

## VOICE TO PARLIAMENT

### *Grievance*

**MS M.M. QUIRK (Landsdale)** [9.24 am]: I grieve to the Minister for Aboriginal Affairs. I reflect on the first anniversary of the unsuccessful Voice referendum. It is timely to review the many actions taken by the state Labor government to improve outcomes for First Nations Western Australians, but we would all concede that much remains to be done. I am mindful that remedial and targeted action touches not only upon minister's portfolio responsibilities; many portfolios impact upon the wellbeing of First Nations Western Australians. Policy settings must take into account cultural considerations in the health, housing, child protection, education and justice portfolios.

The minister would be acutely aware that during the referendum debate the no proponents asserted that Constitutional change would not materially alter the status quo. Instead, they argued "practical measures", largely unspecified, needed to be taken. Constitutionally speaking, many of those so-called practical outcomes for Indigenous people on the ground are the responsibility of the states. The no camp was disingenuous in advancing the misleading argument: why should special provision be made for one group? Inferentially, this argument suggests that one group is getting an unjust advantage over others. The notion of equality before the law, especially within the justice system as it stands, needs closer analysis. It is trite to declare that all Western Australians should be equal before the law. What is perhaps not universally understood is that whilst laws apply equally to everyone, in practice, equal outcomes are not achieved. It is substantive equality that we must strive for.

Although ostensibly applying equally to everyone, some laws have unequal application, disproportionately impacting on a particular racial group. In order to achieve substantive equality, maybe it is time we consider the use of racial impact statements. Like environmental or fiscal impact statements, racial impact statements are predictive tools used in policymaking to determine whether pending bills, if enacted, are likely to create or exacerbate disparate outcomes among people of different ethnicities or races. Racial impact statements are used to evaluate potentially adverse outcomes or the inequity of proposed legislation prior to adoption and implementation. They assist lawmakers in detecting unforeseen consequences at an early stage.

A number of states in the US have passed such laws. They emerged to combat obvious racial disparity in the criminal justice system, evidenced by massive and disproportionate incarceration rates for African American and Latino males. I have visited and spoken to US policy advocates and legislators on the issue. Each US state operates slightly differently but, generally speaking, proponents of new laws must focus on how they will ensure that any predicted inequality can be moderated through public policy mechanisms, administrative measures or the provision of resources for other remedial programs. The statements do not mandate action. With early identification, policymakers may then be able to modify legislation that would worsen existing racial disparities. Practically speaking, it is important to address a policy's unwarranted effects before it is adopted, as it is more difficult to reverse policies once they have been implemented. The results of this process are for the information of lawmakers only, but it may give rise to inviting public comment, thereby increasing levels of accountability. Alternatively, it is argued, they should perhaps even go further and include affirmative steps to mitigate inequality.

I will give two simple local historical examples. Both relate to the criminal justice system, but I envisage the racial impact process could have application in the child protection sphere or even potentially the public health arena. When I had the role of corrective services minister, many people from remote WA were being imprisoned for driving without a licence or unregistered. Invariably, they were Aboriginal. On its face, the road traffic law should apply to everyone equally. On further inspection, it was clear that many people in remote communities did not have a licence; hence, there were few in town to teach learner drivers or enable them to get their log book hours and comply with other requirements, and a licensing centre to register a car or take a driving test was hundreds of kilometres away. With no-one in town holding a licence, how could the licensing centre even be accessed? As the minister knows, there is a strong and pressing cultural imperative to attend funerals, often a distance away. How could the community travel to attend? Sure, on its face important laws should be adhered to. In practice, it was much harder to comply in remote WA than it was in the city. In that case, the then member for Victoria Park undertook to produce a report for cabinet and ultimately a number of measures were implemented to rectify the situation. In recent years, registration has been facilitated by access online.

The other example concerns the charging and incarceration of Gene Gibson of Kiwirrkurra, a remote desert community, for the murder of Josh Warneke in Broome in 2010. In 2012, 18-year-old Gene Gibson was arrested and charged with murder after he ostensibly confessed in an interview. Mr Gibson spoke almost no English and was mentally impaired. Ultimately, the police interviews were ruled inadmissible by the Supreme Court, and the charge was downgraded to manslaughter. Mr Gibson pleaded guilty and spent nearly five years in prison until his conviction was overturned in 2017. Although a number of fatal legal errors were made by investigators, a fundamental mistake was proceeding in the absence of an interpreter. In remote WA, insufficient resources are allocated to the provision of interpreters. Mr Gibson's first language is Pintupi, with Kukatja his second. With limited

understanding of English and cognitive impairment, it was difficult for him to comprehend complex information. This is a stark example of the need to provide ready access to interpreters, especially in remote Western Australia, where more than 50 different languages are spoken.

Access to legal advice is also problematic. We need to dispassionately ask whether an English-speaking accused in the metropolitan area has faced the same fate. Crafting good policy demands that we consider how decisions will play out on the ground and affect people's lives. Racial and ethnic impact statements build a critical check for systemic racism into policymaking process and can help chart a better, fairer course.

