On both preliminary limitation issues the then presiding judge, Mr Justice White, found that Mr Hammond had not complied with section 47(1)(a) of the Limitation Act 1935 in commencing his Supreme Court action on 14 November 1988.

Hon George Cash; Hon Barry House; Hon Robyn McSweeney; Hon Nigel Hallett; Hon Norman Moore; Deputy President; Hon Paul Llewellyn; Hon Ken Baston; Hon Simon O'Brien

Mr Hammond subsequently appealed to the Full Court of the Supreme Court against Mr Justice White's decision in relation to the Limitation Act. The Full Court upheld Mr Justice White's decision on the second preliminary limitation issue that Mr Hammond's cause of action under section 29A of the Public Works Act 1902 accrued more than a year prior to the commencement of the action, but the Full Court did not deal with the first preliminary limitation issue - that is, section 47(1)(a) of the Limitation Act 1935 - in relation to his claim regarding the unlawful use of the land as a caravan park, car park and fire depot. It was zoned for recreational use and he was fighting that claim.

On 10 September 1992, after the decision of the Full Court, Mr Hammond's solicitors wrote to the Crown Solicitor's Office. The letter noted that Mr Hammond had the option of applying for leave to proceed out of time or initiating a section 29A procedure. Mr Hammond's solicitors asked whether, to avoid the unnecessary expense, the defendants would agree to waive the Limitation Act 1935 section 47(1)(a) defence. On 2 October 1992 the Crown Solicitor's office wrote to Mr Hammond's solicitors advising that the defendants were not prepared to waive this defence and the government was not prepared to waive a major defence that the state had to Mr Hammond's litigation.

This has, therefore, had a long history. It really is up to a court of justice to determine the facts. The facts cannot really be determined in here. Hon George Cash has said that this Parliament is to decide whether those facts are truthful or not. We cannot do that; it should be up to a court of law to decide that. As I said, it has had a long history. I will read this statement out again. I know that Hon George Cash has already read it out. Garth Hammond came to us and gave us a lot of documents. In those documents was a plea for us to take up his case. He left us with some things to think about. He said -

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.

Is he correct in saying that? Yes, he is. That is what we live for: we live for the family and we aspire to own land. I have made quite clear during my time in Parliament that private property rights are the Australian way of life. The statement continues -

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.

In my view also they should be commended for their actions. The statement continues -

5. THE PRESENT ATTORNEY GENERAL NOW SEEKS TO CONCEAL THE FRAUD COMMITTED ON MY FATHER.

He seeks to conceal that fraud by bringing in the Yallingup Foreshore Land Bill. The statement continues -

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.

Mr Hammond says that he has battled this matter in the Supreme Court for 14 years. The mental toll that that would take on a person must be horrific. He spent 14 years of his life battling for something that rightly belongs to him against a government that will not listen. His statement continues -

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.

Hon George Cash; Hon Barry House; Hon Robyn McSweeney; Hon Nigel Hallett; Hon Norman Moore; Deputy President; Hon Paul Llewellyn; Hon Ken Baston; Hon Simon O'Brien

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.

As Hon Barry House said, in the previous debate on this bill -

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.

He is quite correct in that statement. Would it be the same if the land were not the Yallingup foreshore and worth approximately \$70 million? It would probably be priceless, as some people would have us believe. The plaintiff, Garth Hammond, is prepared to negotiate, but the government is not budging. I would have thought it good government to start negotiating. Hon George Cash has said that departmental files will never come to light if this bill is passed. That is rather extraordinary. No wonder this government is trying to force this bill through Parliament. This land is probably priceless, due to its location, but if it belongs to somebody, then justice needs not only to be done but also to be seen to be done. It should not need a bill passing through Parliament to have that done; we have courts of law to do that. Garth Hammond is prepared to negotiate, but this will not happen under this government. Justice is something that this government does not recognise. Garth Hammond should have his day in court.

HON NIGEL HALLETT (South West) [7.46 pm]: The Yallingup Foreshore Land Bill 2005 is one of the most appalling pieces of legislation to have been introduced into this Parliament in decades. This Carpenter Labor government legislation is specifically intended to discriminate against a sole Western Australian citizen and, in doing so, to retrospectively legislate an act of fraud perpetrated against that citizen and his family. The facts behind this obnoxious and obscene piece of legislation are clear and simple. In 1938, Thomas Garfield Hammond owned 33 acres of land at Yallingup beach. Mr Hammond's land was west of and adjacent to the Caves House Hotel, then owned by the state government. Mr Hammond decided to develop part of his land as a weekend resort for campers and intended to build semipermanent accommodation for this purpose. This was all perfectly legal and entirely within the local planning laws. At the same time, the state government was rebuilding the Caves House Hotel, which had earlier burnt down. In doing so, the state very substantially upgraded the quality of the accommodation at the Caves House Hotel, taking it upmarket, as might be said. Having Mr Hammond's affordable weekender accommodation for holiday battlers within the view of the new guest rooms at the Caves House Hotel would never do. What Mr Hammond, as a voter, taxpayer and honest small landowner had not reckoned on was the dishonest and fraudulent behaviour of the state government in dealing with an innocent, harmless and defenceless citizen. The response of the state government was to steal Mr Hammond's land. The Town Planning Commissioner of the time wrote in a memo -

Further if shacks or weekend cottages were erected along the water course on Hammond's land it would mean that the view from Caves House would be spoilt.

This memo also gave another blindingly arrogant and illegal reason for wanting to steal Hammond's land, not unrelated to the view of the Caves House Hotel guests. In the same memo, the Town Planning Commissioner disclosed that if any other resorts were to be built in the area, the government should have a monopoly on building and owning them. He wrote -

Hon George Cash; Hon Barry House; Hon Robyn McSweeney; Hon Nigel Hallett; Hon Norman Moore; Deputy President; Hon Paul Llewellyn; Hon Ken Baston; Hon Simon O'Brien

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.

It is important that the chamber understand the level of deceit and dishonesty perpetrated against Mr Hammond by the government, so I will read the full memo into *Hansard*. It is dated 12 February 1938 and addressed to the secretary of the Premier's Department. It reads -

The Secretary,
Premier's Department,
PERTH

Re private land adjoining Yallingup Caves House.

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 week end resort for campers and semi-permanent buildings erected.

It was resolved by the Board to bring this under your notice and the notice of Department of Works and Lands 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 that 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.

The letter was signed by the State Planning Commissioner and dated 12 February 1938.

That letter makes the motive for stealing Mr Hammond's land crystal clear. The views and ambience of a newly rebuilt and upgraded Caves House would be lessened. The value of the expenditure and the recent outlays on the upgrading of the hotel would allegedly be reduced because of Caves House's neighbour, and any developments in the area were to be undertaken only by the government.

Equally, the response of the town planning commissioner is crystal clear; that is, to overcome the impediments to Caves House by compulsorily acquiring Mr Hammond's land. In itself this is outrageous conduct. However, there is much more. Just a month later the chief secretary of the then Department of Works wrote to the then Minister for Works. In that correspondence the chief secretary disclosed another and compelling reason for the state government to obtain Mr Hammond's land by hook or by crook. The motive was spelt out in the third and fourth paragraphs of that letter dated 3 March 1938. It reads -

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 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.

In simple terms this letter tells us that on top of the other outrageous reasons for taking Hammond's land, there is also another compelling reason; that is, the state government-owned Caves House had been for years polluting a freshwater stream running through Hammond's land upon which he relied for his domestic water needs. The Hammond family home was, of course, on the property and its domestic water needs were served by the stream that the state government was polluting with sewage. Now there was about to be an enlargement and upgrading of Caves House, according to the chief secretary. Such an enlargement would naturally substantially add to the unlawful sewage pollution from Caves House onto Hammond's land and into the Hammond water supply. It is for these despicable reasons that the state government determined to take Hammond's land from him. Did the government then approach Mr Hammond and act in good faith with him? Did it tell him the reasons it wanted his land? Did it tell him that for years it had been dumping sewage onto his land and into his water supply? Did

Hon George Cash; Hon Barry House; Hon Robyn McSweeney; Hon Nigel Hallett; Hon Norman Moore; Deputy President; Hon Paul Llewellyn; Hon Ken Baston; Hon Simon O'Brien

it tell him that it disapproved of his holiday chalets, which offended the view of the Caves House guests? The answer is no on all counts.

