

Mr Mark McGowan; Mr Colin Barnett; Deputy Speaker; Dr Kim Hames; Mr Ben Wyatt; Mr John Quigley; Dr Tony Buti; Speaker; Mrs Michelle Roberts; Mr Shane Love; Ms Janine Freeman; Ms Andrea Mitchell; Mr Roger Cook

CONSTITUTION AMENDMENT (RECOGNITION OF ABORIGINAL PEOPLE) BILL 2014

Second Reading

Resumed from 11 June.

MR M. McGOWAN (Rockingham — Leader of the Opposition) [4.00 pm]: Madam Deputy Speaker —

The DEPUTY SPEAKER: The Leader of the Opposition.

Mr C.J. Barnett: Madam Deputy Speaker, it is the second reading debate.

Mr M. McGOWAN: It is the second reading debate. You gave me the call, Madam Deputy Speaker, so I suppose I will take it.

The DEPUTY SPEAKER: Yes. I am sorry, Premier.

Point of Order

Mr C.J. BARNETT: Madam Deputy Speaker, it is conventional in the second reading debate that the other party, in this case the government, would have first right of reply to the second reading speech.

The DEPUTY SPEAKER: Thank you, Premier. I shall just take some advice.

Thank you, members. The convention is that the debate alternate, and the member for Kimberley spoke previously. However, I did give you the call, Leader of the Opposition. If you are happy to allow the Premier to speak, really there is no reason why you cannot speak. I gave you the call as you got my attention first.

Mr M. McGOWAN: As long as I do not lose my right to speak.

The DEPUTY SPEAKER: No, you will not lose your right to speak, but if you are in agreement I will give the call to the Premier.

Mr M. McGOWAN: I am far more agreeable than the government.

The DEPUTY SPEAKER: Thank you, Leader of the Opposition. I apologise, Premier.

Debate Resumed

MR C.J. BARNETT (Cottesloe — Premier) [4.02 pm]: While I am speaking on the Constitution Amendment (Recognition of Aboriginal People) Bill 2014, I make the point that I am not the lead speaker for the government on this bill but I wish to make some comments at the beginning of this debate.

Ms M.M. Quirk interjected.

The ACTING SPEAKER (Ms J.M. Freeman): Member for Girrawheen!

Mr C.J. BARNETT: As I said during question time and I repeat now, the government is prepared on a bipartisan basis to support legislation to recognise Aboriginal people in the state Constitution.

Mr M. McGowan interjected.

The ACTING SPEAKER: Members!

Mr C.J. BARNETT: That is the point I made last night to the member for Kimberley and also to the member for Victoria Park.

The second point I make is that the first priority of the government is the passage of the draft bill, “Noongar (Koorah, Nitja, Boordahwan) (Past, Present, Future) Recognition Bill 2013”, which has been in negotiation for over two years. It is at the point where the negotiating parties have agreed on all aspects and it is about to go into a formal authorisation process with the Noongar people. It is the largest native title agreement there will ever be both in the past and future history of Australia. It is one that confers enormous benefits—financial benefits, land ownership, self-determination and economic opportunities—to the Noongar people.

The next point I want to make is that the purpose of the bill moved by the member for Kimberley is to amend the Western Australian Constitution—nothing more, nothing less. To amend the Western Australian Constitution is a complex issue. There has been no discussion of any degree in the wider public community about this bill. There has been very little discussion within this Parliament, yet the member for Kimberley’s bill, if passed, would amend our Constitution without the knowledge of the vast majority of Western Australians, both Aboriginal and non-Aboriginal. I imagine that done the right way, the people of Western Australia would support the principle and the enactment of legislation for the recognition of Aboriginal people. I again repeat: as a government we are prepared to work in a genuinely bipartisan manner to ensure that the member for Kimberley achieves the credit she deserves for bringing this matter to the Parliament, but —

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Several members interjected.

Mr C.J. BARNETT: Madam Acting Speaker, I would have thought this was one of the more important things in a long time to be considered in this Parliament, and I would have thought it would deserve some respect.

Several members interjected.

The ACTING SPEAKER: Members! Many people have come to listen to this debate. Let us not have the debate go into an across-chamber slanging match. Many members are on calls; I do not want to enter into that. Can we listen to the Premier in silence, please?

Mr C.J. BARNETT: Let me go through some of the issues. As I said, the state government of Western Australia is committed to the advancement of Aboriginal people in Western Australia, and we have given in-principle support for the recognition of Aboriginal people in the Constitution. It is not correct to say, as the member for Victoria Park said this morning on radio, that I do not support an amendment to the Constitution to recognise Aboriginal people. That is not correct. That statement made by the member for Victoria Park is not correct.

The Noongar bill—I want to stress this because there has been two years of very hard and committed work by Aboriginal people and by the South West Aboriginal Land and Sea Council —

Several members interjected.

The ACTING SPEAKER: Members!

Mr C.J. BARNETT: Madam Acting Speaker, I am speaking. This is one of the most important issues that we will face as a society. It deserves some recognition.

The government priority is the Noongar bill, which we tabled as a draft bill in this Parliament on 26 February this year. I explained to both the member for Kimberley and the member for Victoria Park the amount of effort that has gone into it, particularly by Aboriginal people, and the huge commitment of \$1.3 billion by the state government on behalf of the people of Western Australia, which is at the critical point of authorisation.

