

CONSTITUTION AMENDMENT (RECOGNITION OF ABORIGINAL PEOPLE) BILL 2015

Standing Orders Suspension — Motion

MR J.H.D. DAY (Kalamunda — Leader of the House) [12.13 pm]: I move —

That so much of standing orders be suspended as is necessary to enable the Constitution Amendment (Recognition of Aboriginal People) Bill 2015 to be debated without interruption under standing order 61, both during time when government business and private members' business has precedence.

This motion reflects the agreement between the government and the opposition that this bill be able to be dealt with today in time that would normally be allocated to government business, as well as time devoted to opposition business.

Question put and passed with an absolute majority.

Second Reading

Resumed from 17 June.

MR C.J. BARNETT (Cottesloe — Premier) [12.14 pm]: I acknowledge the traditional owners of the land on which we stand today—the Noongar people. I also acknowledge in particular Aboriginal people who have come to the public gallery today for this significant event. I commend the member for Kimberley for progressing the Constitution Amendment (Recognition of Aboriginal People) Bill 2015, which succeeds the Constitution Amendment (Recognition of Aboriginal People) Bill 2014. As I outlined to the house last year, the government supports the recognition of Aboriginal people in our Constitution and offers its full support for the bill.

The passage of this bill will be an important moment in the history of this Parliament. Its significance, of course, is made even more poignant by the fact that it has been introduced by the member for Kimberley, a traditional Gidja woman from the Kimberley. Most importantly, this is a historic moment for Aboriginal people in Western Australia. Acknowledgement of Aboriginal people in our Constitution as the traditional custodians of this land is long overdue. The state government hopes that, for the 96 000 Western Australians who identify as Aboriginal, this change to our state's Constitution acknowledges their, and their ancestors', unique place in Western Australia's history, our heritage and the cultural identity of our state.

Unfortunately, the state's Constitution mentions Aboriginal people only for the purpose of discrimination. With the passage of this bill we can correct this mistake by removing section 42 of the act. As we are all aware, Aboriginal people were living in Western Australia before and when the Constitution was enacted. It is appropriate to add an acknowledgement to the preamble that the Aboriginal people are the first people of Western Australia. The issue of recognition is important for Aboriginal people. I hope they feel a sense of pride that their Parliament will pass legislation to amend the Western Australian Constitution to respectfully acknowledge Aboriginal history and Aboriginal people as the first people of this state.

This bill is not intended to create new rights or obligations. It does not intend in any way to affect the sovereignty of Western Australia or the ability of its Parliament to legislate for the peace, order and good government of the people of Western Australia. It is not intended to change any existing law, other than to add two important phrases to the preamble of the Constitution Act. The first is to formally acknowledge Aboriginal people as the first people of the lands bounded by this state. The second is aspirational, expressing this Parliament's desire to effect a reconciliation with the Aboriginal people in Western Australia. The bill also takes the opportunity to remove two provisions that no longer have any legal effect. This bill is another step toward reconciliation with the Aboriginal people of Western Australia but, as a Parliament, we have more to do to ensure greater equality for Aboriginal people in this state.

I am pleased that this legislation is the culmination of genuine bipartisanship, which has ensured that the form of recognition put before this Parliament for consideration has real meaning for Aboriginal Western Australians. I acknowledge also the excellent work, report, recommendations and findings of the bipartisan Joint Select Committee on Aboriginal Constitutional Recognition, chaired by Hon Michael Mischin, the Attorney General. The member for Kimberley served as deputy chair on this committee. The bill from the member for Kimberley genuinely accomplishes what it seeks to achieve. I congratulate the member for her role in progressing this historic and important legislation.

MR B.S. WYATT (Victoria Park) [12.17 pm]: I rise to make a contribution in support of the Constitution Amendment (Recognition of Aboriginal People) Bill 2015. I acknowledge the member for Kimberley, Josie Farrer, for moving both the original bill in 2014 and this bill in 2015. For a woman who was born on Moola Bulla station and was then taken to Fitzroy mission, to then, through grit, determination and certainly merit, work her way up to the Parliament of Western Australia, and then move with bipartisan support

Extract from *Hansard*

[ASSEMBLY — Wednesday, 19 August 2015]

p5576c-5590a

Mr John Day; Mr Colin Barnett; Mr Ben Wyatt; Mr Mark McGowan; Mr Terry Redman; Dr Kim Hames; Mr Roger Cook; Ms Wendy Duncan; Dr Tony Buti; Mr Peter Tinley

this amendment to the Constitution, is an extraordinary story. I sat on the committee to which the Premier referred, the Joint Select Committee on Aboriginal Constitutional Recognition, towards a true and lasting reconciliation, and I acknowledge the committee chair, Hon Michael Mischin, and committee members Hon Jacqui Boydell; Murray Cowper, the member for Murray–Wellington; Wendy Duncan, the member for Kalgoorlie; and Hon Sally Talbot, member for South West Region, who sat with me on that committee. I thought it was a very productive committee. We had a very short time in which to come up with a meaningful document, and I think we did so. I thank all my colleagues on that committee, and also the authors of the various submissions and evidence given to us, including that of Grant Donaldson, SC, in his expertise.

The acknowledgement of Aboriginal people in the Constitution has indeed been a long time coming. I want to remind the house of one passage of the second reading speech of Prime Minister Keating when he moved the Native Title Bill in the federal Parliament in November 1993, and I quickly quote —

... as a nation, we take a major step towards a new and better relationship between Aboriginal and non-Aboriginal Australians. We give the indigenous people of Australia, at last, the standing they are owed as the original occupants of this continent, the standing they are owed as seminal contributors to our national life and culture: as workers, soldiers, explorers, artists, sportsmen and women—as a defining element in the character of this nation—and the standing they are owed as victims of grave injustices, as people who have survived the loss of their land and the shattering of their culture.

I have been asked, as no doubt many people have been, whether this is simply a symbolic gesture that we are moving here in the Parliament. I want to take that comment from former Prime Minister Keating, because in giving it that standing, it is an acknowledgement not just of the positive contributions that Aboriginal people have made but also the grave injustices that have occurred. That is what this simple paragraph does. I will read it for the benefit of *Hansard* —

And whereas the Parliament resolves to acknowledge the Aboriginal people as the First People of Western Australia and traditional custodians of the land, the said Parliament seeks to effect a reconciliation with the Aboriginal people of Western Australia:

This acknowledges historical fact and, as the Premier said, is an aspirational statement towards reconciliation. The other two amendments simply seek to remove old sections of discrimination around the Aborigines Protection Board that are well past due.

During the winter recess, I had the opportunity to reflect on the history of Rottnest Island as a prison where Aboriginal people from all over Western Australia were held. The history of Rottnest Island as a prison is very much the history, as I wrote, of Western Australia. Effectively, as our frontier moved further north, Aboriginal people were brought down from different parts of Western Australia and put into the Rottnest Island prison. The original prison was effectively a cave on Rottnest Island and then the labour of those Aboriginal prisoners built many of those old buildings that we see and enjoy on Rottnest Island now. What has to a certain extent been lost through history is that those Aboriginal people were also employed by the police to track other Aboriginal people who were at the time considered miscreants fighting against the onset of colonisation as it headed further north through the Pilbara and into the Kimberley. It strikes me that we are yet as a state and nation to properly marry up the story of Aboriginal Australia with our story as Australians. It is not my view that there is the Aboriginal history of Australia or Western Australia and the non-Aboriginal history—it is our history; and acknowledging this in the Constitution whilst, yes, perhaps a symbolic gesture, is an important part of telling the story of who we are.

I had the opportunity, as we all do, to have received many documents. The great bequest of my father to me it seems was boxes of documents of various plans, initiatives, reviews and anything to do with Aboriginal affairs over his lifetime. I pulled out one document that was prepared by my dad when he was commissioner for Aboriginal planning about the time Prime Minister Keating was introducing the Native Title Bill. This was titled “Aboriginal Plan 1993” and had been developed by the then Aboriginal Affairs Planning Authority. The foreword states —

Aboriginal people occupy a special position in Australia’s history and culture. As the indigenous people they provide a significant source for understanding our country and its lands. While it is well documented that Aboriginal people have suffered deep social and economic hardships, the emergence in the past few years of a strong Aboriginal voice calling for the redress of these disadvantages is now matched by the State Government’s commitment to finding the best ways of assisting this renewal process.