What did the government do? It compulsorily acquired this land. Did it compulsorily acquire the land for the reasons set out in internal correspondence? No, it did not. It acquired the land under false pretences, claiming that the land was needed for public recreation under the Public Works Act 1902. In other words, compulsory acquisition was made on public recreation grounds rather than the real and truthful reasons.

Malcolm McCusker, QC, described the manner in which the government of the day took the Hammond land as fraudulent. It set about to intentionally deceive the owner of the land. The state of Western Australia compulsorily acquired 33 acres of Mr Hammond's land for the sum of £300 for public recreation. It should be understood that "recreation" is defined in the normal sense as a level playing field where games of sport are played. The facts of the matter are that the land has never been used for the purpose for which it was acquired. It sat vacant, in every sense of the word, for 34 years, from 1938 to 1972, just four years short of when Mr Hammond Snr died. To this day the land has never been used for the purpose for which it was compulsorily acquired.

In 1972 Thomas Garfield Hammond and his son Garth Hammond, while driving past the property one evening, happened to discover a bulldozer on the land. Upon inquiry, they found it was there to level a part of the land for a caravan park, to which Hon Barry House alluded. This was the very first notion that Mr Hammond had that his land had been acquired on false grounds. I remind the chamber that during those years not only was there no manner or means by which Mr Hammond could discover the dishonesty of the state government, but also he had no reason to think that a state government of any colour would act in a dishonest and fraudulent manner. Even if Mr Hammond had a suspicion, freedom of information legislation was not available to him or any other citizen in those days. It is a new concept of transparency of government behaviour, and was not introduced into this state until 1992.

As matters occurred, Mr Hammond became aware of the fraud in 1996 through the process of legal discovery, which revealed the internal government correspondence showing the fraud. The two letters I cited are examples. When Mr Hammond was alerted to the suspicion of government dishonesty, he immediately took action. Ultimately, Mr Garth Hammond began legal proceedings. He was immediately confronted by the state with the defence of what was effectively the statute of limitations. Mr Garth Hammond now continues his action in the Supreme Court in his capacity as executor of his father's estate. Two successive ministers for land, Hon George Cash and Hon Doug Shave, both arrived at the decision that in light of the apparent grounds on which Mr Hammond's land had been resumed, Hammond should be allowed to have his day in court. In other words, if the state government was found by the Supreme Court to have fraudulently acquired Mr Hammond's land, then he was entitled to compensation. If, on the other hand, the Supreme Court found that the Hammond land was properly acquired, then so be it. Both ministers concluded that if the state had acted dishonestly, the passage of time should not be a bar to justice being done for citizen Hammond.

The Public Works Act 1902 sets out the process for compensation in the case of land not used for the purpose for which it was previously acquired by the state. It must be offered back to the previous owner at a price established by formula. In Hammond's case that was an amount of approximately \$5 000. Having deceived and perpetuated a fraud on Mr Hammond, hidden in the bowels of government for 40 years, the Labor government is now furiously baulking at the statutory requirement to pay what legislation demands for such dishonesty over that period. The legislation before the chamber, which gives me the opportunity to speak against it, is designed to eliminate and dissolve the legal obligation with which this Labor government is now confronted through the sin of the state over the past 40 years.

The sole and specific intention of the Yallingup Foreshore Land Bill 2005 is to amend the Public Works Act 1902 to remove the rights of compensation to Mr Hammond that under that act are available to every citizen of Western Australia. The bill will amend the act to specifically exclude Mr Hammond and his Yallingup land from it. In other words, the effective deliberate intention of this bill is to make the illegal and fraudulent conduct of the state of Western Australia in respect of the Hammond land perfectly legitimate and legal. The fraud is to be legitimised. This is what we are being asked to vote for and support. We are to validate state theft.

If the state Parliament were bound by the provisions of the Australian Constitution that prevails in the federal Parliament, this bill could never come before this house, because under the Australian Constitution all acquisitions by the federal government must be on just terms. This is a provision that I would have hoped every member of this Parliament readily embraced.

This Labor government has shown through this bill that Labor does not believe in acquisition by the state only on just terms. Not only does Labor apparently support compulsory acquisition on unjust terms, but also it is prepared to pass legislation to protect acquisition by the state on unjust terms. Lest there be any doubt or

argument about the deliberate intention of this bill, I remind the chamber of the relevant provisions. Clause 4 states -

- (1) Subsection (2) applies if, and to any extent to which, the resumption was invalid or ineffective.
- (2) The rights and liabilities of all persons are declared to be, and always to have been, the same as if the resumption had been valid and effective in all respects.

Those words are frighteningly clear and unambiguous, even to those of us untrained in matters of the law. We are to treat Mr Hammond as though what has invalidly been done to him was done validly, and it is to have the same effect as if it were valid. What does that say about the equality of all before the law? What does it say about the certainty of the law? What in fact does it say about the integrity and veracity of the law? What it says is that insofar as it applies to Mr Hammond and his Yallingup land, the law is to be suspended and he has no right to look to the law for relief from oppressive and unlawful conduct by the state of Western Australia.

One further matter adds specifically to the obnoxious character of this bill. This bill has been, as I have mentioned, introduced for the exclusive purpose of affecting the rights of just one person. To my knowledge there has only ever been one piece of legislation introduced into any Parliament of Australia for the exclusive purpose of affecting the rights of one citizen. That case, I am advised, was the Kable legislation passed by the New South Wales Parliament. That legislation was designed to keep Kable in jail after his term of sentence had been completed. For peculiar reasons I will not go into now, the government believed that Kable, a convicted rapist, would or was likely to commit murder if he were released. Legislation specifically designed to keep him in jail was passed but failed on appeal to the High Court. Even there, the New South Wales government took the precaution of making the act generic so that it could apply to other inmates. The Yallingup bill, which is aimed at one person only, is the most discriminatory bill. The effect of the bill now before the chamber is that if governments are sued, they can simply pass an act to extinguish a cause of action without compensation. To any right-minded person, that simply cannot be right. My purpose in raising that case is to highlight the obvious offence that discriminatory legislation arouses. To any right-minded person, any act of Parliament that is designed to impair or interfere with the rights of one particular person is bad legislation and should never be entertained. That is what this bill is intended to do.

My speech would not be complete, nor would I have fulfilled my obligations, if I did not draw to the attention of the chamber the genesis of this legislation. This bill is the consequence of heavy and persistent lobbying by a small group of people who live on the hill at Yallingup and who thus far have had the benefit and pleasure of looking undisturbed over the tranquillity of Mr Hammond's land, which in large part retains its natural state. The principal agitator amongst this group is a well-known former federal Labor member of Parliament. Perhaps it is natural that we would all like to have the right of veto over what our neighbour does with his or her land, but that is not a right that our neighbour's private property rights give us. When we buy land, we do not buy the view and we do not buy the right to tell our neighbours what they can do with their land. That this bill stripping Mr Hammond of his rights before the law should be the resting place of powerful lobbying should be deeply disturbing to all fair-minded people.

Mr Deputy President (Hon Graham Giffard), I deeply regret that members of a small local lobby group should put pressure on the government to deny Mr Hammond his rights simply because they want the land to remain as a government reserve so that they can continue to gain pleasure from the views and ambience. It is a sad irony that in 1938 the government of the day fraudulently compulsorily acquired Mr Hammond's land because it thought the land's development would affect the view and ambience of the guests of the Caves House Hotel. In other words, not only is this present government seeking to perpetuate the fraudulent acquisition, but also the motivating force for the acquisition was people wanting to protect their views and ambience. The truth of the matter is that if the land in question were a quarter-acre block that did not affect the views of an influential Labor man, this legislation would never have seen the light of day. The additional motive is that this government just cannot bring itself to confront the large amount of money that a court, unfettered by political interference, may find Mr Hammond is entitled to because of the past dishonesty of the state.

