

*Joint Select Committee on Aboriginal Constitutional Recognition — First Report —
“Towards a True and Lasting Reconciliation: Report into the Appropriate Wording to Recognise
Aboriginal People in the Constitution of Western Australia”*

Resumed from 22 April on the following motion moved by Hon Michael Mischin —

That the report be noted.

Hon STEPHEN DAWSON: Thank you, Madam Chair; excuse me for quickly dashing in, I was out of the chamber on urgent parliamentary business. The last time we met, I had just commenced my comments on this report and I had started off by congratulating members of the committee. At that stage Hon Sally Talbot was also away from Parliament on urgent parliamentary business, so I just want to congratulate her on this report. I had made the point at that stage that the whole committee had done some great work. I had also made the point that I believe that in future when we have joint committees of the Parliament, the membership of those committees should be equal. That would be four members from the other place and four members from this place. Obviously, that was not the case in this regard. I also make the point that recognising Aboriginal people in the Constitution is a symbolic gesture. It has taken an inordinate amount of time; it has taken about 125 years for us to get to this point. I hope that it will not take much longer and I hope that in the next few weeks or indeed, months, we can rectify the issue and finally recognise Aboriginal people in the state Constitution.

I went out for a walk at lunchtime today and on the way back I looked up at the flags flying outside the front of Parliament House. I have not noticed this before, but there are a number of flags on the poles out the front and indeed there are some flags on the roof. Not one of those flags was an Aboriginal flag.

Hon Ken Travers: There used to be.

Hon STEPHEN DAWSON: Well, there is certainly no Aboriginal flag flying out the front of Parliament House these days. That too would be a symbolic gesture. Bear in mind, these things are not going to put food on the table for people who are vulnerable or less fortunate in society, but they are symbolic gestures that would mean a great deal to people, because they show that we have moved on. They show that we appreciate and recognise the immense culture that Aboriginal people have brought to this state and we recognise the custodianship they have had of this state and this land for thousands of years. I think, not just in terms of the Constitution in recognising Aboriginal people, that it is time we flew the flag in front of Parliament House. I will take this issue up again.

Hon Ken Travers: I think it is “re-flying”. I am sure it is an oversight, because it always used to be flying.

Hon STEPHEN DAWSON: I will certainly raise that issue after the debate today, because I think it would be an easy thing for us all to do. There are a great number of flagpoles out the front and indeed three on top of the building, so I think at least one of those could fly the Aboriginal flag.

Back to the report; I think it is a good report. The time the members had to do their inquiry I think was an issue with the committee. The members were all required to work when the rest of us, perhaps, were not engaged in parliamentary duties. We were out in our electorates looking after our electorate duties. I want to pay homage to those members who worked during non-sitting periods, when they would ordinarily be away from Perth and from the chamber. I know too that the committee was able to make special allowance for the member for Kimberley and allow her to participate in some of the meetings, be it by Skype or on the telephone. I think that was a good solution to the issue.

I am going to talk briefly about the other states and the recognition of Aboriginal people in states’ Constitutions around Australia. In the report in chapter three, page 17, on the subject of Victoria, it states —

In November 2004, Victoria became the first state to incorporate a statement of recognition in its constitution. The statement was proposed in the Constitution (Recognition of Aboriginal People) Bill, which was developed on the recommendation of the Premier’s Aboriginal Advisory Council following ‘extensive consultation’ with the Aboriginal community.

That was in 2004; it was 11 years ago that that state was able to rectify this issue. In the report on page 19 it states that —

In February 2010, Queensland became the second Australian state to incorporate a statement of recognition in its Constitution, although the proposal did not enjoy the full support of the Parliament.

I congratulate Queensland on its recognition of the issue. It is disappointing that in that case, the whole Parliament did not support the recognition of Aboriginal people in the Constitution. I think it is very important for us all to be behind this issue because I think the time has come. On page 22 of the report it states —

New South Wales became the third state to include a statement of recognition when amendments to the *Constitution Act 1902* (NSW) took effect on 25 October 2010. The amendments were put forward in the Constitution Amendment (Recognition of Aboriginal People) Bill 2010, which was compiled by the Minister for Aboriginal Affairs following a two-month public submission period and consultation with the New South Wales Aboriginal Land Council.