**DR A.D. BUTI (Armadale — Minister for Aboriginal Affairs)** [9.31 am]: I commence by thanking the member for Landsdale for her grievance, and I acknowledge her longstanding and unwavering commitment to justice inside and outside this Parliament. With that unwavering commitment, she also has the forensic and legal policy skills to ensure that her commitments received results when she was the Minister for Corrective Services. I refer to a number of initiatives regarding drivers' licences in remote communities from when the member for Landsdale was Minister for Corrective Services that have now made a real difference. As Minister for Corrective Services, she oversaw the creation and appointment of an assistant commissioner of Aboriginal justice within the department's executive to strengthen Indigenous leadership and direction within the department and provide high-level advice on issues relating to services for Aboriginal people as well as building Aboriginal community confidence. As minister, she also led the planning and development for the West Kimberley Regional Prison in Derby. The prison's design philosophy was that Kimberley prisoners should be housed on country, with their traditional culture informing service delivery. The unique prison architecture has allowed most prisoners to live in community-style shared households, doing their own cooking, cleaning and laundry. The minister's vision was that by developing prisoners' independent living skills and self-determination, the likelihood of reoffending and returning to custody would be reduced. That vision would have played out, but, unfortunately, the Labor Party lost government. Her vision endured, however, as it was built on common sense and justice.

Building on the member for Landsdale's legacy, the Labor government has progressed new reforms to address the disproportionate impacts Aboriginal people experience with the justice system. In 2020, imprisonment for unpaid fines was all but extinguished by a suite of reforms made to the Fines, Penalties and Infringement Notices Enforcement Act 1994. Alongside this strict new provision surrounding imprisonment for fine default was the introduction of a new work and development permit scheme to allow people expressing hardship to undertake work and development activities as a means of reducing their fine debt. Drawing on similar schemes from the east coast, the WA scheme commenced in September 2020 and is available for people who may be experiencing hardships. Those eligible can apply to complete their approved activities, such as unpaid work, mental health treatment or an educational development course under the supervision of a sponsor in place of paying the amount owed.

In addition to the justice initiatives, the Labor government has continued its efforts to close the gap in social outcomes for Aboriginal people. I acknowledge this is an ongoing challenge. The government signed up to the National Agreement on Closing the Gap in 2020 along with the commonwealth government, other jurisdictions, the Western Australian Local Government Association and the coalition of Aboriginal and Torres Strait Islander peak organisations, the Coalition of Peaks. Significantly, this is the first national agreement to be developed in genuine equal partnership with Aboriginal and Torres Strait Islander people through their representatives on the national Coalition of Peaks. The next meeting is in Perth on the fifteenth of this month. The national agreement provides an important mechanism to incorporate the voices and perspectives of Aboriginal and Torres Strait Islander people across Australia in policy development and reform. We have been very fortunate in Western Australia with the involvement of our strategic partner, the Aboriginal Advisory Council of Western Australia, and our Coalition of Peaks partners, the Aboriginal Health Council of WA and the Council of Aboriginal Services WA.

Since its inception, our government has made significant investments into delivering on the commitments under the 10-year national agreement and have developed implementation plans that outline our activities, which align with our Aboriginal empowerment strategy. Notably, this government has invested in building WA's Aboriginal community-controlled sector, headlined by \$6 million in funding to establish an Aboriginal community-controlled organisation peak body, now the Council of Aboriginal Services WA, and to continue to support the Aboriginal Health Council of WA. The Cook government, in partnership with Lotterywest, also awarded \$3.4 million in grants to 16 ACCOs to support community services for Aboriginal people across Western Australia. Significant funding has also been given for programs, such as the \$31.1 million to continue the Aboriginal community connectors program, the \$8.3 million for the Geraldton Aboriginal short-stay accommodation project and the \$18.3 million towards the construction of a new south west Aboriginal health hub in Bunbury, just to name a few.

We are very proud that last year, our government reached a settlement agreement supporting Aboriginal and Torres Strait Islander people who worked in Western Australia for little or no wages between 1936 and 1972. This settlement is recognition of the wrongs of the past. Throughout the process, the WA government worked with applicants to resolve the proceedings in a respectful and cooperative way. This settlement was an opportunity to

acknowledge the valuable contribution that Aboriginal and Torres Strait Islander people have made to our state, both past and present.

As a minister, I have identified several key priorities in Aboriginal affairs that I think can effect real lasting change to the lives of Aboriginal people. These include economic development, native title agreement-making and education. Our government has very much been committed to Aboriginal economic development, particularly in remote areas, and offers a collection of supports designed to activate Aboriginal economic development opportunities. As many are aware, Western Australia is a native title state, with over 100 determinations. We have been actively working to resolve native title compensation liabilities for agreement-making and the implementation of partnership approaches. This is designed to provide an ongoing sustainable foundation for delivering positive social, economic and cultural outcomes for native title groups. As the Minister for Education; Aboriginal Affairs, education is a high priority for me. I have visited and spoken to many people across the state on important educational themes to help with the education of Aboriginal people, especially remote communities.

I conclude by once again acknowledging the work over many years by the member for Landsdale, and I thank her for her grievance. Her record and commitment to social justice will have a long legacy in this place.

Thank you very much.