The Noongar recognition bill recognises the Noongar people as traditional owners of the south west, and acknowledges their unique contribution to heritage, cultural identity and the economy of the state. The bill is the centrepiece of the south west native title agreement to settle all native title claims across Perth and the south west. It replaces recognition, as it was previously under the commonwealth Native Title Act. An incredible amount of work has been done by both Noongar people and the government negotiators after almost five years of discussion and negotiation. It has been difficult at times, but it is at the point of final achievement—right at that point right now.

The six claim groups are due to consider the state's final and agreed offer early next year. This will be a historic moment for not only Noongar people but also all Aboriginal people in Australia—at great effort and at great expense, I guess. The Noongar bill creates no rights and has no consequential impact on Western Australian law, yet Noongar people have made it clear to me and to the government that, more than anything else the state can offer, the Noongar recognition bill will have a profound significance for them.

The member for Kimberley's bill, which is before the Parliament, does present some complexity that as a government we need to consider, and consider very carefully. This is not a bill that should be passed without that consideration. After all, we are amending the Constitution of Western Australia—an amendment that the people of Western Australia are largely unaware of. They have no knowledge of this. There are not even people in the gallery, or perhaps a couple of people at the back.

Several members interjected.

The ACTING SPEAKER: Members! It is fine. Premier, direct your speech to me.

Mr C.J. BARNETT: I am being very proper.

The ACTING SPEAKER: Yes. Direct your speech to me and do not invite interjections and we will get through this.

Mr C.J. BARNETT: Madam Acting Speaker, I did not invite interjections; I just received them. So, let us look at this bill.

Several members interjected.

Mr C.J. BARNETT: Members opposite should listen to this carefully.

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The ACTING SPEAKER: Premier, I am on my feet and I will continue to get to my feet because I understand that this will be an emotional debate. I will continue to be on my feet. Members, please do not interject, please direct your speech to me and listen to the Premier in silence.

Mr C.J. BARNETT: Members, what does this mean? What impact will it have on native title? Does anyone know? I do not know.

Several members interjected.

Mr C.J. BARNETT: What impact?

Mrs M.H. Roberts: What impact has it had in any other state?

Mr C.J. BARNETT: Will it impact —

The ACTING SPEAKER: Premier, I am on my feet. I understand you invited interjections. Premier, direct your comments to me. If you want to be listened to in silence, please do not invite interjections.

Mr C.J. BARNETT: With respect, I am making points.

What impact does it have on native title? No-one knows. What does it do to test the custodianship and connection in proceedings before the courts under the Native Title Act? No-one knows.

Several members interjected.

The ACTING SPEAKER: Members!

Mr C.J. BARNETT: What does it do to challenge claims by other claimant groups under native title? Nobody knows. They are important issues that have not been considered properly by constitutional legal experts. That has not happened. We do not know what it will mean in proceedings before the courts or in competing claims. We do not know whether it will jeopardise the Noongar native title claim and claims by other groups.

Several members interjected.

The ACTING SPEAKER: Members, I have asked you not to interject. Many of you are on a third strike. This is a very important debate. Please listen to the Premier in silence.

Mr C.J. BARNETT: In the Noongar recognition bill, there are specific provisions that specify that the recognition does not impact on proceedings in the courts. There is no such provision in this bill. The opposition referred to other states. In New South Wales and Victoria, for example, there are specific provisions in their recognition bills to ensure that it does not have wider implication and does not jeopardise native title or court proceedings. There is no such provision in this bill. It is absolutely uncharted waters as to what this will mean for native title claims, native title proceedings before the courts, and indeed the settlement of the Noongar native title claim. Other jurisdictions —

Several members interjected.

The ACTING SPEAKER: Members, I will keep standing and ask you to be silent. Please be silent while the Premier speaks.

Mr C.J. BARNETT: Other jurisdictions took into account these legal uncertainties and doubts, and made specific provisions in their recognition bills to ensure that there was not that risk to other activities in legal claims and native title; indeed, as the state government did in its Noongar recognition bill, which was tabled in its draft form. There is no provision like that in this bill. No-one can be certain as to what complexities it will lead to in terms of claimants, native title settlements and the like. That work has simply not been done. It needs to be done. It does not need to be done on the advice of five or six years ago—the world has moved on. That work needs to be done anew. It needs to be done properly.

I can make some other points.

Mr D.A. Templeman interjected.

The ACTING SPEAKER: Member for Mandurah, you are on three strikes. There are many of you who are on three strikes. Please listen to the Premier in silence.

Ms M.M. Quirk interjected.

The ACTING SPEAKER: Member for Girrawheen, I can actually call you. I will call you because I did ask for the Premier to be heard in silence.

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Mr C.J. BARNETT: Other points: no-one has yet determined what implications there could be on other land titles, particularly pastoral leases. That is indeterminate; it needs to be carefully examined. There could be implications on agricultural land and indeed all forms of land ownership. The implications of areas subject to claim could be dramatically affected by this. I do not know the answers, but the work needs to be done. It needs to be done; otherwise we are creating enormous uncertainty, particularly over Aboriginal groups in conflicting or overlapping native title claims, and pastoral leases, town development, public works and the like. All of those things need to be carefully and properly examined on professional advice before we go ahead with anything like this.