I conclude by appealing to the integrity and principles of the Greens (WA). I know that they will be attracted to the notion of this land being locked up as a reserve; however, I ask them to look to the higher principle. I ask them to place proper weight on the certainty of the rights of private property owners; the certainty that legislation must provide equality for all citizens; the draconian and devastating consequences of retrospective legislation; and the abuse of power that accompanied the fraudulent compulsory acquisition of Mr Hammond's land. Fundamental and inalienable principles upon which rights and corresponding obligations for all citizens must rest are not matters for bargain or negotiation. They must surely be so immutable and certain that ordinary citizens can trust and rely upon them to provide safety and certainty in their life decisions, small and large.

Hon George Cash; Hon Barry House; Hon Robyn McSweeney; Hon Nigel Hallett; Hon Norman Moore; Deputy President; Hon Paul Llewellyn; Hon Ken Baston; Hon Simon O'Brien

Despite how attractive the Greens might find the proposition that the land identified as Sussex location 269, reserve 246222 could be gazetted as a nature reserve, if a court were to find that without the interference of new and retrospective legislation, the location belongs to Mr Hammond, or that he should be compensated for its unlawful acquisition, surely that is where the matter should rest. Surely ownership of the land, and not what the state would do with it if it could improperly acquire it, is the threshold question.

I leave this plea with the Greens: turn away from the tempting bribe of the government that if they sacrifice their vote for a dishonourable purpose, their reward will be dishonestly acquired land retained as a nature reserve. If this Labor government is genuinely committed to ensuring that Mr Hammond's land is preserved in its natural state, it already has at its disposal the legislative power to acquire the land on just terms and convert it to an A-class reserve. I hope the Greens find profoundly offensive the offer of an A-class reserve for participating in the theft of Mr Hammond's land. All Mr Hammond wants is his day in court so that the court can decide whether his land was unlawfully and fraudulently compulsorily acquired. This bill is about preventing the courts deciding that base question. When we fear the courts, we fear the law. This Parliament, of which we are all conscientious and proud contemporary members, has already passed good and sound legislation that is designed to deal with the acquisition of private land by the state. It has been tested many times and has not been found wanting. I urge the government to allow the courts to judge the facts of this matter and to make a wise decision, equipped as they are with the act that this Parliament previously passed for that purpose. Equally, I urge the Legislative Council to reject this bill. It is a bad bill that was introduced for the wrong reasons, and no good can come from it. Support of this bill is support of state theft.

HON NORMAN MOORE (Mining and Pastoral - Leader of the Opposition) [8.11 pm]: I was wondering whether any other members were going to speak on this bill. In particular, I am interested to know the position of the Greens (WA) on the bill, because the fate of this legislation is in their hands. I want to spend a few moments tonight encouraging the members of the Greens to share the view that this bill must be defeated so that a proper outcome can be determined. It is fair to say that no matter how long and hard we argue this matter, Labor Party members will not change their view for the very simple reason that if they did, they would find themselves belonging to an organisation other than the Labor Party. Is it not a terrible tragedy of modern politics that if a person who belongs to the Labor Party votes against a Labor Party caucus decision, that person is expelled? The tragedy of that is that when a bill seeks to remove an individual's rights at law, Labor members must support the decision of the Labor Party. I do not know why the Labor Party is so hell-bent on going down this path and why it is doing so in such a vicious and vindictive way. When the parliamentary secretary read the second reading speech, I interjected at the finish and made some comment to the extent that it was the most outrageous second reading speech I had heard in a long time. *Hansard* did not record that, which is fair enough, so I will say it again now. The second reading speech of this bill was a highly political, highly emotive and highly aggressive second reading speech and, in my view, contrary to the normal expectations of a second reading speech. Second reading speeches are meant to inform the house, in a non-emotive and factual way, what a bill intends to do. The second reading speech of this bill was invective against the Liberal Party and previous Liberal ministers, whom it named. It was an absolute disgrace. That combined with the bill itself demonstrates to everybody the absolute vindictiveness of the Labor Party on this issue. I do not know why it is taking that stance. Has Mr Hammond murdered somebody? Has he seriously offended someone in the Labor Party? Has he done something that is so horrendous that he should have the whole weight of the law descend upon him through the vindictiveness of the second reading speech and the aggression of this bill? Members of the Labor Party - if there are any in Parliament listening to this speech - should read the bill. There are not many Labor members in the chamber, because they could not care less about this issue. Members should read clause 4. In the simplest of terms it says that whatever happened since 1938 is valid, regardless of anything else. I put this point to the house: what would happen if the government trotted into the house with a bill that said that everything it had done since 2001 is valid? The whole community would be outraged, because governments make mistakes. Individuals make mistakes. Indeed, we all make mistakes. However, governments by their very nature, regrettably, always make mistakes. That is one of the reasons that we have a court system, so that a person independent of Parliament and the government can make decisions when mistakes are made and so that people can have their concerns redressed by an independent court of law. That is how the system works. Parliament makes laws. People who break the law go to court and the court decides whether that person has broken the law, and, if so, what the penalty is. That is how our system works. This bill before Parliament says that everything that the government has done since 1938 is valid. Members should imagine, as I said, a bill that says that everything that the Labor Party has done since 2001 is valid. It would be bad luck if anybody found in the future that it had done something wrong, because the person would not be able to take the matter to court. That is how outrageous this bill is. Members should consider clause 4, which reads -

Yallingup foreshore land validly and effectively resumed

- (1) Subsection (2) applies if, and to any extent to which, the resumption was invalid or ineffective.

Hon George Cash; Hon Barry House; Hon Robyn McSweeney; Hon Nigel Hallett; Hon Norman Moore; Deputy President; Hon Paul Llewellyn; Hon Ken Baston; Hon Simon O'Brien

- (2) The rights and liabilities of all persons are declared to be, and always to have been, the same as if the resumption had been valid and effective in all respects.

That is absolutely disgusting. It is almost as bad as a bill we put through Parliament many years ago to remove the rights of a prospector because some people were concerned that they would lose their jobs. I will not go into that now. These situations are very rare. However, this government, for reasons best known to itself - I hope the parliamentary secretary will tell me the government's motivation - is pursuing this issue in a way that I find absolutely appalling. The full weight of the government - and, if the government has its way, the full weight of the Parliament - is telling a citizen of Western Australia that he has no recourse at law or to the courts because we in Parliament have decided that everything that has been done since 1938 has been done properly and validly. How can we make that decision? I put it to the Parliamentary Secretary to the Minister for Health: does she know all the details, facts and figures of this matter since 1938? Do the Minister for Education and Training and the government Whip know all the circumstances surrounding this particular matter? They do not, and neither do I. However, I am prepared to admit it. If this matter were allowed to go to court, all the facts since 1938 would be put to the judge or the jury and, with the benefit of all the facts that go with this particular matter, and having heard the point of view of both the plaintiff and the government, the judge or jury would hand down a finding based on all the evidence. I, for one, would accept that decision without equivocation because that is the process. That is what we believe is the process that applies to citizens in Western Australia, and the way in which the law applies to individual citizens within our state.

I have to ask the rhetorical question: why is the government doing this at all? Why will it not allow the processes to continue as they have done for many years, processes that were assisted by two of my former colleagues when they waived the statute of limitations to allow this man his day in court? Why is this government so hell-bent on stopping this person from having his day in court, as they say? Is it because the government thinks it will lose the case and, therefore, has to legislate to prevent a court decision that it could not live with? Is that the reason? Is it the advice of the government's legal people that it will lose this case, and that from their point of view, in order to achieve whatever ends it wants, the only solution is to pass legislation of this nature? Is that the reason? If it is the case, will the parliamentary secretary tell us when she sums up? She did not tell us anything in her second reading speech, which was full of venom. Why is this taking place today? Why did the government bring it on last week? This matter has been sitting around since 2002. Is it because the matter is to be heard before the court tomorrow? Will the parliamentary secretary tell us? We have heard from Hon Barry House that this matter is in progress in the Supreme Court and that certain things are to happen tomorrow. Tomorrow! The government has brought on the bill today with the expectation that it will get knocked off - or should I say that Mr Hammond will get knocked off in the Parliament - and therefore it will not have to worry about what happens in court. Is that what the government has in mind? That is absolutely outrageous.