Concerning the next state, page 23 tells us —

South Australia followed the lead of the other states by amending the *Constitution Act 1934* (SA) to include a statement of recognition, which took effect from 28 March 2013. This wording emanated from the recommendations of an Advisory Panel, which was appointed by Premier Jay Weatherill in May 2012 to report on the appropriate wording and location for a statement of recognition.

In South Australia, I understand from the report that over a four-month period that panel engaged with Aboriginal and non-Aboriginal South Australians, and the panel received a great number of submissions and also held a number of consultation meetings across the state. We can see from the report that other states were able to do it. In the executive summary of the report, it states —

By comparison, the proposal within the Constitution Amendment (Recognition of Aboriginal People) Bill 2014 is modest ...

[Leave granted for the member's time to be extended.]

Hon STEPHEN DAWSON: I was saying that certainly some of the other states and their recognition has been quite expansive and include a great number of commitments about preservation of cultures and the granting of limited sovereignty, the guarantee of parliamentary and economic participation, planned rights, and the affirmation of land rights. There are a whole range of issues in there, and I know from listening to speakers in this place, and indeed speakers' debate in the other place, that there were a range of concerns about the possible implications of the member for Kimberley's bill. As I was saying before I sat down, the executive summary of the report states —

... the proposal within the Constitution Amendment (Recognition of Aboriginal People) Bill 2014 is modest, simply framed, and unlikely to prove overly contentious.

The report goes on to state —

Furthermore, it has been subject to significant consultation and appears to have the greatest level of current support among advocates of constitutional recognition. As such, the Committee saw it as a suitable starting point for considering an appropriate form of words for the Western Australian jurisdiction.

The committee work went on and the report states further —

In Chapter Four, the Committee examines a range of legal and legislative issues that need to be considered when contemplating any Bill proposing constitutional recognition of Aboriginal peoples. Where applicable, the Committee considered these issues in the context of the Bill introduced by Ms Farrer. From this analysis, the Committee found that this particular Bill offers Parliament one option whereby the risks of unintended legal consequences appear to be negligible.

From the last debate we had in this place, Hon Jacqui Boyde, a member of the Joint Select Committee on Aboriginal Constitutional Recognition, had concerns about the implications of the bill on pastoral leases, for example. I understand that as a result of the work of the committee, it found there were no implications and that, in fact, Josie Farrer's Constitution Amendment (Recognition of Aboriginal People) Bill would not negatively impact on pastoral leases or any other issue.

This report is a good one. It was very good to have bipartisan agreement on this very important issue. I said previously that the bill would not affect bread-and-butter issues for Aboriginal people; it will not affect their longevity or their personal circumstances, but it will be a very important recognition. I had the opportunity to talk to people in my electorate about what this recognition will mean to them, bearing in mind my electorate overlaps that of the member for Kimberley's area. I also had the opportunity to speak to Aboriginal people in a number of Pilbara communities about this issue and, as I think we in this place all agree, everyone said it was about time and that there had been enough consultation on this issue. I will not get into this issue in this debate, but given the other debate—although it is probably not fair to say “debate”; the message from one side has been getting out about potential closure of communities—there is a great deal of concern among the Aboriginal population in the state at the moment. People I have spoken to, including in the last few days before this debate today, have said that the passage of this bill would be a tremendous move. Although it would not make up for the sins of the past, whether they be years, days or weeks, it will show that the Western Australian Parliament in particular truly recognises the role of Aboriginal people in this state. Furthermore, it will show that we care for

those people and that we want to ensure that they have lasting recognition in this state. Including words in the Constitution will go some way towards doing that.

I wanted to make one other point, but I looked at Hon Sue Ellery and thought, “I’ve lost it.” No; I did not. That was not the case.

Hon Kate Doust interjected.

Hon STEPHEN DAWSON: No; that came out wrongly. I was thinking of Hon Sue Ellery’s speech on this issue previously and I was going to make the point that I hope that following this report and the debate on the report in Parliament, when the government responds in the next few months, it will allow the member for Kimberley to take this bill through Parliament and that it will be the Farrer bill. I can see the Leader of the House in this place nodding, but I am not sure he can give me a guarantee this afternoon. I think it is very important.

Hon Peter Collier: I will say a few things in a minute.