It is possible to work through those issues. Other states have put particular protections into their legislation to ensure those risks are avoided. It can be worked through, but it cannot be done by a debate in this house on a constitutional change that has not been properly and carefully examined, and a constitutional change about which the people of Western Australia are unaware. They are unaware of this. They do not know that we are sitting here now contemplating a change to the Western Australian Constitution. How many people out there are aware of it? Virtually no-one is aware that the Labor Party proposes to amend the Western Australian Constitution.

The amount of consultation, public comment, advertising and the like that took part in the Noongar settlement over two years was a very public and open process. It has the support of the whole community. It has the support of the community because it was done properly. I have given the commitment today that the government will work in a genuine bipartisan way to achieve constitutional recognition for Aboriginal people. But as Premier of this state, I will only do it if the people of Western Australia know what we are doing. They have no idea at the moment. They have absolutely no idea. So the opposition would propose a worthy objective —

Mr P. Papalia interjected.

The ACTING SPEAKER: Member for Warnbro, I have asked everyone to listen in silence. Premier, I have asked you to direct your comments to me and that we will try to keep this highly emotive debate directed to me. Please listen to the Premier in silence.

Mr C.J. BARNETT: The people of Western Australia are not aware of what is being debated here. Have the Western Australian people in any way, both Aboriginal and non-Aboriginal, been consulted or asked?

Mr M. McGowan: Yes.

Mr C.J. BARNETT: No, they have not.

Mr M. McGowan: I will explain it to you.

Mr C.J. BARNETT: The opposition proposes to amend the Western Australian Constitution without the people of this state knowing about it. I repeat again: I have given my commitment, probably for the third time now, that the Western Australian government will work with the opposition —

Several members interjected.

The ACTING SPEAKER: Member for Butler, I call you to order for the first time. Can we please listen to the Premier in silence.

Mr C.J. BARNETT: Again I say that we are prepared; we are more than willing. It is overdue that Aboriginal people be acknowledged in our Constitution as the traditional owners of this land. That is what is being done in the Noongar settlement. That is what we have been talking about for years as a government, and I know the opposition agrees. In introducing this legislation without proper due diligence and care being taken, the Labor Party does not know what it is putting at risk. I do not know either. I do not know what it will do to the Noongar settlement. It may derail it. It may bring in non-Noongar people claiming rights under that. It may cause a collapse of the authorisation process. It may threaten the renewal of pastoral leases, which is important in the north of the state. It may jeopardise all forms of land title. The opposition has simply not addressed those issues. It has not addressed them and it brings in a bill—fair enough; I give in-principle support to the bill—but, to the best of my advice, it has flaws that need to be corrected, and can be corrected, without jeopardising its intent. Measures have been included in New South Wales and Victoria, and in other legislation, to make sure the recognition of Aboriginal people in the Constitution does not raise other uncertainties or threaten landholders or land agreements or whatever it might be. Just good governance would require that that take place.

I do not know if the Labor Party is up to that. I do not know.

Mr M.P. Murray: Rubbish!

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Mr C.J. BARNETT: Because that sort of comment, “rubbish” —

Mr M.P. Murray: That is what you are!

The ACTING SPEAKER: Members, I have asked you not to make comment. Premier, I have asked you not to invite interjections. Please, members, listen in silence. Premier, direct your comments to me and please do not ask for interjections.

Mr C.J. BARNETT: With respect, I did not invite interjections. I am making a speech. I am the one receiving the interjections, and I do not mind that. I accept that because it is an important issue.

I would say to the Labor Party, particularly to the member for Kimberley —

Ms J. Farrer: I am listening.

Mr C.J. BARNETT: Member for Kimberley, you introduced the bill.

Ms J. Farrer: Yes, I did.

Mr C.J. BARNETT: Good on you. I spoke to you and I indicated our support. I spoke to the member probably a month or two ago. She asked me about it and I indicated my support in principle. I made it very clear that, in my view, the Noongar settlement had to proceed first, and that is literally a couple of months away. I make the point now that to do this, it must be done properly. The people of Western Australia are entitled to know about it and, properly informed, I am confident—I am certain—that they will support it, but they will want it done properly. They will not want native title cases jeopardised, they will not want overlapping claims, and they will not want doubts about freehold lease renewal and the like. That is a fair and proper thing to do.

I call on the Labor Party to accept my offer of a genuine, bipartisan recognition of Aboriginal people in our Constitution and to allow time for the proper drafting of a bill that meets all the requirements, as has happened in other states that have done it properly without controversy, and it will be achieved, and quite rightly the member for Kimberley will receive due recognition for that. That is the offer of the government of Western Australia.

Ms M.M. Quirk interjected.

The ACTING SPEAKER: Member for Girrawheen!

Mr C.J. BARNETT: If the Labor Party proceeds in the way that I suspect it is about to by making all sorts of claims, attacking the government and everything else —

Mr D.A. Templeman interjected.

The ACTING SPEAKER: Member for Mandurah! Continue, Premier.

Mr C.J. BARNETT: If the Labor Party continues, which I suspect it will, and even if its bill gets through this house today, will it have bipartisan support in Western Australia? In the public eye, it will not. It has the potential to be divisive in our community.

Several members interjected.

The ACTING SPEAKER: Members, I will keep standing up. Listen to the Premier in silence. Many of you are on many strikes, including the member for Armadale. I understand it is emotive.