Hon Simon O'Brien: It is breathtaking.

Hon NORMAN MOORE: Just think about it. Here is a person who believes he has a case. He has gone to the courts to get justice and the government has introduced a bill, saying, "It does not matter what happened in the past; you are not going to win". The government has done this the day before the courts are to do something about it. Does the government consider that justice?

I have been a member of this place for a fair while, and I do not think that I have ever seen anything quite as vicious as this. I have to ask myself, as I asked rhetorically a moment ago: why is the government doing this? Why is the government so intent on taking away this man's capacity to have his case heard in court? I wish that the Labor Party members of Parliament sitting on the back bench in the house had done two things, and I suspect they have not done either; that is, to have read the bill. It is not very big; it takes up only three pages. A Labor Party member could read it in half an hour. Given an hour or two to understand it, if they would just read clause 4; it stands out like the proverbial. It states that everything the government has done in the past is valid. Is that a satisfactory piece of legislation? That is the first thing I wish members opposite had done - to have read the bill. I wonder how many have. I wonder how many Labor members will put up their hands and say, "I have read the bill and I absolutely understand it." I bet none of them has.

Hon Bruce Donaldson interjected.

Hon NORMAN MOORE: Exactly right. They are probably all back in their rooms saying, "Maybe I should do that; but then again, I will not. If I was to read it and understand it, I would have a terrible situation with my conscience, because I would have to put my hand up to vote for this bill when I know it is wrong."

That is the second thing I put to Labor members of Parliament: give some thought to what this actually means, because some government down the track will trot into this house with a bill that validates all sorts of things. If it has the numbers, it will whack it through, and will have validated all sorts of things. It will deny people the

Hon George Cash; Hon Barry House; Hon Robyn McSweeney; Hon Nigel Hallett; Hon Norman Moore; Deputy President; Hon Paul Llewellyn; Hon Ken Baston; Hon Simon O'Brien

capacity to take their case to a court. That is what we are faced with. It is not just Mr Hammond's land; it is the fundamental principle of what this bill is all about. It is absolutely fundamental to our system of justice in Western Australia.

My colleagues who have spoken before me tonight have, in my view, presented a very, very compelling case for this bill to be defeated. Hon George Cash gave us a very, very learned legal dissertation on this matter. He proved conclusively - to my mind, at least - that Mr Hammond is entitled to take this matter to court. My other colleagues who represent the south west have explained the issue from the point of view of Mr Hammond and the community of Yallingup. They have explained - to my satisfaction, at least - some of the reasons this is happening. However, I have to say I cannot believe that Mr Ron Edwards has so much power over the Labor Party that he could have created a situation in which we are presented with a bill like this and a second reading speech like this. One person could not engender that much viciousness, bitterness and nastiness into the government. It had to come from somewhere else. That I do not understand. I am sure the parliamentary secretary will tell us the genesis of all this bitterness that is coming from the Labor Party on this matter, so that at least we can understand why the government is taking this quite extraordinary course of action.

[Quorum formed.]

Hon NORMAN MOORE: It is good to see the Labor Party back in force. The government could not care less about this. Those opposite were outside having a glass of wine or whatever. The Minister for Education and Training was making snide, across-the-chamber comments, when this matter is the most serious issue to have faced this Parliament for many years, if not ever. Maybe the minister should go for a walk in the cool air. It would do her a world of good. The minister ought to be ashamed of herself, as should any other member voting for this bill.

There has been some suggestion that the reason this bill has to be passed is to preserve this land as a nature reserve so that Mr Hammond does not build 47 000 high-rise condominiums on it. The parliamentary secretary, who represents that part of the world, should take as much blame as anybody else, if not more. The bottom line, as has already been explained in the house, is that the planning processes of Western Australia will decide what happens on this land, not Mr Hammond. The parliamentary secretary should drive down to her electorate. Every 50 yards there is a sign saying, "Get your hands off my land Gallop". It will be changed shortly to Carpenter, I suspect. The planning laws of Western Australia enable people to have their privately owned land rezoned for purposes that relate to preserving the environment. That is what will happen to the land. The parliamentary secretary knows it, and I know it. Mr Hammond knows it. If a court decides that Mr Hammond owns the land, that does not mean that he can go ahead and build whatever he likes on it. That will not be allowed under all the planning processes that we have been told about concerning the Leeuwin-Naturaliste area of Western Australia. He may get compensation. Who knows? There are no guarantees about compensation in Western Australia. There might be under commonwealth law, but there sure is not under state law. He might not get anything for all the effort he has made to prove that his father was badly done by in this matter way back in 1938. The Greens members of this chamber should understand that this is not about the preservation of the land for nature purposes at all. That can be dealt with under the existing laws that apply in Western Australia. This bill is about a government that thinks it will lose in court, and has decided to bypass the court system and go straight to Parliament with a bill that will validate everything that has been done without members knowing anything about it. There are a few more Labor members in the chamber now. I wonder whether any of them can put up their hand and tell me that they know everything about this bill; that they are a full bottle on the circumstances surrounding this matter.

Hon Ken Travers: Sue Walker and Colin Barnett seem to know a lot about it. They are not dinosaurs.

Hon NORMAN MOORE: Is it not extraordinary that somebody who stands up in this Parliament and says that this is a crappy bill - excuse my language - and says so because that is what it is, is referred to as a dinosaur? Heaven help the state of Western Australia when people who stand up for what is proper and right are described in those terms by logs from the other side. The member has not even read the bill. He does not know what it is about; he does not have a clue. Hon Paul Llewellyn and Hon Giz Watson can make a difference with this; it is in their hands. The Labor Party members will sit there, like the stones that they are, and they will put up their hands when they are told to and they will put them down when they are told to. For the whole of their parliamentary careers, they will refuse to do one thing against their party for fear of expulsion. That is where they are at, unlike every other member in this chamber who is entitled to a different point of view and can express it without being expelled. I say to the Greens: just think about what this bill does. They should read it carefully, and I am sure they have, because they have to make the decisions in this chamber. They should read clause 4, because that is the guts of the bill. It is one little clause, which states, in part -

Hon George Cash; Hon Barry House; Hon Robyn McSweeney; Hon Nigel Hallett; Hon Norman Moore; Deputy President; Hon Paul Llewellyn; Hon Ken Baston; Hon Simon O'Brien

The rights and liabilities of all persons are declared to be, and always to have been, the same as if the resumption had been valid and effective in all respects.

Talk about retrospective legislation! That is something we should all abhor. I say to the Greens: read it carefully. It is a fundamental principle that we should all stand up for. If somebody wants a decision on this sort of issue to be made, it should be made in the courts and not in this chamber. We are not a court of law. We do not have witnesses who can give us evidence from both sides of the argument. We have heard the disgusting second reading speech, which is the government's argument. That is all the government is saying because the rest of the members have their mouths shut. They have clearly been told to shut up and not speak in case they accidentally say that they think there is something wrong with the bill. That is the evidence we have in favour of this legislation. There is a fair bit of evidence from this side of the house, in fact, lots of it, which gives the contrary point of view. We still do not have all the evidence. We are not a jury; we are not judges. We are simply members of Parliament in this house to make law, and not to pass judgment on law. There are some circumstances in which we do that, but very rarely indeed, and not on bills of this nature. The Greens should think about that fundamental principle. We should not be making this decision. We should allow Mr Hammond, like every other citizen of Western Australia, to work his way through the court process, and for the Supreme Court to make the final decision. As we have said on this side of the house, we support Mr Hammond because he has put his argument to us, and we believe that it is a fair argument. If he loses in the court, that is bad luck for Mr Hammond. That is where it should be decided. If he loses there, bad luck. If he wins, which I think would be justice, it is for the government to decide through its planning processes what will happen on the land and whether compensation will be paid or not. That is the scenario. I tell the Greens that this is not about high rise at Yallingup, and it is not about blocking Mr Whatshisname's view. It is not about blocking the views from Caves House. This bill is all about giving a man a chance to have his case decided by a court, and not by members of Parliament. It is also not about losing some valuable real estate for high-rise purposes because that will not happen either, and everybody knows that.