The Constitution Amendment (Recognition of Aboriginal People) Bill 2015 is, if you like, part of that renewal process. When I spoke to the 2014 bill, I reminded members of the original Constitution Act 1889. Section 70 stated —

Extract from Hansard

[ASSEMBLY — Wednesday, 19 August 2015]

p5576c-5590a

Mr John Day; Mr Colin Barnett; Mr Ben Wyatt; Mr Mark McGowan; Mr Terry Redman; Dr Kim Hames; Mr Roger Cook; Ms Wendy Duncan; Dr Tony Buti; Mr Peter Tinley

There shall be payable to Her Majesty in every year out of the consolidated revenue fund the sum of 5 000 pounds mentioned in Schedule C. to this Act to be appropriated to the welfare of the Aboriginal Natives, and expended in providing them with food and clothing when they would otherwise be destitute, in promoting the education of Aboriginal children (including half-castes), and in assisting generally to promote the preservation and well-being of the Aborigines. The said annual sum shall be issued to the Aborigines Protection Board.

The amendment seeks to remove lasting references to that board. Section 70 goes on to state —

... under the sole control of the Governor ... Provided always, that if and when the gross revenue of the Colony shall exceed Five hundred thousand pounds in any financial year, an amount equal to one per centum on such gross revenue shall, for the purposes of this section, be substituted for the said sum of Five thousand pounds in and for the financial year next ensuing.

Debates around section 70 continue to rage amongst some groups to this very day. The history of section 70 is that Sir John Forrest, before he became Premier—from memory, he was surveyor general—recommended the inclusion of the Aborigines Protection Board to effectively control the allocation of those moneys. After Forrest became Premier, an exchange between Chamberlain in England, who was the colonial secretary in 1895–96, and Forrest debated whether section 70 should be removed. It was in the context of similar arguments that we hear today: what would the English Parliament know about how we in Western Australia treat Aboriginal people? Five years after section 70 was introduced, Chamberlain wrote —

When in 1887 the Legislative Council of the colony passed a resolution that the time had arrived when the executive should be made responsible to the Legislature of the colony, and that Western Australia should remain one and undivided, Lord Knutsford, while accepting these resolutions in principle, stipulated for special protection for the natives, and, in his Despatch of January 3, 1888, he expressed his concurrence in the opinion of the Governor, Sir FN Broome, that some measure would be necessary for placing the aboriginal inhabitants under the care of a body independent of the Parliament of the day, and stated that he considered the Governor's suggestions which were substantially those afterwards adopted, to be reasonable and well considered.

Chamberlain went on to write —

This correspondence was before the Imperial Parliament when considering the Bill, and the provision respecting the Aborigines Protection Board was clearly understood to be one of the conditions of the grant of self government. Mr Parker, the senior delegate from Western Australia, stated before the Select Committee of the House of Commons: "We have accepted responsible government on the special understanding and arrangement that this Aborigines Protection Board ... shall continue".

As I pointed out last year, after Sir John Forrest became Premier he quickly moved to enter into this quite long dialogue with Chamberlain about repealing that act. Forrest wrote to Chamberlain —

The Parliament of Western Australia is more likely to look after the interest of the aborigines than the Imperial Government. I am not aware that the Imperial Government has ever done much for the aborigines of Western Australia, nor do I know of any special efforts being made for their welfare by the people of the United Kingdom. That being so, why all this outward show of sympathy for the aborigines and, at the same time, want of confidence in the colonists of Western Australia, who have alone done whatever has been done for their welfare?

We knew where this was eventually heading and Chamberlain was keen, I guess, to extract himself from the argument and wrote to the then Acting Governor Sir A.C. Onslow —

I am anxious to meet the views of Colonial Government as far as possible. I am prepared to approve Reserved Bill, omitting from Section 70 as much as places expenditure under the care of independent unofficial Board, so that while permanent appropriation of 5,000L secures requirements of natives, your responsible advisers would advise Governor as to management of fund, same way as other expenditure.

The government had a couple of cracks at it, because it did not follow the manner and form provisions stipulated in the Constitution to amend, but eventually removed section 70. As I said, this bill of 2015 to finally remove the reference to the Aborigines Protection Board was effectively started by Sir John Forrest back in the 1880s, so it certainly takes some time to move on any change to our Constitution.

I will not refer in great detail to the history of the Aborigines Act 1905 through to now. Either way, the history of Aboriginal people in Western Australia and more broadly around Australia is well known and well documented. We are now having a discussion at the federal level around constitutional recognition of Aboriginal people, which is separate from the one we are having in this place and a much more complicated conversation than we

Extract from Hansard

[ASSEMBLY — Wednesday, 19 August 2015]

p5576c-5590a

Mr John Day; Mr Colin Barnett; Mr Ben Wyatt; Mr Mark McGowan; Mr Terry Redman; Dr Kim Hames; Mr Roger Cook; Ms Wendy Duncan; Dr Tony Buti; Mr Peter Tinley

are having here, due primarily to the fact that there is no requirement for a referendum about this move. However, it certainly is now moving in terms of discussions around culture and Aboriginal identity and what we want and how we expect to see that going forward. We are familiar with the apology and the stolen generations. I drag around like some anchor and always have with me my grandmother's file from the Department of Native Affairs. I never met her but it sets out her life and the early life of my father in great detail. It always strikes me as a reminder to us all that we are not talking about events hundreds or thousands of years ago; we are talking about events that still impact upon people whose lives were controlled, bullied and demeaned by governments over a long period. We are seeing that discussion now bubble its way through in respect of stolen wages, the stolen generations and other areas around abuse or educational outcomes. However, we cannot forget that people still live today who have in their possession these extraordinary files of government control over their life. They talk about children removed and how those children were to be dealt with. The first five years of my father's life is documented in that file, perhaps more so than the life of most people in a diary. I now know how much was spent on my father in his first few years on anything concerning clothes, food or requirements.

It is indeed an extraordinary thing for us now to think about those impacts. When people ask me whether this bill is a symbolic gesture, I say, "Yes, but it is also the story and acknowledgement of the standing of Aboriginal people that Keating referred to in that Native Title Act second reading speech in 1993." The passage of this bill will not address the issues that we talk about most days in this Parliament. There is still much to happen around all areas of Aboriginal affairs, which I will refer to generically as Closing the Gap, whether it be in health or in education. However, we cannot underestimate the importance of these sorts of amendments to legislation; the acknowledgement of Aboriginal people; and the acceptance of the story and the cultural practices of Aboriginal people into the document that deliberately discriminated against and excluded them from the time the document was first passed by the English Parliament back in 1889. These are important historical times that we must all acknowledge and celebrate.

I want to thank Josie Farrer, the member for Kimberley. As I said, for somebody who was born on Moola Bulla station and taken to the Fitzroy mission to be now sitting in Parliament and moving an amendment to the Constitution, it is indeed something in which she should take great pride. That determination that we all see took her to the peaks of the Shire of Halls Creek and now to the peaks of the Kimberley representative here in Parliament. So, Josie, thank you very much for that.

I say to all my colleagues that we should be proud of what we are doing. I do not have a thunderclap of revelation here. We are acknowledging something that the High Court of Australia acknowledged a long time ago and was embedded in the Native Title Act. It is simply bringing our Constitution up to speed with things that have been happening uncontroversially around the nation for a long period. I thank Parliament for the opportunity not just to speak to this bill, but also indeed to be part of the process in which it got to this place.

MR M. McGOWAN (Rockingham — Leader of the Opposition) [12.34 pm]: I also begin by acknowledging the traditional Noongar owners of the land on which we stand today. I acknowledge the Indigenous people and their supporters in the gallery today. I acknowledge Aboriginal people across Western Australia, in particular the member for Kimberley, Josie Farrer, and thank her for her contribution to getting us to this point. I thank the member for Victoria Park for his very well researched words.