Mr C.J. BARNETT: Bipartisan support means exactly what it states. It does not mean that the numbers on one side of an argument or debate outweigh the other. It means that the Liberal Party, the National Party and the Labor Party come into this place united to recognise Aboriginal people in the Western Australian Constitution to a man and woman. That is what it requires. An acrimonious debate, which may well result, is not bipartisan support. It is more than the mere passage of a bill through this house. It is a statement to the people of Western Australia, particularly the Aboriginal people: “We acknowledge you, we recognise you, and we want you in our Constitution with your agreement and with the agreement of the whole population of Western Australia.” That is what this is about, and that is why the Labor Party should allow time for that to be done with dignity, respect and propriety.

MR M. McGOWAN (Rockingham — Leader of the Opposition) [4.22 pm]: In commencing my remarks on the Constitution Amendment (Recognition of Aboriginal People) Bill 2014, I acknowledge the traditional owners of the land on which we stand today, the Noongar people. I also acknowledge in particular elders and interested Aboriginal people who have come to the public gallery today for this debate. Ordinarily, I do not have a written speech; I just use what I know, but today I had some notes on what I had to say. These notes—I can table them if members like—did not have a single word of criticism of the government. It is a lovely speech, full of high-minded statements, examples of consultation with people in Western Australia about this issue and

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examples of what has happened in other states that have recognised Aboriginal people in their Constitutions. That is what I came in here with the intention of saying today. That is what I wanted to say. That is how I wanted this debate to progress. I am of the view that we have done this entirely properly the whole way through since 11 June, when the member for Kimberley gave her second reading speech. I think the whole course of action has been done entirely properly, and I will set it out for people. However, before I do, I want to say one thing about what this is about. This is about recognising in our state's highest document a historical fact; that is, when European settlement occurred in this state nearly 200 years ago, people had been living here for tens of thousands of years prior to that. It is not currently acknowledged in our state's Constitution. Other states have found a way to do it since 2004. Victoria was the first state that managed to do it in 2004. Every other mainland state has found a way to do this in a straightforward bipartisan manner. I thought that, as Western Australians, with the imprimatur of the member for Kimberley, we would have the maturity as a Parliament to do that in a bipartisan fashion.

I want to set out for people what happened. In 2004, advice was sought from the Solicitor-General by the then government of Geoff Gallop, and a form of simple, straightforward words was written that acknowledged Indigenous Western Australians in the preamble to the Constitution. It merely made a statement of historical fact that Indigenous people had been here for tens of thousands of years prior to European settlement and they were to be recognised in the highest document in the land. Those words were created by the Solicitor-General at the time. He created words that did not impose legal rights and obligations, and he provided legal advice to the then government to that effect.

Dr K.D. Hames: What did you do?

Mr M. McGOWAN: The then government did not proceed because advice was received by Hon Norman Moore that the Liberal Party in the upper house would not under any circumstances support it. That is why it did not proceed. I did not have any intention of saying any of those things today in the speech that I had written, but as the Premier asked me, I have done so.

What happened? The matter did not proceed because we knew it had no prospect of success in that era. A lot of the history of the legislation of 1995, which was immediately prior to my arrival in this place, and of the issues that occurred prior to that time is now gone. Those attitudes are out of the upper house. I thought those attitudes were out of this house. Therefore, we thought it was a good opportunity to come forward with the form of words provided by the Solicitor-General to the then government with legal advice demonstrating that there would be no adverse legal consequences from pursuing that form of words in the state's Constitution. Josie Farrer, the member for Kimberley, took up the baton, and she did it entirely right for an opposition. We do not have all the resources of a government. We do not have all the agencies to do this work. We do not have 136 000 people who work for us; we have about 12. Josie Farrer, the member for Kimberley, took up the baton and delivered a marvellous and beautiful speech in this house on 11 June this year, and then my office proceeded to consult. We wrote 407 letters to organisations all over Western Australia seeking feedback. We did press, internet and consultation with Indigenous people, businesses, landholders—you name it—across Western Australia setting out exactly what we were doing. I wrote to the Premier personally at that time asking for the government's support. Five months and one day ago, we as an opposition undertook that level of consultation, which I think is a pretty extraordinary effort for an opposition. The government has had five months and one day to look at this issue. We brought it on because Josie wanted to bring it on on behalf of the Aboriginal people of this state. We wanted to show good faith that we did not just read it into the house, put it out there, get an article in *The West Australian* and forget about it. She wanted to show that it meant something. It was about demonstrating confidence in the Indigenous people of this state and giving them confidence that another step on the road to reconciliation was in place and an Indigenous woman from the Kimberley had been responsible for it—not a Labor politician and not a partisan politician, but an Indigenous woman from the Kimberley who had stepped up and done something great for her people. That is what we wanted to do. I do not actually think there is a huge number of votes in this. For every person we might win, we might lose another one. It is not an issue on which there are huge numbers of votes, but it is the right thing to do, it is the decent thing to do, it is a genuine thing to do and it is the thing that we should all do together. It should not be a matter on which a hectoring, nasty speech is delivered; that is not what it should be about and that is not what my speech was going to be. I will seek to table it after this.