Hon Adele Farina: Planning policy will protect against high rises.

Hon NORMAN MOORE: Thank you very much. The parliamentary secretary has just made my argument. I appreciate her support and help. Maybe she will vote with me.

Hon Adele Farina: I doubt it.

Hon NORMAN MOORE: Why not?

Hon Adele Farina: Because I do not agree with your position.

Hon NORMAN MOORE: Does the parliamentary secretary think that it is all right to pass a bill to take away somebody's right to go to court? The member is a lawyer.

Hon Adele Farina: That is not an accurate or fair analysis of what is happening.

Hon NORMAN MOORE: Just read the bill.

Hon Adele Farina: Have a look at the history of it as well.

Hon NORMAN MOORE: Read the bill.

Hon Adele Farina: Read it in context. Stop asking me questions.

The DEPUTY PRESIDENT (Hon Graham Giffard): Order! The Leader of the Opposition has the call.

Hon NORMAN MOORE: It is encouraging that somebody thinks she knows something about it. If she thinks she knows about the history of this, she should be in a position to get up and tell the house all the reasons that Mr Hammond has stuffed up - if I can use that expression - and should not be allowed to go to court. Can she give me all those reasons? The second reading speech did not. It just referred to vindictive things about Liberal ministers. It did not state why the bill should be introduced. Maybe the parliamentary secretary can tell us all the things that he did wrong that would preclude him going to court. I would have thought that anybody who had even a rough sense of justice would say that the best solution to these sorts of issues is for the court to decide rather than the Parliament. An independent organisation such as a court has no axe to grind and no political motivation. It is there to make decisions on these sorts of issues. It is the best place for such decisions to be made, not in this chamber. We are in this place to make the law in the first place, not to judge it when it suits the government of the day.

I have had far too much to say on this issue, but I feel quite passionate about it. When I read this bill for the first time I was absolutely appalled that a government could even contemplate doing what this bill seeks to do. When I heard the second reading speech, I just about chucked up. It contained language worse than I just used then in a political sense. I feel very passionately that we should not pass this legislation. We should take the good

Hon George Cash; Hon Barry House; Hon Robyn McSweeney; Hon Nigel Hallett; Hon Norman Moore; Deputy President; Hon Paul Llewellyn; Hon Ken Baston; Hon Simon O'Brien

advice provided by Hon George Cash from a legal point of view, and listen to the very cogent arguments of my colleagues from the south west who know the issue intimately. We should at least say tonight - or whenever we vote on this - that we should not make a decision in this Parliament that should be made in the courts. Let the courts decide, not us. I put that point of view very strongly to the Greens (WA) in the hope that they will see some logic in the argument and at least allow this matter to be dealt with in the proper place and not here with this bill. I oppose the bill vigorously.

HON PAUL LLEWELLYN (South West) [8.40 pm]: I will begin my contribution to this important debate with an acknowledgement of the traditional owners of the land on which we stand. Where do the principles of ownership, the rights of individuals and the public interest stand in this discourse about justice, property rights and so on? I acknowledge that the law itself is imperfect, that decision making in this place is often imperfect and that, irrespective of timing, the deliberations and considerations that the Greens (WA) have given to this process have been rigorous and thoughtful. I acknowledge Hon Nigel Hallett, who gave an extraordinary commentary on the issue. I fully acknowledge the quality of that argument. Hon Barry House gave a touching, personal rendition and personal perspective of it. Hon George Cash outlined some of the principles of law that need to be considered in a decision-making process like this. I also acknowledge the contribution of Hon Robyn McSweeney and the pressure that I came under from Hon Norman Moore. This is not an easy role to play.

Hon Norman Moore: We acknowledge that.

Hon PAUL LLEWELLYN: It is not easy. I want to refer to some of the points that Hon Christine Sharp outlined in this place some time ago when the bill was first introduced. I will look at some of the historical circumstances that surround the case but I do not want to go over old ground, because I think that while this place is not a court of law, the substantial arguments and evidence have come out largely in this place. I will then turn to the principles of planning and public interest and where it is that the public interest sits in a decision like this and where the principles of ownership and rights lie. It is not for me to make a judgment on that, but I will give the perspective I have come to as a member for the South West Region and a resident of that region for many years.

This brings me to a speech made earlier in this house by Hon Christine Sharp, a very thoughtful member of Parliament who looked at the fascinating tangle of different issues that this bill has thrown before us. She looked at the issues of the statute of limitations, the waiving of its provisions and the implications for general governance of waiving its provisions. She looked at the statute of limitations, the purpose of which, notwithstanding the imperfections of government and law, is to put issues in the past where they sometimes belong so that we can project and look forward to the needs of not only the current society, but also future societies.

I am a member for the South West Region and a surfer. No-one who has lived in the south west could not know the land at Yallingup that we are talking about and not be touched by that place. I will go on to use the Aboriginal theme when I talk about the meaning, importance and significance of that place, rather than refer to it in the context of a statement of planning policy or some instrument that we create or some recent construction of law - which is what we are really discussing here - that has ridden roughshod over any other rights of the people who owned the land in the first place. The significance of the land to the Aboriginal people is extraordinary, important and valid in this discourse. I have not spoken to Hon Christine Sharp for some time, but I am sure that she acknowledges that important part of this discourse.

That the land is in good condition, is natural and might be good for conservation purposes or a caravan park is not necessarily of any consequence to the Greens, but its siting is significant. In response to members on the other side, I acknowledge the substantial and touching case in many ways that they as a community of politicians have put forward. I acknowledge that there is in some ways certainly a case for Garth Hammond and the Hammond family. I think Hon Christine Sharp also acknowledged that in her speech on this debate. Although we have come to the conclusion that in many ways we must have a statute of limitations, our society and our community must also have the capacity to acknowledge the wrongs of the past, because that is what this country is founded upon. I say this as a person from an occupied nation. I know that. Our nation is founded on injustices and imperfect law, ambition and the rights of one people overriding and overrunning those of other people.

I will deal with the historical circumstances that surround the case and acknowledge that under our current system of imperfect law only in very exceptional circumstances should we even consider doing what we are doing. To some extent exceptional circumstances exist in this case because of the manner in which the land was historically acquired and the results that could flow from successful litigation. I do not know all the detail, and there is an enormous amount of detail. My files on this are a couple of feet deep. To some extent I have drilled down and trawled through them because this was one of the first bills on my desk when I became a member. I

Hon George Cash; Hon Barry House; Hon Robyn McSweeney; Hon Nigel Hallett; Hon Norman Moore; Deputy President; Hon Paul Llewellyn; Hon Ken Baston; Hon Simon O'Brien

thought, what a doozey to have to come to. I am glad it took a few months for this bill to come on for debate, notwithstanding any other judicial proceedings. I understand that the land was acquired 68 years ago. Some research by a member in the other place suggests that in 1937, 96 acres were acquired for £300 and a year later, Mr Hammond received, for just 33 acres, some £250. He was financially rewarded at the time that the resumption took place. My understanding was that the family accepted that amount, notwithstanding the compulsory nature of the resumption.

Years later we have before us a bill that will try to bring some closure to this matter. We see that the legal costs of Mr Hammond and his family will be met by the state. This gives me some sense that this process is not completely unjust. As a community we can stay locked in the past, in litigation and in a philosophy and an ideology of rights that both are defined in current laws and have been transported through time and are embedded in our laws and customs. I will now go to the point with which I opened this discourse. Where does the public interest lie in the matter of this land that was acquired 68 years ago, and now has a completely changed context? The whole ownership context has changed. The physical landscape has changed and society has moved on a little bit; not a lot but enough to see that we need more rigorous planning arrangements and arrangements of rights and responsibilities in town planning schemes and regional schemes. It is right that that should happen. It is right that, as a sophisticated society, we should set out laws that will give direction to the way in which society uses land.