Hon STEPHEN DAWSON: The member for Kimberley has spoken on a range of issues important to her constituency in the Kimberley and important to Aboriginal people in this state. This is one of those issues and because of Josie Farrer’s leadership on the issue, she should be allowed to lead the debate on it in Parliament. It would be a fitting tribute to her and a fitting acknowledgement if this bill were to be recognised as the Farrer amendment or whatever else. I find Josie Farrer inspirational, and I welcome her leadership and her contribution on a range of important issues. With those comments, I again congratulate the Select Committee on Aboriginal Constitutional Recognition, and I am very pleased to have been able to make a contribution to this debate.

The CHAIR: Members, before putting the question, I draw your attention to temporary order 5, which requires that after a 60-minute consideration of a report, it drops to the bottom of the list of committee reports for consideration. We have 14 minutes and a few seconds remaining on consideration of this report. It will then drop to the bottom of the list, but it will not fall off the list. There will still be an opportunity for members to make a contribution at another time.

Hon SALLY TALBOT: I have been in Parliament for 10 years and two of the most inspirational moments I have experienced as a member of this place took place in the other house. There have been a few in this place but I want to particularly note the two moments in the other place. One was when Josie Farrer, the member for Kimberley, stood and second read her Constitution Amendment (Recognition of Aboriginal People) Bill. The other was when she tabled this report in the Legislative Assembly. On both occasions she spoke, as she always does, from the heart about her people, a subject that she has lived from the inside out, and when it comes to the recognition of Aboriginal people in the Constitution, that is not something most of us in this place can claim to be doing. On both those occasions, the word used by Josie Farrer that sticks in my mind was her urging that we as parliamentarians should be brave enough to be “magnificent” and take this step. This report demonstrates conclusively that passing this bill will be a small step, and one that will not affect the way we conduct most of our business in this place. It will not constrain anyone else’s rights as citizens of Western Australia but it will send a message to Aboriginal people in this state that they are actually regarded by non-Aboriginal people as worthwhile human beings.

Often when committees present reports in Parliament we hear comments about the experience for members on the committee, particularly when it is a select committee that has convened only for the purpose of considering a particular topic and then, essentially, dissolves into the ether. I draw members’ attention to the comments made at the end of the substantive part of the report, before the appendices, in paragraph 5.8 on page 57, where it reads —

The Committee members are honoured to have had the opportunity to participate in this Inquiry and commend this report to the Parliament.

The CHAIR: Order, members! I apologise to Hon Sally Talbot, but a number of private conversations are happening around the chamber that are very audible and making it very difficult for Hansard to record the important words of Hon Sally Talbot.

Hon SALLY TALBOT: Thank you, Madam Chair. I will not, of course, say anything that discloses any of the committee’s deliberations, but I will say that it was my observation that it was indeed an honour—I do not use that word lightly—for all seven members of that committee to have participated in a process that has the potential to make such a significant, albeit symbolic, change to our practices in Western Australia. It will not have escaped the attention of anyone in this house that the committee’s membership was indeed diverse. It is probably fair to say that the committee represented every single hue of the rainbow of the political spectrum in Australia currently, from the far right to the far left. Nevertheless, for me this was a fairly unique experience because not only was there a genuine commitment—I deeply respect my colleagues on all sides of the house and I believe that members are always committed to do the work—but also there was in this case a commitment to see some kind of meaningful change recommended in the report. I want to pay tribute to the other six members

of the committee for the rigour and genuine heartfelt sentiment they brought to the task of bringing about genuinely significant reform in the report.

Hon Stephen Dawson noted that we met over the summer period. Many may regard that as an interruption to our electoral duties, but, as Hon Stephen Dawson said, it is not necessarily holiday time, as it is for the rest of Australia. Although we do not have commitments in Parliament at that time, we would normally devote our time to our electorates. In the case of some committee members, of course, there are much more concrete and practical challenges involved in meeting throughout January. In the Kimberley it is the wet season, a time when it is not always physically possible to move around the Kimberley. It was due in no small part to the expertise of our support staff that the committee managed to meet at all. I think there were only one or two meetings during that entire four-month period when all seven members of the committee were not present, either physically, on the phone or by Skype. Again, it is not an easy thing to achieve when dealing with remote locations and dodgy telephone connections, but I must say from that point of view I found the whole process in all the meetings and hearings extremely rewarding. I think every single member put every effort they could summon into making a contribution within their capacity. I thank the staff in particular for that, including Tim Hughes, the principal research officer.