Last week I flew over to Gough Whitlam's memorial service. Seven Prime Ministers were in attendance in the room. There on a screen was the photograph of Gough Whitlam and Vincent Lingiari in 1975 in which Gough took Vincent's hand and poured the dirt from his native title lands into it. That was 1975—39 years ago. It was a wonderful memorial ceremony and Noel Pearson delivered a beautiful address about how legislation, which is often derided, can make a difference in people's lives. He talked about the Racial Discrimination Act

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and how he would not be where he is today but for that 1975 legislation. What we are debating now is hardly as controversial as that. This is just a recognition of historical fact; that is all we are debating here today. That is all we are attempting to do here today—a beautiful recognition of historical fact put forward by the member for Kimberley. Surely, if Vincent Lingiari and Gough Whitlam, and subsequently, I might add, Malcolm Fraser, could do it nearly 40 years ago, we can do this. I support what the Premier is doing on the Noongar claim, and we will vote for the legislation when it comes before this house. I am making that commitment today. Surely, it is not beyond the wit and wisdom of the Parliament and the government to support something even though it is put forward by the opposition. It was not put forward by Josie Farrer in a way that was hostile or political or partisan. It was put forward in a way that was respectful and decent and that is all we are asking for here today.

I want to answer some of the questions that people raised. The preamble in the bill merely sets the situation prior to the Constitution Act coming into effect. That is all it does. I want to answer that fundamental question: does it then influence, as the Premier said, freehold title, pastoral land or native title claims in Western Australia? I want to read out the advice received by the Solicitor-General on these issues when Labor was in government.

Mr C.J. Barnett: When?

Mr M. McGOWAN: Premier, it does not matter when.

Mr C.J. Barnett: It does matter.

Mr M. McGOWAN: No, listen to me: if the law had been passed in 2004 and the Solicitor-General gave an absolute commitment that none of those implications were in place, it does not matter. The law would have been passed and in place now. The Premier would not say now, 10 years later, that it creates certain obligations. The Premier is putting a specious and silly argument. I want to read what the Solicitor-General said. The advice from the Solicitor-General—the government’s adviser, who is notoriously conservative on these things—according to the explanatory memorandum, is —

I do not believe that an amendment to the preamble in these terms would have any significant legal consequences. I would see it as principally a statement of historical fact.

...

“In terms of its constitutional significance, it could only be relevant to the extent that it might be the foundation for some implied limitation on the legislative power of the Parliament. However, I find it difficult to see how any limitation of substance could be constructed from such a provision.”

In other words, there are no implications in a technically legal sense. However, there is an implication in how we view ourselves as a state and an implication for Indigenous people who want to see another step along the road to recognition. As Josie Farrer said to me, it just provides another way of Indigenous people being more confident about their place in our community.

I will set out what has occurred in other states. In 2004, Victoria passed the recognition of Indigenous people in the preamble to its Constitution. Queensland, of all places—I am familiar with Queensland—passed those laws in 2009 and they received royal assent in 2010. In 2010, New South Wales passed such a recognition in its Constitution. South Australia passed a recognition in its Constitution in 2012, and it was assented to in 2013. In other words, every mainland state, bar Western Australia, has undertaken this step. We might be first in many things, but historically our relations with Aboriginal people has not been one of our strong suits. We have improved enormously since those 1995 laws were struck down by the High Court. We have improved enormously since that time and since then there have been changes in the upper house that should allow for this legislation to go through with cheering and clapping rather than spite and bitterness.

Mr C.J. Barnett: Speak for yourself.

The ACTING SPEAKER (Ms J.M. Freeman): Premier!

Several members interjected.

The ACTING SPEAKER: Members! The opposition leader has the call.

Mr M. McGOWAN: In 2006 the Law Reform Commission of Western Australia produced a report in which it said that this was an important step along the road to reconciliation. In fact, back at that point in time, it said that such laws should be passed at the earliest opportunity. That position was stated by the Law Reform Commission of Western Australia eight years ago. I will just quote one small part of its report —

From its consultations with Aboriginal peoples across Western Australia it became apparent to the Commission that many Aboriginal people believed that amendments to laws and policies were not as

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meaningful without the fundamental respect for Aboriginal peoples and their laws that could be brought about by constitutional change.

That is the opening paragraph of what the commission had to say. The commission wrote that eight years ago—surely the time has come for us to undertake this small but significant step in light of that.

Other states have done it. The Law Reform Commission advised us to do it. We have consulted across Western Australia and all the feedback we received was enormously positive. I am more than happy to table all these letters, emails, information from the government and the like. I sent 407 letters to groups across Western Australia. I will not quote all of those that came back, but I will quote one. According to my notes, one letter that came back said the following —

“These changes will be a step forward; a public acknowledgement of the past, a reverence to carry into the future and, I hope, will lead to a future where all Aboriginal people will be respected, appreciated and walk with pride.”

That is what someone wrote to me, on the back of what we have done. I had a meeting a few weeks ago with John Anderson, the former Deputy Prime Minister and former Leader of the National Party, whom I found in the meeting to be quite a decent fellow.

[Member’s time extended.]

Mr M. McGOWAN: It was a meeting about recognition of Indigenous people in the commonwealth Constitution, which requires the agreement of a majority of people and a majority of the states. It is much more difficult to achieve than it is at state level. I advised him that in the past 100 years, our Constitution has been changed 25 times—just so members know. It is not that big a deal. There have been 25 amendments to the Western Australian Constitution, but a commonwealth constitutional change requires a referendum with a majority of people and a majority of states. We had a discussion about it and I indicated our support for what the federal government was attempting to do. I told John Anderson that we wanted to do it at a state level, and he wished me all the best. He has to walk a much more difficult road because of the requirement for the referendum. Do members know what he said? He said the worst of all worlds would be for it to be put out there and be voted down as a result of whatever fear campaign and specious and ridiculous arguments are made. He asked me, “What message would that send to the world?” I agree wholeheartedly and that is why I am saying to this house that the same argument applies. The Premier needs to listen to what I said to him. The member for Kimberley introduced this Constitution Amendment (Recognition of Aboriginal People) Bill five months and one day ago. I wrote seeking the Premier’s support.