On 1 November 2004, four Aboriginal custodians of the Yallingup area met with an anthropologist to walk over and do a survey of the land at Yallingup and to look for the cultural heritage. What tangible physical artefacts connected those people to the historical use of the land? What stories and messages about that land were transmitted through the Aboriginal culture? We heard from Hon Barry House that the Aboriginal word for this land means "place of love". A series of stories, rites, responsibilities and ownership rights about the arrangements for the use of land have been transmitted, not for 68 years or even a few hundred years, but for thousands of years. Every culture has its planning schemes; not just ours. Aboriginal culture had a land use planning scheme transmitted via customary law, stories and so on.

Hon Barry House: Those factors will be taken into account by our planning processes.

Hon PAUL LLEWELLYN: That is true. Aboriginal dreaming legends relating to the Yallingup area have been documented. The anthropologist's report on Yallingup Brook, written by Dirima Cuthbert, states -

The custodians confirmed the Yallingup Brook and surrounds as a feature in the Ngilgi Dreaming legend, where Wolgoine (the bad spirit) and Ngilgi (the good spirit) fought. Their fight took them from the Yallingup reef, along the length of the brook, and eventually ended at Ngilgi Cave, where Wolgoine was defeated. The custodians said that Ngilgi Cave, Yallingup Brook and their surrounds have always been important to Aboriginal people for recreation and collecting bush foods. Jarrah (djarryl), red gum (marri), peppermint (wannang), hakea (toolgan) and blackboy (nallang) trees are all food sources found in the area.

Hon Bruce Donaldson: Are you suggesting we should amend the bill and give the land to the original custodians?

Hon PAUL LLEWELLYN: Perhaps the whole of Australia should be given back to the original custodians; I do not know. Why do we not amend the Australian Constitution and hand all the land back? As we speak, people are camped in the Melbourne botanical gardens claiming that they have provable sovereign rights to the country. Our rights as they exist today need to coexist with the rights of the people who came before us.

I will tell a story. A gypsy man and a gypsy woman were driving along a road. The woman was pregnant and about to give birth. She said, "I'm about to give birth to our child." They pulled over and camped in the field while waiting for the child to be born. The farmer came along and said, "Get off my land." The gypsy said, "What do you mean? Whose land is this?" The farmer said, "It is my land." The gypsy asked, "Where did you get this land from?" The farmer replied, "My dad gave it to me." The gypsy asked, "How did he get it?" The farmer said, "He fought for it." The gypsy then asked, "Who gave it to him?" The farmer said, "His dad fought for it." The gypsy put up his fists and said, "Okay, bring it on. Let's have a fight about this land." That is how we got this place. Okay, that was not a very good joke. However, in Australia we fought for our land and we have certain rights and responsibilities that overlap. Eventually we coexist with a series of rights and responsibilities about how we come to use and enjoy land. These arguments underpin the rationale for finding a just and fair solution to the matters of ownership, rights and responsibilities.

The arguments about generational rights and generational responsibilities are the foundation on which the Greens (WA) base its decision making. Who owns the land? Who owned the land? Where are the rights and responsibilities? Where do we rightly put the decision making? I wish to some extent that it was not with me or

Hon George Cash; Hon Barry House; Hon Robyn McSweeney; Hon Nigel Hallett; Hon Norman Moore; Deputy President; Hon Paul Llewellyn; Hon Ken Baston; Hon Simon O'Brien

the Greens, but it is. We go back to the first principles. To some extent, given the historical course of time, the best place for this land is in the hands of the public for all people to enjoy.

Members may call that a judgment or a decision, but we are confronted with what is on the table now. It is not that we did not give consideration to some of those other higher order concerns of transmission of rights, natural justice and responsibilities; it is just that those decisions are not isolated to this eco chamber - to the laws of this country right now. We forfeited that right when we chopped down the first tree to form the colony of Western Australia. Now we need a new reality and new negotiation and discourse about ownership. Where did this land come from? How did we get ownership of the land? A Governor signed over thousands of hectares of land. He said, "Take it; it's yours." Who had the right to give it away in the first place? How did Garth Hammond get the land? He did so with his fists in the air; that was how the land was taken. Garth did not do that personally, but the agents of Garth - the government, the Queen of Western Australia - did that and that is how the land was acquired.

We are prepared to move on in the case of one individual whose rights we respect and whose case is compelling. We are prepared to move on and the Greens will support this bill.

HON KEN BASTON (Mining and Pastoral) [9.04 pm]: I rise to speak against the Yallingup Foreshore Land Bill 2005. I congratulate Hon George Cash, Hon Barry House and other honourable members who have spoken against this bill.

I have listened with interest to the debate because, as a new member of this house, I have very little knowledge of the area involved. Some weeks ago I read the second reading speech made in the other house and the revised version made in this house. It became blatantly obvious to me - before I listened to the debate today, which has further enlightened me on some of the history behind the reason this bill is before the house - why Garth Hammond wants his day in court. During this debate the philosophies of the two major parties became obvious. The opposition's philosophy is always for the individual; it believes the individual should not be controlled by government. This bill is stopping the right of an individual to have his day in court.

Why would the government include clause 7 in this bill if it believed that it had a case to win? Clause 7 states that the government will pay for what has happened so far as the legislation rules out further action by any person. It indicates that in this case, Garth Hammond, who took his case to the Supreme Court, would more than likely win. The second reading speech states that the government compulsorily acquired this land under the Public Works Act. It states -

This bill implements the government's proposal to retain this land for the people of Western Australia. The legislation will accomplish the following: it will preclude . . . it will prevent . . . it will overcome the claim that the caravan park, . . .

It includes all those words that I find offensive. As a member of this house I am not in a position to make judgments to support this bill. I do not have all the evidence. The only evidence I have has come from the members who have spoken in this debate. I have never stayed at Caves House. I have visited it once and driven past it. I do not know the area very well. I know there are a lot of houses near the beach and a historic building looking down on them. It would be wrong for me to support this Parliament acting as a court. Hon Barry House said that this saga has been going on for some time, and I appreciated his historical perspective, bearing in mind he was born in the area and knows its history in depth. Tonight is the first time I have heard the history of this saga.

Hon Paul Llewellyn: What about the Aboriginal issue?

Hon KEN BASTON: We fought for it.

If this bill is passed then the evidence in the departmental files alluded to by Hon George Cash will never come to light, and thus the truth will never be known. The issue will remain unsolved. I believe this bill is wrong and should not be supported. A Supreme Court should decide the outcome for Mr Hammond. The integrity and credibility of this Parliament have been shredded by the introduction of this bill. It is obvious that the advice of the State Solicitor's Office is that the government would lose this case if it went before the Supreme Court. Hence, why does the government want to rush today to ram this bill through? It is reprehensible that the State Solicitor's Office appears to be the pawn in this case. The real remedy would be found in the Supreme Court.

In conclusion, this is a very small bill, but after reading the second reading speech given in the other place and revisiting it when it was presented in this house, there is no way that I can support this bill.

HON SIMON O'BRIEN (South Metropolitan) [9.11 pm]: The Yallingup Foreshore Land Bill 2005 is indeed a remarkable beast. When one examines the government's second reading speech in an effort to divine the motives behind its actions, a few remarkable provisions deserve highlighting. First, according to the second

Hon George Cash; Hon Barry House; Hon Robyn McSweeney; Hon Nigel Hallett; Hon Norman Moore; Deputy President; Hon Paul Llewellyn; Hon Ken Baston; Hon Simon O'Brien

reading speech, quite a lot of things have happened that touch upon the future of the land the subject of this bill, and they have been happening since 1938. That point is made in a couple of places in the second reading speech and, presumably, we are reminded that this matter kicked off in 1938 to try to convince us that all of this has been happening for a very long time, and therefore now, today, on Tuesday, 11 April 2006, the matter must be brought to a head and disposed of in accordance with this bill.

