

CONSTITUTION AMENDMENT (RECOGNITION OF ABORIGINAL PEOPLE) BILL 2015

Second Reading

MS J. FARRER (Kimberley) [4.01 pm]: I move —

That the bill be now read a second time.

Madam Acting Speaker, I seek leave to pay my respects in the Gidja language, which will contain nothing unparliamentary. I will then provide the house with an English translation.

[Leave granted.]

Ms J. FARRER: Thank you.

[*Words spoken in Gidja language* —

Kilingen jarrak ngenen ngenengka, Noonga-m pe taam warringarrem-pe — ngarri / ngayen kulu kulu ngenan perrem purru marnum.

Ngayen ngarra ngenau Gidja-m warringarrem-pe jijiyilem-pe, ngali ngalem pe of Western Australia.]

In English, I said —

I pay my respects to this land and to the Noongar people, the original inhabitants and traditional custodians of the land on which we meet today.

I also acknowledge my people the Gidja tribe in the East Kimberley, and all the Aboriginal nations of Western Australia.

I stand here today with mixed feelings. I am happy that we are one step closer to recognition of all Aboriginal people in our state's Constitution. I feel buoyed by the findings of the Joint Select Committee on Aboriginal Constitutional Recognition that my original 2014 bill was correctly drafted. I thank the members of that committee for their hard work and, in particular, for their support of me. I feel encouraged by the indications of bipartisan support from government members for this Constitution Amendment (Recognition of Aboriginal People) Bill 2015 and feel that we are moving closer to us not being timid and reaching out to be magnificent. But there is also a feeling of frustration that it has taken more than a year since I introduced the 2014 version of this bill to get to this point. However, if this new bill is passed, the wait will have been worth it.

The human history of Western Australia commenced between 40 000 and 60 000 years ago with the arrival of Indigenous Australians to our north west coast. My ancestors expanded the range of their settlement to the east and south of the continent. They were visited time and again over the last 500 years or so by your mob, although your history says a white explorer, Dirk Hartog, was the first recorded contact in 1616. Let me make this clear: this is your mob's version, not my ancestors' history. I always laugh when some scientist claims to have made a "new" discovery such as a lily, a plant or an animal or some rangeland feature. But seriously, our history, our cultures, will remain separate forever until we recognise who was here first. This is what this bill does. It means that once we have amended the Constitution to recognise the original people who occupied this land—so long ago that we could walk here—our collective history joins at that point and history becomes our history from now on. We can join and walk together—all of us.

As a reminder to members of where this journey has taken us, I introduced the 2014 bill on 11 June 2014. My colleagues and I then began extensive consultation, contacting more than 400 stakeholder groups and receiving feedback that extended into October 2014. On 12 and 19 November we debated that bill in this house. Some members opposite gave expressions of support, for which I congratulate them. However, the Parliament also expressed concern that the bill may not be properly drafted and there may be legal ramifications. On 26 November 2014, this house passed a motion directing the matter to a joint select committee. On 2 December our colleagues in the other place appointed their members to that committee. The committee met through the summer and tabled its report on 26 March this year. The report's 16 findings concluded that the words in the 2014 bill were a suitable starting point for considering an appropriate form of words for constitutional recognition in Western Australia and recommended some minor amendments to improve readability. The report supported the removal of section 42 of the Constitution Act 1889 (WA). In addition, the report recommended the amendment of section 75 to remove the definition of the Aborigines Protection Board. The report found that the continued presence of these spent provisions within the Constitution Act 1889 would be inappropriate and inconsistent with the spirit of reconciliation inherent in a statement of recognition by the Parliament.

The report contains two recommendations: first, some minor amendments to the 2014 bill's wording for the Constitution Act 1889 preamble; and, second, that the 2014 bill appears to be an option available to the Parliament should it wish to consider a bill to recognise Aboriginal people in the Constitution Act 1889 (WA).

I would just like to say that the Constitution was formed back in 1889. My mother's grandmother, her dad's mother, was alive then. So we have had 126 years to be the subjects of this Constitution.

Importantly, the report found that if the 2014 bill were passed, the risks of unintended legal consequences appear to be negligible. As I pointed out when I tabled the bill a few months ago, the report provides strong reassurance on the following points: firstly, it finds that the addition of these words of recognition could be enacted by ordinary legislative procedures—in other words, we do not need a referendum; secondly, it finds the suggestion that such an addition could limit the legislative power of the state can be discounted; thirdly, it finds that the risk of the addition having any impact on the interpretation of other Western Australian legislation or legislative powers is exceedingly low or negligible; fourthly, it finds that the addition will not have any substantive effect on native title law or pastoral leases, and I think we need to be clear on that; and, finally, and very importantly, the report finds that a non-effects clause should not be incorporated into any statement of recognition and notes that a non-effects clause would undermine the spirit in which the statement of recognition is made. As a result, this 2015 Constitution Amendment (Recognition of Aboriginal People) Bill 2015 is substantively the Constitution Amendment (Recognition of Aboriginal People) Bill 2014 with the Joint Select Committee on Aboriginal Constitutional Recognition's recommended changes incorporated.