Mr C.J. Barnett interjected.

Mr M. McGOWAN: The Premier does not talk to me; how can I speak to him?

We sent out 407 submissions seeking feedback, and it was overwhelmingly positive. On Monday I rang John Day, the Leader of the House, to advise him that we would be bringing on the bill today. The Premier has had all that time with 136 000 public servants to consider the government’s position, but he has come in here today running arguments that, frankly, hark back to 1995 and that awful little period when those native title laws were voted down by the High Court 7–0.

All I am saying to the house today is that this is a great opportunity for this house to show how good it can be by supporting Josie Farrer, the member for Kimberley, to do something decent, something genuine and something bipartisan and show great faith towards the original inhabitants of this land. That is what we would like to see happen here today. That is why this proposal should be a matter of celebration, not vindictiveness. It should be a matter of friendship, of celebration and of big spiritedness and that is what I would like to see happen.

[Interruption from the gallery.]

The SPEAKER: Those people in the gallery, you are quite entitled to sit and listen to the debate but you are not allowed to clap or shout out, so please observe our rules.

DR K.D. HAMES (Dawesville — Minister for Health) [4.43 pm]: I was to be the lead speaker for the government on this issue but I am not anymore; someone else will take on that role. I thank the opposition for allowing me a pair. It is unusual and generous and I appreciate the opposition doing that because it is not how these issues are normally managed. Thank you for doing that.

It is disappointing for me that we are unable to support this Constitution Amendment (Recognition of Aboriginal People) Bill because I strongly support the concept of the recognition in our legislation of Aboriginal people. If we want to do something in a bipartisan manner, I do not have to go back very far to work out how we do that.

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Last year, the member for Kwinana gave notice that he would introduce a motion to acknowledge women whose children were lost to stillbirth. A year later, having been approached by a parent who wanted us to go down that same path, the Premier agreed that that was a bipartisan issue for government. I spoke to the member for Kwinana, who agreed to withdraw his motion so that we could deal with it in a bipartisan manner and we did so very successfully. That is how we do something in a bipartisan manner. A bipartisan manner is normally initiated by the government of the day.

Several members interjected.

Dr K.D. HAMES: It is true; there have been times, both in opposition and in government, in the past when those things have been done.

Several members interjected.

The SPEAKER: Members!

Mr P. Papalia interjected.

The SPEAKER: Member for Warnbro!

Ms R. Saffioti interjected.

The SPEAKER: Member for West Swan!

Dr K.D. HAMES: As has been said, I greatly respect the member for Kimberley and appreciate her role in this and recognise that she deserves to have a very strong role in a bill going forward in the future that recognises the role of Aboriginal people because she has worked very hard, as has in fact the Premier and his department in working with Noongar people to recognise Noongar people through the land rights legislation that is to come.

This is a very important issue and recognition of Aboriginal people is critically important, in my view. As members opposite will know, I have had significant involvement. As a young boy in Derby I was brought up with Aboriginal people as my mates. I was Minister for Aboriginal Affairs for, I think, seven years in two different sessions of government. I worked for four years on Aboriginal heritage with Aboriginal people in places like Leonora, with Wongatha and Wuther people, sitting down and talking with elders about history and culture and eating traditional foods. I was the Aboriginal consultant for Kings Park and over about 18 months I compiled "The Aboriginal History of Kings Park", which gave me enormous pleasure. From that document I will read a quote from Daisy Bates, who wrote about the very early days of the settlement of this land —

I can never look down on the panorama of that young and lovely city from the natural parkland on the crest of 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.

In that document we tell the story of the first meeting, just below us, where Spring Street meets Mounts Bay Road. There was a spring there where Yellagonga sat when Irwin first came ashore to plant the flag for the first settlers who came here to Western Australia and tells the story of those Aboriginal people. I have been in the Kimberley to the land of Diamond Gorge with all the elders, particularly one, whose name I cannot say for cultural reasons, but who was from Mt Barnett. He was about 80 at the time. It was at the age of 14 that he saw his first white person. I went with that group of elders, sat in the sand and ate the fish they had caught from Diamond Gorge and an old bullock they had knocked off.

As we walked there, we walked past mounds of stone and we were able to pick up rocks that had been traditional carving implements and spearheads. We talked about the history of Aboriginal people in this state that goes back at least 50 000 years. It is a magnificent history for Aboriginal people in the state and it deserves all the respect that we can give it. It deserves recognition of the fact that when those white settlers first arrived on the shores of the Swan River, it was the Aboriginal people, specifically the Yellagonga and the Moorda tribes, who were met in response to that first landing.