The second reading speech refers to statutory changes that have occurred. For example, it refers to 1955 when the original section 29 of the Public Works Act 1902, which does apply, was repealed and new sections 29 and 29A were inserted. These sections provided a right for a former owner of the land to repurchase land resumed under the Public Works Act 1902 in identified circumstances. That was the view of the Labor government then in power in the 1950s.

Later in the second reading speech some highly personalised comments were made about former ministers Cash and Shave - ministers of a Liberal government in the 1990s - but we must remind ourselves that these provisions were first contemplated by a Labor government that introduced then new sections 29 and 29A back in 1955. Subsequently, further legislative changes were proposed in respect of sections 29 and 29A. The second reading speech refers to the Land Administration Bill 1997, which was dealt with during the time of the Liberal ministers to whom I have referred. Of course, one of those gentlemen is a respected member in this chamber now, and he has played a leading role in the debate on this and other occasions. The Greens (WA), in particular, on the cross benches would disregard his views at some peril, because Hon George Cash has been involved in these matters and understands them implicitly. This legislation is about the way in which sections 29 and 29A have been considered by subsequent governments, and that goes to the core of the debate. With respect, it is not about traditional landowners. Whatever validity those issues have, they are not the central issues that are being considered in this bill. We were told in the second reading speech that in 1997, when that year's Land Administration Bill was introduced, it proposed to repeal sections 29 and 29A of the Public Works Act 1902, which you will recall, Mr Deputy President (Hon Ken Travers), were inserted in 1955. According to the second reading speech, at that time an approach was made by Hon Barry House, the relevant local member, and Mr Hammond's solicitors - Mr Hammond was a constituent of Mr House - to ensure that Mr Hammond's position was not prejudiced by the proposed repeal of sections 29 and 29A of the Public Works Act. Indeed, the government of the day saw the merit in that approach; that is, that 42 years after these provisions had been placed in the Public Works Act it was proposed to repeal them, but in so doing a gentleman by the name of Mr Hammond stood to have his interests prejudiced. The second reading speech tells us that the consequence of those amendments was that Mr Hammond was able to take advantage of the provisions of sections 29 and 29A of the Public Works Act. My immediate response to that is: why should he not? The provisions had been there to provide protection for people in his circumstances for 42 years! He was contemplating further proceedings about the land in question. Why should his position and his rights not have been preserved? The Parliament of the day agreed, and it is now a matter of record what happened to the Public Works Act as it applies to this matter.

The second reading speech refers to the land in question from 1938 to the present day. Frankly, after gaining an impression of the tone of the second reading speech, I am far more inclined to rely on Hon Barry House and Hon George Cash to describe the situation in which Mr Hammond finds himself and the various hoops through which he has had to jump to try to get his day in court to decide the matter that we are told is imminently before the courts. What the government wants to do with this bill - it has been trying to do this since 2002 - is to ensure that Mr Hammond does not have his day in court. The government has introduced a couple of bills over several years, of which this is the latest, to try to do away with Mr Hammond's rights under sections 29 and 29A of the Public Works Act 1902. The honourable Leader of the Opposition posed the rhetorical question: why is the government so desperate to proceed with this bill but only from time to time, because it comes in fits and starts? Sometimes it is more fit than start. The government had its first fit in 2002 when it brought in a bill to fit up Mr Hammond, but then it backed off for some reason. It had another start in 2005 when it brought in the Yallingup Foreshore Land Bill 2005, but the second reading speech was not given until Tuesday, 4 April 2006. After the required one week break between the second reading speech of a bill and the resumption of the second reading debate, here we are on Tuesday, 11 April 2006 debating this bill. I do not know whether that makes it a fit or a start. However, I do know that the government is determined to have another stab at this bill and to give it its best shot at getting it through Parliament. Hon Ken Baston speculated about the government's motives and asked why we have been debating the second reading all day and why we are still debating it now. Clearly, it is a bill of great controversy. There are other bills on the notice paper, yet this one is pre-eminent. As Hon Ken Baston alluded, the only reason is that in getting this bill passed into law, the government may be able to forestall legal proceedings - Mr Hammond's day in court - at the last gasp. The issue moves from 1938 to 11 April 2006, when we are confronted with a government that is determined to spend all its parliamentary time trying to push this bill through the house on the eve of the legal proceedings that Mr Hammond has been trying

Hon George Cash; Hon Barry House; Hon Robyn McSweeney; Hon Nigel Hallett; Hon Norman Moore; Deputy President; Hon Paul Llewellyn; Hon Ken Baston; Hon Simon O'Brien

to get for donkeys' years. Is that a coincidence? What advice did the government receive to bring on this rush of blood to resolve a matter that it previously indicated it wanted to solve by the introduction of bills in 2002 and 2005? In April 2006, we are all of a sudden seeing as much despatch as the government can summon.

What is the government trying to do with this bill? The intent of the bill is contained in clause 4, of which subclause (1) reads -

Subsection (2) applies if, and to any extent to which, the resumption was invalid or ineffective.

We had better find out what proposed subsection (2) states. It reads -

The rights and liabilities of all persons are declared to be, and always to have been, the same as if the resumption had been valid and effective in all respects.

As other members have said, that is a remarkable thing to do. I will concentrate my remarks on the implications of going down this particular path. The proposition is that the rights and liabilities of all persons are declared to be, and always to have been, the same as if the resumption had been valid and effective in all respects. This is in relation to land at Yallingup that was the subject of a land resumption notice published at page 2112 of the *Government Gazette* on 9 December 1938. That is the definition in the bill. That in itself is a remarkable declaration. We often hear it said by governments when they respond to people who petition them in one way or another for relief that they do not have a magic wand. Clause 4(2) purports to be magic wand, because it states that the rights and liabilities of all persons are declared to be, and always to have been, the same as if the resumption had been valid and effective in all respects. That magic wand derives from 9 December 1938. That is almost 70 years to this day, and all of a sudden the government is waving the magic wand that is clause 4(2) and everything is valid and effective. Clause 4(1) - the qualification clause - is the second offensive aspect. It reads -

Subsection (2) applies if, and to any extent to which, the resumption was invalid or ineffective.

This bill seriously contemplates that the position of the government is wrong. As Hon Bruce Donaldson suggested by way of interjection a few minutes ago, if the matter were to go to court, Mr Hammond would have his claims upheld. This is a desperate attempt by the government at or beyond the eleventh hour to not allow that to happen. It cannot argue the merits of the case in the court, so it has decided to declare that the legal entity known as the state has, in its actions since 1938, been valid and effective in all respects, even if the resumption in question was invalid or ineffective. The government will turn black into white and night into day. It wants to wave a magic wand that it wishes it had, but often claims that it does not have. In this case, because it suits the government, it will invent and wave a magic wand to wade through this bill - and to hell with the claims of Mr Hammond.

I have heard from one or two members during this debate that they know Mr Hammond, that they have known him for donkey's years, that they know where he lives and that they can vouch for his character and so on. I do not know Mr Hammond. I do not believe I have ever met him or ever clapped eyes on him. I do not know him from a bar of soap. It is only through this ongoing saga that his name has come to my attention. The little I know about Mr Hammond has come from my observations during, and listening to, the debates that have occurred several times in this place. Why am I not as entitled to have as a cavalier view of Mr Hammond's rights as the government's view? I do not know Mr Hammond from a bar of soap; he has other people who are big enough and ugly enough to look after his interests, so why need I worry about it? There are other Mr Hammonds all over the state. There are people like you, Mr Deputy President, me and everybody else in this place who also have the potential to be Mr Hammond; that is, to be in the position in which our rights to a day in court, to recover property, to be heard and to appeal against decisions are cast into doubt. That is why we must have regard for this aspect of the bill, and that is why Hon Paul Llewellyn and his colleagues also need to think again about this bill. With respect, the bill is not, by and large, about the matters about which he spoke. The bill is about the things that I am talking about now, and that other members have spoken about in the same vein. Do we want to see this precedent set? In the view expressed this evening by the Leader of the Opposition, the most experienced member of this place, indeed, the grandfather of the Parliament, this respected member -

Hon Norman Moore: You'll go a long way.