I want to talk about a couple of things in this contribution. First of all, I want to talk about the Constitution Amendment (Recognition of Aboriginal People) Bill 2015. I also want to talk about the member for Kimberley and her role in this legislation. I also want to talk about her history because I learnt about it recently and I am absolutely amazed by her life story. I might talk about that in a moment.

First of all, I want to talk about this legislation to amend the Constitution. It is symbolic but it is also meaningful. It is to me a demonstration of how far Parliament has come. I came into Parliament 20 years ago and some of the first debates I watched from up in the gallery were debates around native title issues. Parliament today is fundamentally different from what it was then. The debates have changed, the language has certainly changed, and attitudes have changed. That is what this bill is a part of; it is showing that transformation in this place.

Although the bill is symbolic, I want to quote Paul Keating, who brought forward the native title legislation nationally 22 years ago, and what he had to say about these ethical and moral issues. 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.

Extract from Hansard

[ASSEMBLY — Wednesday, 19 August 2015]

p5576c-5590a

Mr John Day; Mr Colin Barnett; Mr Ben Wyatt; Mr Mark McGowan; Mr Terry Redman; Dr Kim Hames; Mr Roger Cook; Ms Wendy Duncan; Dr Tony Buti; Mr Peter Tinley

Josie Farrer, in discussing with me these issues, put it in this way: the purpose of this bill is to make sure that Aboriginal people feel more confident in their community. For me it is to recognise a historical fact and a historical role. It is to take our step as a Parliament on the long road towards reconciliation with Aboriginal people. It has taken 18 months or so to get this bill to this point. I expect that it will pass this house today. The road commenced back in 2004 when the original words, substantially, that we are passing today were put together by the State Solicitor at the urging of the then upper house President, Hon John Cowdell, and the then Premier, Hon Dr Geoff Gallop. We know that the words are symbolic but meaningful; and importantly they contain the words “reconciliation” and “Aboriginal people as the First People of Western Australia and traditional custodians of the land”. The bill will also remove some of the historical words that are offensive and are in the state Constitution until the point of the bill’s passing. Therefore, for those purposes and for those reasons this bill is important. However, it is also important to recognise what happened to people. It is important not only for people who are historic and gone, but also for people who are alive today. They are people who endured things that most of us would find unimaginable and extraordinary. By passing this legislation that recognises Aboriginal people in the Constitution, I think we are taking some steps towards softening the pain that some people still feel about what happened over the course of their lives. We read and hear about these things. We have heard about the stolen generation; the father of Ben Wyatt, the member for Victoria Park, endured it.

I want to tell the story about someone else in this position that I learned about on Friday when sitting in the electorate office of Josie Farrer, the member for Kimberley. Frankly, if there has been a more amazing life story to come into this Parliament, I have never heard it. In this Parliament I have met war veterans, people who have made contributions in sport and business, and people who have had lived amazing lives overseas or who have come from other places, but I have never heard a story like this one before. I want to tell Josie’s life story because I think it puts in context why this is an important achievement for someone of that background. Josie was born at Mulla Bulla station in the East Kimberley near Halls Creek. She is a proud Gidja woman. She did not know her father until a man arrived when she was a grown woman and claimed that he was her father. She has never seen any documentation to prove that that is the case and he is now long gone. When she grew up at Mulla Bulla station, she grew up next to the campfire with the other kids. She was largely raised by her grandparents along with a group of other kids who grew up in the same community. When she went to school for the first time, she was nine years of age. A truck arrived at the campfire, she hopped on the back and she went off to what was loosely termed a school outside of Halls Creek and she learnt *God Save the Queen*—she had a few days at school and learnt the words to *God Save the Queen*. She wore clothes made of flour bags to go to school, which was at a settlement near Mulla Bulla and Halls Creek. She went off to school with the other children who had been living by the campfire. They did not live in houses, shacks or shanties; they lived by the campfire. There was another group of children who were taken to the place where people were living near Mulla Bulla who also had been removed from other parts of the Kimberley. She described the term that was used at the time in the official documents. They were described—we understand that term is offensive these days—as half-caste people. She, as one of the kids from that original settlement, was not allowed to mix with these children who arrived; it was against the rules for her to mix with the, so described at that point in time, half-caste people. She did those few days of schooling and learnt *God Save the Queen*.

In the mid-1950s another truck arrived and she and some of the other children were put on it. She was taken away from her mother and taken to Fitzroy Crossing, a long way from Halls Creek. The Department of Native Welfare seconded a Methodist church in Fitzroy Crossing and she lived in the dormitory. She did not see her mother, who she was taken from, or her grandparents. She did her schooling in the former Methodist church where she learnt English for the first time. She also learnt how to read and write for the first time. If anyone has ever seen Josie’s writing, they will know that it is absolutely beautiful writing. She did not see her mother again until she ran away from the school in Fitzroy Crossing after a year or so. She was found after swimming the Fitzroy River with the other girls who had run away to try to get home. Fitzroy River was in flood and she said there were snakes, horses, logs and other things in the river, but somehow they crossed the river trying to get home. She was found, flogged and taken back to the school. She was then sent to Derby and put in a school there where she participated in what would now be known as a homemaker program. She did two years there and tried to run away again by getting on the back of an old truck with the other girls, which got them back to Fitzroy, to try to get back to Halls Creek. I understand the authorities then relented and allowed her to go back to Halls Creek, where the town site was then under construction. She then got back to Mulla Bulla after years away from her mother and grandparents. She was given a job as a horserider mustering cattle on the property there at Mulla Bulla. She then did a job as a domestic cleaner at the station at Mulla Bulla.

At the age of 17 she married Bill. Because she did not have a birth certificate or anything of that nature, she needed the permission of the Department of Native Welfare to get married. Her husband Bill was a horse breaker. They moved around the Kimberley from station to station. She worked at Kimberley Downs

Mr John Day; Mr Colin Barnett; Mr Ben Wyatt; Mr Mark McGowan; Mr Terry Redman; Dr Kim Hames; Mr Roger Cook; Ms Wendy Duncan; Dr Tony Buti; Mr Peter Tinley

station, Leopold station and Mabel Downs station as a domestic, sewing, making kids clothing, cooking and making bread in the houses. She had three children with Bill and when she was eight months pregnant with her fourth child, her husband, Bill, died. She did not know what to do. She had three children and one who was about to be born, and she had no money, so she went back to her mother in Halls Creek. She made some money working at the Charles Perkins Hostel doing cleaning and domestic duties. She lived out on the reserve at Mulla Bulla with her mother. In the early 1970s with four children, while living with her mother, she met Mario. Mario had escaped from Poland and come to Western Australia, and was working on a road gang building roads out near Halls Creek. She has lived with Mario for over 30 years. She had five more children with Mario, so that is nine children. She also looked after the four children of her sister, who had passed away, which is a total of 13, and then two white children who came to the community moved in and she raised them as well. That is total of 15 children!

The SPEAKER: She should be the Speaker! Sorry, Leader of the Opposition!

Mr M. McGOWAN: We might take you up on that, Mr Speaker!

She moved into a house for the first time in 1974—that is the first time she had ever lived in a house with a toilet, shower and a bathroom. She said to me she always thought she had to go outside to go to bed and those sorts of things. Mario continued working for Main Roads building roads and was away a lot. Josie raised the 15 children. The kids went to school in Halls Creek and she looked after them over that time. Over time, of course, the children moved away and got jobs and the like. Unfortunately, one of the white children she raised passed away from a brain tumour. Her nine children live in Western Australia and Queensland, with one living in Canada.

In the 1970s she got a job cleaning a cafe. In the 1980s she started working in different fields outside of cleaning and being a domestic at stations. She realised her language was so important. Her first language is her Aboriginal language, her Gidja language. She started working on the Language Project to maintain and record languages as part of the Kimberley language pilot project. In the late 1980s she set up a radio station in Halls Creek with the ABC and started establishing traineeships for local Indigenous people.

In fact, she trained two blind presenters in radio presenting and media, one of whom was Sandy Dann who people might know is part of Goolarri in Broome. Coaching her on that allowed Sandy to become a very professional radio presenter in Broome.