This debate does need to be bipartisan. We will hear most of the speakers on this side of the house supporting the concept of the legislation and supporting the concept of recognition of those people. The Leader of the Opposition talked about the fact that the Labor Party got advice from the State Solicitor in 2004. That is true; I have it here. That was a long time ago. We need to ensure that those things are updated in the context of the current native title legislation that has proceeded enormously since that time. The opposition needs to do those things. Why did it not progress it then? We heard a reason from the Leader of the Opposition. He said it was not

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supported by the upper house. Frankly, who cares? He does not know whether this legislation will be supported by the upper house if it goes through this house. That would not have stopped him. It has not stopped him now so why did it stop him then? Why did it stop the Labor Party when it was still in government in 2004?

Mr P. Papalia interjected.

Dr K.D. HAMES: So what?

The SPEAKER: Member for Warnbro, you might also be thrown out. There are a number of members on three calls.

Dr K.D. HAMES: I am just going to wind up. The concept is to have a debate in here, and I think it is good that we are having a debate. I think it is good that the member for Kimberley has brought this legislation forward. It gives us an opportunity to discuss it. Personally, having had discussions with the Premier and having been advised of what the government will do, which we thought she agreed with, I think maybe there has been a bit of pushing for it to get back here today. We support the concept of the legislation. Regardless of what happens here today, we will work productively to bring it forward. We will work with the member for Kimberley, other Aboriginal people in this state and other non-Aboriginal people in this state. Our efforts will be to strongly support bringing this legislation back in the future and supporting it.

MR B.S. WYATT (Victoria Park) [4.52 pm]: I rise to speak to the wonderful opportunity introduced by the proud Gidja woman sitting behind me. I, too, want to acknowledge the traditional owners—the Noongar people. I will respond to some of the arguments that the Premier made this afternoon as to why he is not supporting the Constitution Amendment (Recognition of Aboriginal People) Bill 2014. The Premier and the Deputy Premier can use all the words they want but they are not supporting this legislation. I want to respond to some of the arguments put by the Premier. I think he has it wrong. I looked at his backbench and I know that they think he has it wrong too. Every argument he raised here today is able to be defeated because it is ludicrous. This morning, the position of the government was that it cannot support the passage of this legislation because it has to wait on the federal process of constitutional amendment. That was the statement the Premier put out this morning. Yet when he got to his feet today, he did not even mention that. He got to his feet and rattled off some red herrings. This morning, he tried to get his range on why he is opposing the legislation—because he is waiting for leadership from Canberra—and that did not work. I did not think anyone accepted any connection between what is happening federally and what we are trying to do today.

These are the red herrings that the Premier outlined today. The first one is the old divide and conquer: “We do not know the impact this is going to have on native title and that claimant group or that claimant group.” It is the old divide and conquer—let us try to create some divisions in the Aboriginal people because “no-one knows the impact” of this legislation. The second argument is that this legislation might jeopardise the Noongar claim. This from the government that is proposing to amend the Aboriginal Heritage Act 1972 to remove any involvement of Aboriginal people, and he is saying that this legislation might jeopardise the Noongar claim. Give me a break! Then came the beauty. I have not heard this argument. He dusted off the old Richard Court argument—after Mabo, the passage of the Native Title Act. He does not know the impact. I have written down the quote. He said there were “doubts about freehold title renewal”. That is what the Premier said. He dusted off the old Richard Court line when he last had to deal with something like this. He made three ludicrous arguments. Looking at his backbench, they know how ludicrous they are too.

Then the Premier expressed a concern that we are in this place this afternoon debating the Constitution of Western Australia and no-one knows. He looked up to the public gallery and said there is no-one there. That is what he said. He was so concerned about the fact that people had no idea what was happening, he was so concerned that no-one knows about the impact of this legislation on other areas of law and he was so concerned about what it might do to freehold title and Noongar claim that, in the five months since the member for Kimberley introduced this legislation, he did not do a thing. Did he mobilise 136 000 public servants to give him advice on what impact it may have on the Noongar claim? Did he mobilise 136 000 public servants to advise him on what legal impact it may have on freehold title? Did he mobilise 136 000 public servants to find out what it might do to other areas of law? Silence. The reason the Premier is opposing this legislation today is, as the Deputy Premier said, “bipartisan manner is normally initiated by the government of the day”. That is the only reason the Premier is opposing this today. He tried to draw range on a couple of different reasons to oppose the member for Kimberley’s bill. Not one of them has really hit the mark, highlighted by the Premier’s inaction. If the Premier was really concerned about those issues, he would have sought advice.

The Leader of the Opposition has gone through the consultation that we have done. The Premier suggested that this bill fell from the sky and landed on his desk today and no-one knows anything about it. I want to quote what the Law Reform Commission of Western Australia stated when it looked at this issue. It stated —

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From November 2002 to August 2003 the Commission undertook an extensive consultative process in the metropolitan, regional and remote areas of Western Australia.

...

In many cases, consultations took place over a number of days and included large public meetings, gender-based discussion groups, theme-based discussion groups and one-on-one (or restricted group) confidential briefings.

...

As part of the research gathering phase of the project 15 background papers on different areas of interaction between Australian law and Aboriginal law and culture were also commissioned. These were published individually over the period December 2003 to June 2005 and were released as a single volume in January 2006 to complement the Discussion Paper and this Final Report.

As with every other area of Aboriginal policy, Aboriginal people have been consulted to death. All the members say that; I hear them say that. I wanted to put to bed early that the arguments raised by the government's leader do not stack up, and they know that. They know that if the Premier genuinely wanted to know the answers to those questions, all he had to do as the Premier of the state was ask one of those 136 000 public servants to advise him. What do we get today? No-one knows. I say to members: do not think for a minute that the Premier is across his brief on this. I think he has got this one wrong and they know it.