In opening this debate I will reiterate some of what I covered in my second reading speech on the 2014 bill. It is worth restating for the sake of posterity and should be included in the second reading speech for this amended 2015 bill. Early in 2014, I raised the issue of official constitutional recognition of Western Australia's Aboriginal people and invited the Premier and the Leader of the Opposition to step forward with me and deliver a great act for all Western Australian Aboriginal people. Today, I ask again that all members of this Parliament also step forward and provide their support to pass this bill. This bill amends the Western Australian Constitution Act 1889 to officially recognise Western Australia's Aboriginal people as the first people of this land. Make no mistake, this is important. Recognition, acknowledgement and acceptance are necessary steps to true and lasting reconciliation, and this bill is just one of those steps. In a way it is more than a step, it is a confident stride forward. As I said earlier, when European settlers came to Western Australia, there were people here before them; people with rich, beautiful languages, culture and art, people who had complex laws and protocols, and people who fought wars and negotiated peace. These people—my people—had been here for thousands of years.

This year will mark 126 years since the Constitution Act was passed and so it is long overdue that recognition is given to Australia's first people. The Constitution Act 1889 has been amended 24 times in the last 126 years. Until the 1967 referendum, Aboriginal Australians were excluded even from being counted in the tally of citizens under section 127 of the Australian Constitution. Moving forward in an equal future together we must all remove acts of discrimination against one another. We are a strong and vibrant people and we share with you a beautiful country and unique culture and languages. However, we continue the pursuit of true reconciliation. Other mainland states have provided constitutional recognition of Aboriginal Australians as the first people of our country. We heard South Australia was the most recent state to recognise Aboriginal people in its Constitution through the Constitution (Recognition of Aboriginal Peoples) Amendment Bill 2012, which was introduced into the South Australian Parliament on 29 November 2012, passed on 5 March 2013 and assented to on 28 March 2013. The New South Wales Parliament introduced the Constitution Amendment (Recognition of Aboriginal People) Bill 2010 on 8 September 2010, passed the bill on 19 October 2010 and it received royal assent on 25 October 2010. Queensland introduced the Constitution (Preamble) Amendment Bill 2009 on 24 November 2009, which was passed on 23 February 2010 and received assent on 25 February 2010. The first state in Australia to give constitutional recognition to Aboriginal people was Victoria, which introduced the Constitution (Recognition of Aboriginal People) Bill 2004 on 26 August 2004, passed the bill on 4 November 2004 and it received assent on 9 November 2004. At a federal level, the Aboriginal and Torres Strait Islander Peoples Recognition Bill 2012 was passed by the House of Representatives on 13 February 2013 and read into the Senate on 25 February 2013. Passing this bill will make Western Australia the last mainland state to recognise Aboriginal people in its Constitution.

This Western Australian bill recognises that Aboriginal people are the original custodians of Western Australia. I will not reiterate the 2004 Solicitor General's advice on the lack of unintended legal consequences. The joint select committee's findings endorsed that advice by coming to the same conclusion. Recognition of Aboriginal people as the first people of Western Australia through our Constitution is vital in addressing the ethical issues that face all Australians. The task of government is to show leadership and advocate unity; acknowledgement is not a distraction. I agree with Paul Keating who spoke about these ethical and moral issues when he said —

The distraction comes when we fail to address them, when we avert our eyes from these core moral issues of national responsibility and pretend we can shuffle towards the future without acknowledging the truth of our past. That is what impedes our ability to move forward as a nation.

And none of these issues is more central than addressing the place in our society of indigenous Australians.

I say to my fellow members of Parliament here today that this is the opportunity for us to stride into the future, not to shuffle forward with eyes closed from the truths of the past. This is the chance to come together as a Parliament and as a community in a sincere, mature, heartfelt spirit of reconciliation. Members, I said earlier this year that true reconciliation means bold action, brave people and meaningful dialogue. I also challenge members to not be afraid—do not be timid just be magnificent! Despite all our differences, I believe that Western Australian people, and, for that matter, all Australian people, will understand better than anyone the need for the recognition, acknowledgement and respect of ancestral lands. Today, I am asking all of you who like to reminisce about your connections to Australia and your ancestral links overseas, wherever that may be, to join me to seize this opportunity before us as parliamentarians to do something remarkable.

Members, when this bill is passed by this Parliament, I believe an appropriate acknowledgement of the significance of this bill needs to be held here in the Parliament building. The event should include the traditional owners, the Noongar people, and other representatives. I will be writing to the Presiding Officers and the Premier about this event in due course. So please assist me with passing this bill and let us make history in Western Australia by acknowledging Aboriginal people as being the first people of Australia. I invite you again members to be magnificent and support this bill. I would like to now commend the bill to the house.

[Applause.]

Debate adjourned, on motion by **Mr A. Krsticevic**.