In 1988, the member for Kimberley was elected to the Halls Creek council. She wanted to achieve things for Indigenous people in the world in which she lived. She wanted them to be able to work in education and agriculture, and pastoral activities and the like, and to help break the cycle of offending and make sure that people had meaningful lives. After getting herself elected to Halls Creek council, in the 1990s she became shire president of Halls Creek. She told me that she wanted to get elected because the negativity around Aboriginal people—to prove that Aboriginal people can do things and improve things. From 1988 to 2004, Josie served on the Halls Creek council. She resigned from the council in 2004 when her grandson passed away. From 2004 till 2013 when she was elected to Parliament, she indicated to me that that was a time of mourning because she felt the pain so strongly after the loss of her grandson. In 2013, as we know, she was elected to Parliament and this year in 2015 she is passing a bill through the Parliament to recognise Indigenous people. If there is a more amazing life story than that in this Parliament, or in the history of this Parliament, I would be surprised. I think we have someone very special amongst us who has done some amazing things. One of the amazing things that she has done is what we are doing today.

MR D.T. REDMAN (Warren–Blackwood — Leader of the National Party) [12.51 pm]: I start by acknowledging the traditional owners, the Noongar people, and in doing so highlight our collective responsibility to ensure the first Australians share in the prosperity of Western Australia. It is an honour to be speaking in this chamber on this bill—to play a small role in making history. It is certainly days like today that I remember why I became a member of Parliament in the first place. From me, I congratulate the member for Kimberley for the leadership that she has shown in bringing this bill before the Parliament. I also recognise the contribution of the members of the Joint Select Committee on Aboriginal Constitutional Recognition who reviewed this bill, including my colleagues the member for Kalgoorlie, Wendy Duncan, and Hon Jacqui Boydell, MLC.

The economic and social outcomes for Aboriginal people are unacceptably poor. They have poor health, a lower life expectancy, higher suicide rates and, in many cases, Third World living conditions. They are less likely to finish school, more likely to go to jail, less likely to have a job, and they are more likely to suffer from alcohol and drug abuse. In the face of such serious problems, some have asked the question: what is the value of a symbolic gesture like recognition in the Constitution? Surely is it not more important to address the practical issues on the ground? Has the apology to the stolen generations done anything to improve Aboriginal life expectancy? I am engaged in a genuine effort by this government to improve outcomes for Aboriginal people.

Extract from Hansard

[ASSEMBLY — Wednesday, 19 August 2015]

p5576c-5590a

Mr John Day; Mr Colin Barnett; Mr Ben Wyatt; Mr Mark McGowan; Mr Terry Redman; Dr Kim Hames; Mr Roger Cook; Ms Wendy Duncan; Dr Tony Buti; Mr Peter Tinley

I have spent a lot of time over the past few months travelling to communities in the Kimberley to discuss practical things such as health, housing and education. I certainly appreciate the support the member for Kimberley offered in that process. Social disadvantages are deeply entrenched and have been suffered across generations of Aboriginal people. We cannot blame Aboriginal people for being suspicious of government given what has gone on in the past.

A fortnight ago, I travelled to remote communities in the Kimberley as part of the consultation on the government's reform process. In one community, I sat next to an Aboriginal leader who told me that he was waiting for constitutional recognition. It was important for him to know that his proud and ancient culture was being formally recognised by this Parliament. That is the value of this symbolic gesture. It shows him and all Aboriginal people that we are genuine and that we acknowledge the importance of Aboriginal history and culture to all Western Australians. It means that we can engage in these difficult discussions from a place of mutual respect and dignity. In the debate about practical measures versus symbolic gestures, there cannot be one without the other. It is no good making sweeping, symbolic gestures without doing anything to address the problems on the ground. However, we cannot move forward and improve social and economic outcomes without the recognition of historical truths. As the member for Kimberley said in her second reading speech, recognition, acknowledgement and acceptance are necessary steps to true and lasting reconciliation. History will judge us harshly on what we do next; how we walk the talk of reconciliation, and how we as a government and as a Parliament work with Aboriginal people to make sure the future is an improvement on the past. Today's recognition of historical fact is not where we stop. It is where we start.

DR K.D. HAMES (Dawesville — Minister for Health) [12.55 pm]: I would first like to recognise the traditional owners of the land—not just this land on which we meet today, but the land of all the Aboriginal people of Western Australia, and I particularly acknowledge the member for Kimberley for her great work in bringing this legislation forward. It was very interesting listening to Josie's history. It is amazing. I did not know she had been on Kimberley Downs station. I was there as a baby and that is where my name came from. I was very interested to hear that. I am speaking partially because of the great history of this occasion, but partly because I was Minister for Aboriginal Affairs probably for seven years altogether. During that time, I met some amazing Aboriginal people with whom I became good friends, or I was already good friends with them. There were people like my two Aboriginal policy officers during that time, John McGuire and Neville known as "Nifty" Collard. Ben Wyatt's dad, Cedric, was chief executive of the Department of Aboriginal Affairs when I was the minister. He was a fantastic person to work with. In regional areas, Irene Davey and her family from One Arm Point helped Josie's campaign. She is an amazing woman with an amazing family. Interestingly enough, one person whom I would include in the list of amazing people is a lady called Joan Martin. People will remember Joan Martin because she was evicted from her house in Karrinyup by me as the Minister for Housing, yet I ended up getting to know her very well. I have some of her paintings in my office down in Mandurah. She has a similar story coming from those early days, being taken away from her family and put in an institution, and then her life developed from that time. Despite the fact that there were problems and issues with her children, she remained an amazing lady.

I think I probably most enjoyed when I was not in Parliament, after I lost my seat in 2001, and I started a company doing Aboriginal heritage surveys, particularly doing stuff with Joan Martin and other surveyors. My company got a contract to do Aboriginal heritage surveys for the then Kings Park Board. We managed surveys of the board, but it also asked me to write a history of Kings Park. I compiled an Aboriginal history of Kings Park. The member for Victoria Park talked about how history is really a matter of who writes it as to what the history is. We all know the two versions of the Pinjarra "battle" on one hand written by white people and the "massacre" on the other hand written by Aboriginal people. Having studied that story fairly carefully, I tend to the latter rather than the former. Those things tell different stories. There is a book by a man called Keeffe, *Eastward Ho: To Mullewa and the Murchison*, which is the story of early settlement in Geraldton. It explains the expansion out into Geraldton and the contact with Aboriginal people out there. In terms of how that conflict went, it was written by the white people. Of course, many of those Aboriginal people ended up on Rottnest Island. People from all over the state ended up on Rottnest Island and large numbers of Aboriginal people died there, both through illness and due to other reasons. Those stories are written by Aboriginal people. When I compiled the history of Kings Park, we spent a lot of time at the library going through stories by Daisy Bates, a lady called Vinnicombe, and numerous other authors who had written components of history that included Kings Park. I put all that history together as a single block. In doing that, I talked to Aboriginal people about their view of the history of settlement in Kings Park. The white story that is told is of Irwin landing and meeting Yellagonga, and Yellagonga thinking that the spirits had come and handing over the land and moving to Lake Monger. A park is named after Yellagonga in the northern suburbs. It was a devastating time for Aboriginal people. Some of them remained in Perth but many went back to family and relatives in the regions

Extract from Hansard

[ASSEMBLY — Wednesday, 19 August 2015]

p5576c-5590a

Mr John Day; Mr Colin Barnett; Mr Ben Wyatt; Mr Mark McGowan; Mr Terry Redman; Dr Kim Hames; Mr Roger Cook; Ms Wendy Duncan; Dr Tony Buti; Mr Peter Tinley

around Perth. Of the Aboriginal people who have now come back to the city, very few have direct provable connections to the city of Perth. Finding people who knew the Aboriginal story of Kings Park was very difficult.