Hon Ljiljanna Ravlich: Not if he's backing you, he won't.

Hon Norman Moore: You're an absolute pain in the neck; you know that?

The DEPUTY PRESIDENT (Hon Ken Travers): Order! Hon Simon O'Brien has the call.

Hon SIMON O'BRIEN: Do not put me off, or I will have to start again.

Hon Norman Moore: I think you need to start again.

Hon George Cash; Hon Barry House; Hon Robyn McSweeney; Hon Nigel Hallett; Hon Norman Moore; Deputy President; Hon Paul Llewellyn; Hon Ken Baston; Hon Simon O'Brien

Hon SIMON O'BRIEN: As Hon Norman Moore said, I invite those viewing this debate - I get a feeling that it will be picked over - to hark back to the words of the Leader of the Opposition when he indicated clearly that he thought that this is one of the most serious bills he had ever seen come before this house. The sense of his words was clear: this bill has the most serious potential ramifications of any bill to come before this house in his time here. I remind members he has been here since 1957 - 1977; sorry!

Hon Norman Moore: It just feels like it!

Hon Ljiljanna Ravlich: It feels like 1957.

Hon Norman Moore: The more you open your mouth, the longer it feels.

Hon Ljiljanna Ravlich: I can't wait until he leaves.

Hon SIMON O'BRIEN: This battle-scarred warhorse -

Hon Norman Moore: Somebody told me to walk in front of you in Turkey, just in case there is a bomb!

Hon Ljiljanna Ravlich: I don't know why you're coming.

Hon George Cash: I want you to get a photo of you two side by side smiling - at the same time.

Hon SIMON O'BRIEN: I want to bring members back from their allusions to the battlefields of Flanders or Gallipoli to the battlefield of Yallingup. The point is that this is not only about a block of land resumed at Yallingup on 9 December 1938; it is about other blocks of land, other rights and other Mr Hammonds, and the future of how we legislate in this state. There are times, I am sure, in which it is quite legitimate for a legislator to pass laws that validate things that have happened in the past. It would be necessary and convenient for legislators to do so on occasions. However, this is not one such occasion. This is an occasion when the legal entity of the state, as exercised through the current government, is seeking for its own partisan benefit to extinguish the rights of one of our citizens. Whether we agree with that citizen does not matter. We should not stop him having his appeal heard in the relevant court. It should not be said, by waving the magic wand of clause 4, that nobody has any rights and liabilities beyond what they would have had had the resumption been valid and effective, and that, furthermore, if that resumption was invalid or ineffective, it does not matter, as we will pretend it was not invalid or ineffective. This is a form of legislative fiction that reflects very poorly on those who propose it, and it does not warrant the support of this house.

I turn now to the main point I want to talk about. Let us look at some other examples in which the force of those who have the control, numbers or power to make legislation exercise that power in such a way as to crush an individual or extinguish an individual's rights. This has happened on many occasions throughout history. People often talk about governments going in hard against the individual rights of a citizen in what becomes a very one-sided contest. It is said that such governments are behaving like Nazi Germany did towards individual citizens. I urge members to recall that much of the power that the Nazis assumed in Germany in the 1930s was actually given to them by vote of the Reichstag, thereby giving the impression at the time, in their minds at least, that what happened was legitimate. Laws proposing to persecute, marginalise and victimise minority groups were all passed in accordance with established legislative procedure in that country at that time. It was all strictly legal. In retrospect, we think of some of the atrocities that occurred at that time as crimes against humanity. I tell members that they were not crimes against the law of that land at that time. I refer to when Jews, for example, were persecuted and had their property attacked, damaged, destroyed and confiscated. It was all legal and by the book because laws were passed that said it was okay to do so. They were able to pass such laws because the legislators in the Reichstag in that era did not have the guts to stand up and say, "No. This is wrong!" That is what is being asked by some of us this evening. I put it to members on the crossbenches that they need to pay regard to that situation. Throughout the thread of British common law there is another legislative device that was used - rightly or wrongly, depending on one's perspective at the time, I suppose - to attack the rights of an individual and to deprive that individual of his or her rights, and even to deprive the descendant and heirs of that person of their rights. I refer to the old bill of attainder. Once it was passed, it was known as an act or writ of attainder. We do not have bills of attainder available to us. The Leader of the House would be disconcerted to recall that they were abolished in British law in 1870. Indeed, they had not been used since 1798, which is even longer ago than the resumption of the Yallingup land in 1938!

Hon Kim Chance: Have you ever heard of a writ of adverse possession?

Hon SIMON O'BRIEN: Yes. Does the Leader of the House want to go down that path or should we just leave it at the attainder?

Hon Kim Chance: I thought I would bring it up as you were delving around that kind of obscure land law. If you are looking for examples of injustice, I would look at the writ of adverse possession.

Hon George Cash; Hon Barry House; Hon Robyn McSweeney; Hon Nigel Hallett; Hon Norman Moore; Deputy President; Hon Paul Llewellyn; Hon Ken Baston; Hon Simon O'Brien

Hon SIMON O'BRIEN: I am delighted to hear the Leader of the House participate in this debate. I think he is signalling that he feels a speech coming on to tell us why we are wrong and why those of us on this side of the house who see what the government is doing as misguided, are wrong.

Hon Kim Chance: The government will tell you.

Hon SIMON O'BRIEN: We have not heard diddly-squat from the other side of the house in response to the arguments put.

Hon Kim Chance: You did not hear the second reading speech?

Hon SIMON O'BRIEN: While the Leader of the Opposition was away on urgent parliamentary business, I not only indicated that I had heard it, but also I referred to it and quoted it in several places. Does the Leader of the House want to read about it tomorrow or does he want me to go back to it now?

Hon Kim Chance: No. I am sure I will pick it up.

Hon SIMON O'BRIEN: The second reading speech tells us what is in the mind of the government. That is all we have to go on. We on this side of the house have responded in a number of speeches today. We are yet to hear any meaningful retort or response from the government. The Leader of the House evidently has something to offer.

Hon Kim Chance: You will hear in good time. Just be patient.

Hon SIMON O'BRIEN: Who will we hear it from?

Hon Adele Farina: Me.

Hon Kim Chance: You will hear it from the parliamentary secretary.

Hon George Cash: But we won't have any of the departmental files so that we can look at the notations.

Hon Kim Chance: You might not need them. The parliamentary secretary's response will be so comprehensive that you will be entirely satisfied.

Hon SIMON O'BRIEN: I imagine it will be pretty brief!

Attainers go back to antiquity in English common law. An attainder was quite often applied to a criminal condemned for some sort of crime. Generally, the crimes we know about were typically treason. A person would be declared attainted. It meant that the convicted man's civil rights were nullified. Quite often, given that the crime was treason in centuries gone by, a person was not only convicted, but also he was condemned to boot. There are a number of examples, of which members are probably aware, of people not only suffering capital punishment for their offence, but also having their lands, titles and property confiscated through an attainder. That effectively meant that their heirs were also disinherited. Sometimes that would be reversed and an heir's property would be restored, but sometimes not. There are a number of examples. Lord Lovat was one example. Any number of his descendants could have been the next earl after the tenth earl was executed. Because the tenth earl was subject to a bill of attainder, the title was forfeited as well as his lands. There were a couple of ways in which a bill of attainder could be reversed. Most obviously, not through an act of royal grace but through a reversal of political fortunes. That meant that what was previously the other side got back in power. In other words, the other faction got up. As such, a bill of attainder could be reversed or repealed in some way. Again, another form of legislative nonsense, particularly if a person had been beheaded on Tower Hill a couple of years before and all sorts of things had been done to his heirs.

Debate interrupted, pursuant to sessional orders.

House adjourned at 9.45 pm