The committee employed a specialist consultant barrister, Adam Sharpe, who specialises in constitutional law. I hope that in the future Adam finds that that line on his curriculum vitae says that he assisted the committee in the preparation of this report—and in fleshing out the committee's understanding of complex constitutional legal issues, I hope that as the years go by people will look at his CV and recognise the important part he played in informing the committee so that it could write a report that brought about very significant and historical constitutional legislation.

Hon Michael Mischin: I have met with him since and he regards his experience as one that was very gratifying and rewarding, and something that he felt enhanced his career—well, let us say, his experience of the law.

Hon SALLY TALBOT: That is gratifying to hear and I am happy to hear that update from the Attorney General. I and the other members of the committee deeply appreciated Adam's very considered opinions.

I also pay particular tribute to Mr Peter Quinlan, SC. I have already commented that the committee met all through January and into February, a time when most people would not consider it their first preference to be chained to their desk. When it came to look for somebody from whom we could seek a legal opinion, we of course were very demanding in our request for that person. I must say that Mr Quinlan did himself and the whole legal profession proud, because not only did we give him a complicated brief to which he responded within a matter of days with a very fulsome and well-considered opinion, but also he did us the very extensive courtesy of providing a summary at the end of his discursive opinions, which was immensely useful. I am sure that, like me, every committee member read the full 30 or 40 pages. It was certainly a help to people who do not have legal training to be able to read his summary of those more discursive points. The committee also went back and asked him for a subsequent brief which he again provided to the committee in a timely fashion. It will be noted, and I am sure that my colleagues on the committee have drawn attention to this in their earlier contributions, that we took the unusual step of publishing that legal opinion. We did that for a particular reason. Both of those opinions can be found at appendix 8. It is not usual practice to include legal opinions, but we did it for a particular reason—that is, we knew there are a whole series of complex legal considerations that go into any kind of amendment to the Constitution of a state. I will come back to those down the track when we go back to this particular report for consideration in this place. We decided to publish our legal advice because we wanted people to see exactly how and why we had formed the opinions that we formed.

Hon PETER COLLIER: I will probably not need the three minutes to speak to the tabling of the first report of the Joint Select Committee on Aboriginal Constitutional Recognition because I would like to think that I will have more to say on this when the bill is finally introduced into the chamber. This is one of those rare occurrences in the Western Australian Parliament where we have unity of purpose and direction, and it is for such a valuable and rewarding outcome—that is, for Aboriginal people to be recognised in our constitution.

Yesterday in a ministerial statement I identified the enormous challenges that Aboriginal people faced when they wanted to fight for their nation during World War I and how they were not recognised at that time and were not allowed to enlist in the Australian Imperial Force. Nevertheless, they did so, and 13 Western Australians went off to Gallipoli. Since that time, of course, and in the century that has ensued, Aboriginal people have overcome a lot, but the gap between Aboriginal and non-Aboriginal people is still extraordinary and there is an unacceptably large variance between the quality of life of some Aboriginal and non-Aboriginal people. That is something we will collectively continue to work towards overcoming.

However, we are not talking about that in this report; we are talking about the recognition of Aboriginal people within the Constitution. That in isolation is not going to do an enormous amount to overcome those barriers that I just spoke about. It is a symbolic but powerful symbolic gesture on the part of Aboriginal people. It is something that they have wanted for generations—that they as the original Australians would be recognised within the Constitution.

The Constitution is a document that identifies the governance of our state and the governance of our nation. The one glaring omission has been the recognition of Aboriginal people, the original Australians. That is how we got to this point now. I do not care how we got there, who led the charge or whatever—we got there. However, I recognise Josie Farrer. Her courage and conviction to do it is testament to her and how strongly she feels about this issue. I would like to pay particular tribute to the committee for the role it played. For all parties of the Parliament to come together and provide this report is testament to how we can work together when there is a cause worth fighting for.

As I said, Aboriginal people want recognition. It should be unconditional and with no strings attached. It is a very powerful weapon in recognising their culture, their history, their heritage and the role that they play in our community. I look forward to that bill finally coming into this place, when I will have a lot more to say on this. In the meantime, I am strongly of the opinion that Josie Farrer should introduce that bill into the Legislative Assembly. It is her bill and it should stand testament to the role that she played to get us to the point we are at today.

The CHAIR: I will give the call to Hon Alanna Clohesy the next time we consider the report. Pursuant to temporary order 5, I need to move on to the next committee report on our list.

Consideration of report adjourned, pursuant to temporary orders.