I would like to quote one little section from the document I have produced. It is a direct quote from Daisy Bates that reflects the history of Aboriginal people. This was written about the Bibbulmun race but could quite easily apply to Aboriginal people across the state. Of course, in the early days there was no recognition of Aboriginal people, the suffering they went through and the effect of white people on their life and society in Western Australia. I quote Daisy Bates —

“I can never look down on the panorama of that young and lovely city from the natural parkland on the crest of the Mount Eliza that is its crowning glory without a vision of the past, the dim and timeless past when a sylvan people wandered its woods untrammelled, with no care or thought for yesterday or tomorrow, or of a world other than their own. Scarcely a hundred years have passed since that symmetry of streets and suburbs was a pathless bushland, a tangle of trees and scrub and swamp with the broad blue ribbon of river running through it, widening from a thread of silver at the foot of the ranges to the estuary marshes and the sea.

Through it all, a kangaroo skin slung carelessly over his shoulders, a few spears in his hand, strode the first landlord, catching fish in the river-shallows, spearing the emu and the kangaroo, and finding the roots and fruits that were his daily bread. His women and children meekly followed, carrying his spare weapons, their own household goods, and perhaps a baby swung in the kangaroo-skin bag. Every spring and gully, every quaintly distorted tree, every patch of red ochre or white pipe-clay was his landmark, and every point, hill, valley, slope or flat from the river’s source to its mouth had its name. Simple in his needs in a land of plenty, knowing none other than the age-old laws of life, and mating, and death, that have been his through the unreasoning centuries, he was a barbarian, but his lot was happy. As far as humans can, he lived in perfect amity with his fellows.”

Although I have talked about the many people who I have known and the experiences I have had within Western Australia’s ministry, one of the greatest experiences of my time was when consideration was being given to the damming of Dimond Gorge to create another Ord River dam. I met with some of the elders from that community to discuss that. One of the elders, who was in his late 70s but has now passed, was from Mt Barnett. He was a tall, proud man. He told the story of seeing his first white man when he was 14 years old. We sat around a fire where they cooked up some beef. The beef was probably the toughest I have ever had in my life, but old Billy said it was fantastic and so tender! They also cooked some fish that they had caught from the dam and told stories of the region. Walking into that spot, we walked past mounds of rocks covered in flint. Spears and axe heads used as skinning implements were scattered carelessly over the top. One was picked up and shown to me. He said that before whitefellas came along, 5 000 people had lived in this gorge—an amazing number—and had lived off the plenty of that land. As a result of that visit, I strongly opposed the damming of that gorge. As members know, the damming did not go ahead. It was certainly one of the most amazing experiences of my life. As some members know, I have recently been to Greece. I saw the ancient history of Greece in looking at the great edifices, the stones and graves that go back to 1 000 BC; that is 3 000-plus years ago. This state’s Aboriginal history is 50 000 to 60 000 years old, but for all of the things that have happened, Aboriginal people live here with their history and their culture.

The member for Kimberley has done a great thing in introducing this bill. I was a member of Parliament during the 1990s when this Parliament, in a very strong bipartisan way, apologised to the stolen generation. I am extremely proud once again to be in this Parliament, again in a bipartisan way, to recognise Aboriginal people in the WA Constitution. To the member for Kimberley, thank you very much for your great work.

MR R.H. COOK (Kwinana — Deputy Leader of the Opposition) [1.06 pm]: I rise to make my contribution to the Constitution Amendment (Recognition of Aboriginal People) Bill 2015. I start by joining others in acknowledging the traditional owners of Western Australia, but in particular the Whadjuk people of the proud Noongar nation; that group of people who battled the odds of the greatest dispossession in this state and who are still a loud and proud nation within our community. I also acknowledge the member for Kimberley and the member for Victoria Park for their contribution to this debate. This is no mean feat at all. We have come to a substantial and historic point in time. I am immensely proud to be part of a political party that is part of this legislation. This does huge credit to all members of Parliament. It is not that long ago that Hon John Coddell entertained the Parliament with similarly drafted legislation, but it was given very short shrift indeed by some representatives in this place and given no hope of passage through both houses. The fact that we have come this far is a great credit to the people who are now in this place and to the leadership of those groups.

This is an extraordinary step. It is a single and largely symbolic step. I want to reflect for a moment on the importance of symbolism. The member for Victoria Park said this is symbolic, which is important of itself. It is not enough, and never will be enough, but it is an important step. This bill rights some wrongs of some outdated

Extract from *Hansard*

[ASSEMBLY — Wednesday, 19 August 2015]

p5576c-5590a

Mr John Day; Mr Colin Barnett; Mr Ben Wyatt; Mr Mark McGowan; Mr Terry Redman; Dr Kim Hames; Mr Roger Cook; Ms Wendy Duncan; Dr Tony Buti; Mr Peter Tinley

ideas about how Western Australia represents Aboriginal people in its Constitution. Very importantly, it places an opening statement in the WA Constitution that acknowledges the traditional owners of this country and the rightful place they play as Indigenous people on this land. It describes the process and the importance of that acknowledgement in the spirit of reconciliation—reconciliation being a very important journey that we are all on. Although that is a symbolic gesture, it is a very important one for overcoming this issue of invisibility of Aboriginal people, and indeed a lot of minority groups in our community, not only Aboriginal people in our life's history but also in our contemporary lives.

Invisibility is about how people perceive themselves and are perceived through the social dimensions in which we live. Aboriginal people have fundamentally been written out of our collective story. In fact, as we now know, through great regret, active government policies sought to not only make Aboriginal people invisible, but also essentially eliminate them as a group within our society—an active genocide if you will. If that intent was not about physical genocide, it was certainly about cultural genocide. From that point of view we have a very long road to travel to understand the way to go to remedy that.

My attention is drawn to the issue of transgenerational trauma and its role in the lives of people who survived the Holocaust. We are reaping the very rich and damaging rewards of what I believe is a transgenerational impact upon Aboriginal people from the policies of the Swan River Colony and its early days and, as the member for Victoria Park observed, not so early days in our history. So we have a lot of work to do, indeed, and part of that work is about reversing issues around invisibility. I am grateful to the academics Fryberg and Townsend, who refer to invisibility and the impact it has upon the individual in their paper "The Psychology of Invisibility". They observe, among other things, in their paper —

Majority group members enjoy the tacit privilege of being positively represented in multiple ways in the American cultural imagination, —

That they describe —

whereas people associated with minority groups are often represented in ways that have negative and limiting resonances or they are not represented at all—that is, they are invisible.

They go on to describe —

When a given domain lacks social representations of one's identities, members of that social identity group are deprived a sense of belonging and a set of self-schemas and/or self-strategies for how to be in that domain. In essence, the absence of representations means that one requires more cognitive resources and effort—a greater leap of imagination—to conceive of oneself in that domain.

We have heard the Leader of the Opposition describe the extraordinary efforts that the member for Kimberley went about establishing herself, understanding her identity and making her way in society despite all the institutional and social dimensions which rendered her and her culture invisible.

Fryberg and Townsend go on to observe —

As people confront the representations of their group that others hold, they are introduced to new images and ideas about who they are and how they should behave ... People use them to orientate themselves in the social context (to represent) and to communicate with others (to re-present).

...

As people described themselves through the social representations of the groups to which they belong ... so too must they contend with the meanings and ideas that they around other people attach to those representations ... In other words, social identities, and their respective social representations, have consequences or every day experiences and social interactions.

It means that what we are doing here is not only a grand gesture on behalf of the founding document of our democracy but also part of a very small effort to try to eliminate that invisibility of Aboriginal people in our society. To the extent that provides people with greater certainty, with more positive self-resonance about culture and their place in our broader community, I think what we are doing here is an incredibly important task.

When I began my time as a social activist supporting the Aboriginal rights movement some years ago, we often talked at different times about the big task at hand. Initially it was land rights; then it was the treaty, native title and reconciliation. At the moment the big issue is recognition in the nation's constitution. We have always strived for those big steps. What I have learnt over that time is that no single grand gesture actually resolves these issues; it is actually an explosion of little activities, little gestures, policies, actions, words and meanings everywhere, that go toward resolving this patchwork, this broken quilt that we have at the moment in our social fabric. It is about little things that go to mend the holes in that social fabric, so we should not underestimate what we are doing here today as an important exercise. However, as I said, it is not enough; we have to do more. What

we could be doing, for instance, is flying the Aboriginal flag out the front of Parliament House and from these buildings. That would be a very simple symbolic gesture that says that this place is as much about the first nation people as it is about people who have come since those times. We could begin each day with a simple acknowledgment of the traditional owners of the land upon which we meet—simple words that quietly acknowledge and continue to acknowledge in our day-to-day lives the enduring values of the oldest living culture in the world.

There are other things, of course, but let not this just be simply an apology; let not this just be allowed to live today, as important as today's gesture is. Let us continue to apply ourselves to this long journey that we are on. As I said, we are suffering from the impact of transgenerational trauma, so all of us have to continue to play a role to try to mend the damage that we have done, and to try to address the dispossession, the disadvantage and the attacks upon people's culture and people's lives. This is a great thing we are doing today, and it is an extraordinary effort by the member for Kimberley and the work that she has done to bring it to this place. It is a great effort by leaders on the other side to make sure that this is moving forward in a bipartisan way, and we should all be very proud of that process. However, let us not forget that there are many more little explosions of activity, gestures, policies and reparations that must continue to take place, because this task is very much in its early stages.

MS W.M. DUNCAN (Kalgoorlie) [1.17 pm]: I really appreciate the opportunity to speak now on the Constitution Amendment (Recognition of Aboriginal People) Bill 2015. There are some school students who are waiting to speak to me, but this debate is far more important. I also commence my words by recognising not only the Noongar people on whose land we meet today, but also all Aboriginal people in Western Australia, and in particular Josie Farrer, the member for Kimberley. I note some confusion in the house with the seat that starts with the letter K. I just want to say that the member for Kimberley has done a massive job in bringing this bill to the house. I as the member for Kalgoorlie have played a very infinitesimal part in this as a member of the Joint Select Committee on Aboriginal Constitutional Recognition. However, can I say that, for me, it is huge, and it always will be a very large part of my job as a member of Parliament. It has been a great honour to have been part of this process and it certainly brings me incredible satisfaction for the bill to be now debated in this house.

As has been noted in this debate, the bill was first introduced in June last year and then stayed on the notice paper for quite some time before it was brought on for debate. I think at the time we were at risk of losing a momentous opportunity to recognise Aboriginal people in our Constitution. As the member for Kwinana noted, the leaders of the parties got together and worked out a way forward and that is something for which we will be forever grateful. The outcome is what we now see today. One of the most enjoyable parts about being a member of the joint select committee was the way we worked together in a collaborative manner with real intent to come up with a result that had consensus and bipartisan support. We took the time to look at the experiences of other states and to take submissions, but what really made the task much easier was that in between introducing the bill and it coming on for debate, the member for Kimberley and her supporters contacted more than 400 stakeholder groups. We were assured during our deliberations that this form of words and the bill had wideranging support from Aboriginal communities in Western Australia.

In some of the submissions we received suggestions that perhaps the wording was too simple and that we should try to be more magnificent in what we were trying to say. I think it was Professor Anne Twomey who suggested that we should put more meat around the wording in the bill. However, in her wonderful way of putting things, the member for Kimberley calmly, quietly and without force told us that the Aboriginal people in Western Australia speak many languages and sub-dialects and that they sought wording that everyone could understand and support. It was really quite deliberate that our committee came up with the wording as explained in the conclusion on page 55 of the report, which reads —

Relative to other proposals, this is a modest, uncomplicated, but nonetheless symbolically significant statement. It is unlikely to generate substantial controversy and is arguably, the most widely consulted and supported proposal for constitutional recognition undertaken in Western Australia to date.

It gave us all great comfort that we could go forward with this form of words and know that it would be supported widely. I thank you, member for Kimberley, for giving us that comfort.

Another question that was debated late last year was the effect of this clause on other statutes of the state and whether it is justiciable. I must say that I was pleasantly surprised that in spite of the fact that non-effects clauses were introduced in other states, having sought very detailed advice from the Solicitor General and independent state counsel, we decided that a non-effects clause was unnecessary. One of the submitters who influenced me was Professor George Williams, who said that such clauses create the perception that the recognition is insincere, and has undermined Indigenous support in the four jurisdictions where constitutional recognition has

Extract from Hansard

[ASSEMBLY — Wednesday, 19 August 2015]

p5576c-5590a

Mr John Day; Mr Colin Barnett; Mr Ben Wyatt; Mr Mark McGowan; Mr Terry Redman; Dr Kim Hames; Mr Roger Cook; Ms Wendy Duncan; Dr Tony Buti; Mr Peter Tinley

occurred. It was very courageous of the committee to decide that a non-effects clause was not necessary. I am very proud that that is what we decided.

The bill will amend a couple of other provisions in the Constitution. It will delete section 42, which relates to the formation of the state and legislature, and it will remove reference to the Aborigines Protection Board in section 75. Those two changes will certainly enhance the Constitution and add value to the recognition that is given in the preamble.

It was interesting to hear the member for Kwinana talk about invisibility. Only last week I was talking to a highly regarded Aboriginal elder in the goldfields. She said, “Sometimes, Wendy, we feel like we don’t exist. You talk about us, you write about us and you do things for us. And when we’re in the media, it’s usually for something we have failed at. Nobody talks with us or asks us our opinion.” That is one of the big challenges of the day. Surely recognition in the Constitution will be a small step towards a greater feeling of inclusion for Aboriginal people. As has been noted, recognition in the Constitution will not revolutionise Western Australia and its relationship with Aboriginal people, but it certainly is a very big step in saying, “You are not invisible. You do belong, you have always belonged; you were here first.” That is very important.

Another lovely comment was made when at the beginning of June I spent a few days in the Ngaanyatjarra Lands. I went out there for several days, just talking to people. I was sitting with some Aboriginal elders—I think it was in Wanarn—and we were talking about government policy and some of the things that might be happening both in the state and federally. I was endeavouring to give a commitment that I would continue to listen to, represent and support them when one of them said to me, “You know, Wendy, we will be here long after you white fellas are gone.” That is absolutely right. There is that steadfast determination, that smile behind the eyes and that wisdom. We come out there, we want to save the world and make a change, but these people have had their connection to the land and their country for so long that they will survive with or without us. In fact, probably the sooner we come to realise that, the better.

The most important thing from the debate is Josie Farrer’s words —

... join me to seize this opportunity before us as parliamentarians to do something remarkable.

It is remarkable to have bipartisan support for something so important. Western Australia took its time to get to this point. Other states did this before us, but we benefited from that experience. I commend the bill to the house. I want to thank those who were involved in helping us to get here, particularly those involved in the select committee. I refer to Tim Hughes; Adam Sharpe; Grant Donaldson, the Solicitor General; Jim Thompson, from the State Solicitor’s Office; and, of course, Pete Quinlan. Most of all, I thank you, Josie Farrer, member for Kimberley. This is a magnificent achievement of yours.

DR A.D. BUTI (Armadale) [1.29 pm]: It is with great pleasure that I rise to contribute to the debate on the Constitution Amendment (Recognition of Aboriginal People) Bill 2015. I also acknowledge the land of the traditional owners on which we stand to debate this bill today. I recognise my friend and colleague the member for Kimberley and her work and significance in bringing this bill before the house. It is indeed a very significant day. It is an act of reconciliation, although what reconciliation means is arguable. It is also an act of justice, and it is simply the right thing to do.

The history of the legislation that has come before this house with regard to Indigenous people makes this an even more significant day. The legislation that was debated in this house started with the Aborigines Act 1905, which came out of the 1904–05 Roth royal commission into Aboriginal people. Commissioner Roth was a public servant from Queensland and his recommendations led to the enactment of the 1905 act, which was modelled on the 1897 Queensland act. Obviously, as a Queenslander, it was going to be a great influence on what he recommended. The Aborigines Act 1905 has been incredibly significant in the history and lives of Indigenous people in this state. It also formed the blueprint for many of the other acts enacted in other jurisdictions of Australia in the first six to seven decades of the twentieth century. We should not diminish the relevance and importance that the 1905 act had in controlling the lives of Indigenous people in Western Australia. It was a reflection of the desire by the government of the day and the ruling classes to segregate and control Aboriginal people. What it also created, which was very significant, was the Chief Protector of Aborigines, which eventually changed its name to the Commissioner of Native Affairs. Of course, the 1905 act, which gave the government of the day control over Indigenous people and the ability to remove certain Indigenous people from their land, their culture and their families, led to what is known as the stolen generations. The main character in that history of course is A.O. Neville, who became the Chief Protector of Aborigines in 1915 and resigned only in 1940, when he was called the Commissioner of Native Affairs.

A number of amendments were made to the 1905 act over the years, but it remained the seminal piece of legislation that gave incredible control to the government of the day to decide what Aboriginal people could do. There was another royal commission in 1934. The Moseley royal commission was another royal commission into

Aboriginal people. That led to the Aborigines Act Amendment Act 1936. That act did not make life better for Indigenous people; it actually expanded the powers and coverage of the 1905 act. It allowed more people to be taken away. We have to realise—this is why today is quite significant—that Indigenous people could be taken from their families because they were Indigenous, not because they were being neglected. Under the mainstream child welfare legislation at the time, a court order had to be sought to have a child removed and it had to be proved that the child was in danger or being neglected. However, Indigenous children could be removed because they were Indigenous. I think this desire, motive and power was reflected by A.O. Neville at the commonwealth–state native welfare conference in 1937, when he expounded his views on Indigenous affairs and the powers he had.

By 1954, we had gone through the Second World War and we had seen the human rights abuses and gross violations of human rights during the Second World War. Australia was a major player in the establishment of the United Nations. We had the United Nations Universal Declaration of Human Rights of 1948, but Western Australia still had this system whereby Indigenous people could be removed because they were Indigenous. The Native Welfare Act 1954 did not remove that power. That unfettered power to remove Indigenous children from their families was not removed from our statute book until 1963, when the Native Welfare Act 1963 repealed the 1954 act and all the preceding acts.

That historical brief of the acts that have gone through this house shows us that this place has not been overly kind to Aboriginal people. The legislation we have passed time and again has just increased the control that governments have over Indigenous people. However, today, people are saying that this bill is an act of reconciliation and I think we can argue and state that it is an act of reconciliation, but what we do mean by “reconciliation”? It is an interesting discussion that could go on forever. There is no one definition of “reconciliation”. It is a pretty vague concept. It depends on what we mean—whether we are seeking to give it a legal meaning, a political meaning or a cultural perspective. I think we can properly state that there are two major understandings of reconciliation. The first is a narrow, more legalistic view whereby we seek to reconcile Indigenous rights with countervailing interests and rights—the rights of Indigenous people versus the rights or interests of the majority of people. The member for Victoria Park said that we do not have a distinctive Indigenous history necessarily and a distinctive non-Indigenous history; it is all one history. But, of course, within that history there have been some significant different parts of the population and, as a result, Indigenous people seek to have different rights recognised and guaranteed against countervailing interests. There is also a wider concept of reconciliation, and that seeks to rectify the injustices of the past, guarantee rights and create a more harmonious, trusting relationship between Indigenous people and non-Indigenous people and, basically, between Indigenous people and the government. Once this bill is passed through this chamber today, we will be able to say that this is part of the broader concept of reconciliation whereby we are making a political statement about seeking to create a more harmonious relationship between Indigenous people and non-Indigenous people.

I mentioned that this is an act of justice. I suppose it can be argued that, through the bill, we are seeking to restore justice and trying to develop a trusting institutional relationship between Indigenous people and the political institutions that have controlled and governed Indigenous people for so long. We are seeking to reclaim a moral universe. Reconciliation seeks to heal the victims of historical injustices by restoring to them as much as possible the rights that they had before those injustices occurred. But, of course, that is very difficult because injustices have a long history, so it is not so easy to necessarily restore those harmed relationships. I think we need to look at this bill as being part of a reparative reconciliation act. We are seeking to reconcile harmed relationships and injustices, so it could be argued that it is reconciliatory reparation.

That argument generally involves three steps. The first step in seeking to achieve this broad reconciliation target or process is to acknowledge and atone for the past wrongs against Indigenous people. I will briefly talk a bit more about that. The second step involves the provision of material reparations and the third and final step is to establish legal and constitutional structures designed to ensure similar wrongs are not repeated in the future. It could be argued that, here, we have a bit of a merging of some of those steps. It could be argued that the Constitution Amendment (Recognition of Aboriginal People) Bill 2015 seeks to acknowledge that there have been past injustices. It does not deal with the second step, which is material reparation, but it deals with the third and final step—the constitutional structure. I think we have to be careful because reconciliation can never be achieved; it is a continuing process. We will never be completely reconciled, because from an Indigenous point of view that would require, some would say, a revolution. I will talk about that in regard to the Mabo decision. We are doing what we can with the structures and political institutions that govern us.

I will detail why we can never have complete reconciliation. I turn to the Mabo decision, which was probably the most important case in the legal history of Australia. If one case were to be written about in Australian legal history up until now, it would be the Mabo decision. The seminal importance of Mabo is that it overthrew, or washed away, the myth of terra nullius. That was the doctrine that Australia was uninhabited when the Europeans came—nobody was living here. That view, obviously, could not remain, because people were already

Mr John Day; Mr Colin Barnett; Mr Ben Wyatt; Mr Mark McGowan; Mr Terry Redman; Dr Kim Hames; Mr Roger Cook; Ms Wendy Duncan; Dr Tony Buti; Mr Peter Tinley

living here. That then created a problem, because if we are considered to be a settled nation, under the various legal doctrines there can only be settlement if the land was unoccupied, and it was not. The two other ways a country can be controlled by another identity is through invasion or treaty—through being ceded. We have never had a treaty with the Indigenous peoples, and the argument therefore remains that Australia was invaded. Of course, that has major political and legal ramifications. Justice Brennan, who wrote the leading judgement in *Mabo*, stated that although the court was prepared to overrule the doctrine of *terra nullius*, it was not prepared to question or revisit the status of how Australia came to be in European hands. Justice Brennan basically stated that to do so would tear apart the skeleton of the legal system of Australia. That would also bring in the issue of who has sovereign right over Australia. How could the High Court of Australia question that if in doing so, it would be questioning its own existence? Of course, the High Court was not prepared to go down that line. The continued process of reconciliation will not fade, and that issue is still to be addressed at some stage.

I want to mention two people. The first is the late Robert Riley, who was a great advocate of Indigenous peoples in not only Western Australia, but also Australia. He was part of the stolen generations, although the issue about whether he was stolen or not is controversial; he was separated from his mother and sent to Sister Kate's Children's Cottage Home. When he asked about whether he had a mother, he was punished and told his mother had died, but she had not and he met her when he was about 10 years of age. I think many people know about the life of Robert Riley; if they do not, I recommend they read the biography written by Quentin Beresford that sets out the incredible human being he was, what a talent and what a loss his premature death through suicide was to Australian society.

I do not want to take away from the positivity of today, but I want to briefly mention the Adam Goodes saga. That is why I think we cannot get carried away about today. We are taking a significant step in this Parliament, but I think the Adam Goodes saga tells us that we still have a long way to go. From my reading of it—a lot has been written on this so I do not need to say too much—it seems that it is okay for someone to be an Indigenous leader or respected Indigenous person if they behave according to the way society wants them to behave. So, the attitude is, "You're a fantastic leader, you're a fantastic footballer, but don't confront us. Behave the way we want you to behave." Let us think about this. People say it has nothing to do with racism, but they always raise three things.

[Member's time extended.]

Dr A.D. BUTI: Firstly, they raise him calling out the 13-year-old girl who called him an ape. He was in his workplace and he was racially vilified. He should not have done that, according to many people. Secondly, they talk about his Australia Day speech. They have not read his Australia Day speech, because in that speech he said he was proud to be an Australian. They are referring to another comment he made in a documentary by John Pilger, not in the Australia Day speech. Thirdly, they say, "How dare he?" It was the Indigenous round of the AFL season, he is an Indigenous athlete and he did a dance that has some Indigenous significance to it, but people say he should not have done that because it was confronting. What that tells me, members, is that we should celebrate today and let us pass this piece of legislation, but let us not be fooled that this is the end of the reconciliation debate. I think the Adam Goodes saga shows that we still have a long way to go in how we see the relationship of Indigenous people and their status in our society. Remember that reconciliation will never be complete: it is a continuing process, and this is only part of that process.

MR P.C. TINLEY (Willagee) [1.47 pm]: It is a great privilege to rise as a member of this chamber at a time of this most significant bill, the Constitution Amendment (Recognition of Aboriginal People) Bill 2015. It is a privilege because those who came before me in the seat of Willagee would have liked to do something like this and try to promote the idea of a bill such as we are confronted with here to amend our Constitution. They would be very envious —

Mr P. Papalia: They were stymied.

Mr P.C. TINLEY: They were stymied, I suppose, yes, in their desire to do it.

Those who come after us will see this as a point in time from which they will have to reflect on what their contribution has been to reconciliation in their time in this place. I congratulate the member for Kimberley for urging all of us in her second reading speech to do what she has done, which is to be brave. As clearly outlined by my leader, for her entire life she has been a brave person and has shown significant personal courage when it could be argued that she sometimes did not have to. That she took additional children into her care when she already had a full house may seem odd, but people who know Josie know that is nothing extraordinary given her character.

It may not surprise people to know that my contribution today will be to bring to this chamber a voice for Aboriginal people who have served our country in uniform. Theirs was a significant contribution that I believe needs to be highlighted in a debate like this. By doing so, we too can recognise the contribution to this country of Aboriginal Western Australians, and Australians generally, on the international stage.

Extract from *Hansard*

[ASSEMBLY — Wednesday, 19 August 2015]

p5576c-5590a

Mr John Day; Mr Colin Barnett; Mr Ben Wyatt; Mr Mark McGowan; Mr Terry Redman; Dr Kim Hames; Mr Roger Cook; Ms Wendy Duncan; Dr Tony Buti; Mr Peter Tinley

We heard from other members the idea that this is a symbolic act. Symbolism is important. Mabo and Wik were substantive matters. The symbolism around Sorry Day and the apologies that this house has made to first Australians about stolen wages and the stolen generations need to be completely contained within debates in the house. This symbolism will actually advance our own identity. It is most important that we acknowledge the more than 40 000 years of Indigenous culture which, as the member for Victoria Park has identified, will allow us to make a connection between a deep past and a prosperous future. We cannot do one without the other; there must be recognition of the past to understand how we might want to progress our identity in the future, out here on the Indian Ocean.

There is a thing about symbolism that is worth noting; I refer to a quote relating to symbolism that has been variously rehashed, and I think it is really apt to this debate. To my mind, it is a prism through which we can look at all the symbolism that has occurred in reconciliation with First Australians. It goes, “If you change the way you look at things, the things that you look at will change.” We have been looking at this at least for as long as some of the older and more experienced members of this Parliament have been here, and it has changed their opinion over time. Older members of both places will remember Hon John Cowdell’s first attempt to get this legislation up, and the debates that were held at the time. They are not worth rehashing here, but that legislation did not even get out of the gate, yet here we are doing the very same thing in a bipartisan way that was attempted to be done within the memory of the longest sitting members of this house. That is a very good example of the way in which we look at things and how we can remodel them.

The Indigenous contribution to the Australian military has been significant but very difficult to define, for the reason that many Indigenous Australians who have enlisted in the defence forces since settlement have been overshadowed by a range of different acts of Parliament and attitudes within the community in relation to how they have been treated. There are quite a few stories now being gathered; it is believed that there were at least 3 000 Indigenous members of the Australian defence forces during the Second World War, and there is research being carried out to understand what sorts of contributions were made by Indigenous Australians further back in history. More and more evidence is being gathered as more research is carried out, and anecdotal evidence shows that a lot of Aboriginal men changed their ethnicity in order to get around the enlistment requirements and, in the early days, the White Australia policy, which actually forbade Aboriginal people from serving in the defence forces. That is an interesting fact; so motivated were those Indigenous men and women who joined the Australian defence forces, even before Federation, that they would actually do whatever it took to enlist. We often hear stories about young men—boys, even—who faked their age to get into the defence forces, such as the Australian Imperial Force and the Second AIF. History is littered with stories like that, but here we had First Australians who were so committed to the country that has oppressed them for so long that they still felt the need and the call to actually serve in uniform.

Throughout the history of the Australian Army, Aboriginal and Torres Strait Islander men and women have served with significant distinction. During the first half of the twentieth century, they served despite regulations prohibiting enlistment; requirements such as “not substantially of European origin or descent” were discriminators at the enlistment office. When they managed to skirt the rules and enlist, Aboriginal and Torres Strait Islander men and women often found military service an egalitarian experience, providing education and employment opportunities denied to them in civilian life. In fact, often when Aboriginal service men and women came back from service, up to and including the Vietnam War, they found that the egalitarian circumstances under which they had served were not the same as what they found in the civil society that they re-entered, and the discrimination resumed exactly where it had left off when they had first put on the uniform. The friendships that Indigenous personnel forged with non-Indigenous soldiers broke down barriers and fostered non-Indigenous allies in the struggle for Indigenous rights. In fact, I saw during my service life the contribution that Indigenous and other non-European soldiers made, and it did a lot to actually further the identity of what it meant to be an Australian soldier.

However, symbolism can also be extremely harmful, and I am drawn back to the Second Boer War of 1899 to 1902, when Western Australia was still a colony. The six colonies produced six different contingents to go to the Second Boer War, in numbers greater than the British forces; 16 000 Australian men went to South Africa to fight in the Second Boer War. It is believed that included in that group were about 50 Aboriginal trackers, at the personal request by letter from Lord Kitchener, commander of the British forces in South Africa. Apparently 50 trackers embarked and were transported to South Africa along with the troops. Why do we not know that to be an absolute fact, and why do we have only some of their names, thanks to the detective work of various historians? It is because they were not included on the manifest; they were included in the cargo. They were listed as part of the cargo of the ships that took the Australian contingent forces to South Africa, and that was it. They served with significant distinction, and there are many stories about the work that Aboriginal trackers did in the Second Boer War, but I will not delay the house with those anecdotes; they are there for members to

Extract from *Hansard*

[ASSEMBLY — Wednesday, 19 August 2015]

p5576c-5590a

Mr John Day; Mr Colin Barnett; Mr Ben Wyatt; Mr Mark McGowan; Mr Terry Redman; Dr Kim Hames; Mr Roger Cook; Ms Wendy Duncan; Dr Tony Buti; Mr Peter Tinley

research as they see fit. My key point about how symbolism can be harmful is illustrated in the fact that they were listed on the ship's manifest as cargo.

We also do not know whether they returned. There is growing evidence to show that a significant number were not allowed to return under the White Australia policy; a significant number of them were left in South Africa to fend for themselves. I refer to the work of Dr Dale Kerwin, a research fellow at Griffith University, who has been researching this for many, many years. He has determined this to be a true fact. Here we had people who were prepared to go and serve under our flag between 1899 and 1902, during which time the colonies of Australia were unified as a single nation, and those separate contingents were formed into a single contingent. They were so motivated that they joined up, and yet they were listed as cargo on the ship's manifest and denied return to Australia because of the discriminatory policies of the time.

That is certainly a shameful event in our history, but it is important that we acknowledge whenever we can the service of First Australians to the whole nation because they, in their active service, created a single identity of "Australian", and the more than 100 Indigenous members of the defence force from Western Australia also represent a significant contribution.

It is instructive and worth noting that, in a true act of bipartisanship, members of the current conservative government have looked at this legislation, and the more they looked at it, the more it changed for them. We are now on the cusp of a significant, tangible contribution to reconciliation with the Noongar nation, enshrined in the Indigenous land use agreements that are currently before the tribunal and hopefully will be signed off on.

To the government: well done. To those members of the parties opposite who would be resistant to some of this: the time has come to collapse your resistance, to fold, and to recognise us as one Western Australia with one voice and with a long and rich history.

Debate interrupted, pursuant to standing orders.

[Continued on page 5601.]