I want to talk about a couple of points about the historical story of our Constitution and Aboriginal people. Despite the Premier saying that the priority of the government is the Noongar claim, this is not about the government. This is not about the member for Cottesloe and the government; it is about the Parliament making a statement about what we think about ourselves and how we involve Aboriginal people in our foundation document. I have the original version of the Constitution Act 1889 and I want to read a section that is no longer there. Many will be familiar with section 70. I will not read it all, just a couple of points —

There shall be payable to Her Majesty, in every year, out of the Consolidated Revenue Fund the sum of Five thousand 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.

It goes on to state —

... under the sole control of the Governor ...

And then later, importantly —

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.

I daresay that people in the gallery are familiar with the old section 70 because it was indeed a topic of much debate. Looking at some of the writings by our constitutional scholars, I note in particular a piece by Professor Peter Johnston titled "The Repeals of Section 70 of the Western Australian Constitution Act 1889: Aborigines and Governmental Breach of Trust". Aborigines have been forever waiting on the government of the day to get itself comfortable with how it treats its Aboriginal people. I do not think the government is comfortable yet. It will get there because I think the backbench will insist upon it. I do not think it is there yet but they will shortly be there. Not long after, when John Forrest was the Surveyor General, he recommended the Aborigines Protection Board. In 1883 the then governor, Governor Broome, appointed John Forrest to head a commission of inquiry that produced a report entitled, "Report of a Commission appointed by His Excellency the Governor to inquire into the Treatment of Aboriginal Native Prisoners of the Crown in this Colony: And also into certain other matters relative to Aboriginal Natives." That flowed on from some of the, perhaps, less stellar performances of the custodial guards on Rottnest Island. Governor Broome was concerned about getting some pressure from London. At the time no doubt the words of William Wilberforce about slavery were running through the English system causing some concerns about what was happening in the colonies. Surveyor General John Forrest headed that commission. Neville Green wrote a paper and stated —

Forrest's report on Aboriginal prisoners, presented to Broome on September 1884, recommended the establishment of a board, 'for the management of all matters connected with the Aborigines, and to

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which all moneys to be expended on them should be entrusted.’ It was such a board and its functions that Forrest set out to destroy when he became premier six years later.

The board was set up and when the original act was passed and sent to England there were some concerns, interestingly enough, out of England about how Aboriginal people were being treated. I will now quote from Chamberlain who was the then Colonial Secretary. Our Governor, acting effectively as the go-between between our colonial Parliament and the English Parliament, received this despatch from Chamberlain the Colonial Secretary on 27 December 1895, about five years after section 70 was introduced —

When in 1887 the Legislative Council of the colony—

Being WA —

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.

Remember, this is from Chamberlain —

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”.

There was such concern about the new empowered colonial government here in Western Australia, about the capacity to treat Aboriginal people, that England said, “We do not want the Parliament directly responsible for that job.” So the Aborigines Protection Board was entrusted with that role and £5 000 a year, as confirmed in section 70 of the then Constitution or one per cent of gross revenue of the state would go to the Aborigines Protection Board solely responsible to the governor. There was no role for the Parliament at that point.

Now, remembering that Forrest recommended the protection board, Forrest became Premier and almost immediately after the passage or the granting of responsible government of Western Australia, the Parliament here—us in Western Australia—immediately moved to try to repeal section 70. It took some time—about eight years—but almost immediately. That happened in 1889, and then in 1894 the Parliament here passed a repeal bill and sent it to England to be agreed to. It sat there for some time and Chamberlain still had some concerns about agreeing to that repeal. Sir John Forrest, the Premier at the time, said this in a despatch —

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?

It sits at Downing Street for a period of time. Chamberlain, lobbied by Forrest, was aware of the desire of a WA Parliament, but he still had concerns. He did not want to give up section 70 quite so easily so he wrote to Sir AC Onslow, the Acting Governor in 1895, about a year after the state Parliament passed the repeal bill and said —

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.

That is, I am not going to get rid of section 70 but we will make the Aborigines Protection Board responsible to a government department instead of to the government. That was not good enough for Forrest at the time. Chamberlain inevitably, and the British government, facing such hostility —

[Member’s time extended.]

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Mr B.S. WYATT: Chamberlain was always going to see this through and he stated in the same correspondence that he noted that the provisions of section 70 were not intended to be of a permanent character.

Just shortly before that, it was a condition of responsible government. Five years later, it becomes “not meant to be of a permanent character”. In due course, it was abolished. But of course there was some embarrassment there, because they had to re-pass the legislation as the manner and form had not been complied with in that original 1894 bill. Section 70 was then removed from the Constitution.

Interestingly, not long thereafter, in 1905, quite a remarkable person, F. Lyon Weiss, who had a real interest in the way Aboriginal people were being treated, started to examine the passage of that second bill, only to find that that had not been passed validly. Weiss, quite a talented person, notes that between the passage of the bill in 1897, and 1905, the Aborigines had been “hypocritically defrauded of more than £150 000”, because section 70 was still valid. What is often lost in the passage of time with the Aborigines Act 1905—that infamous act—is that the member for Forrest fought for our government to have control of Aboriginal people. The English were a bit concerned about how we would go. Four years after Forrest left Parliament, in came the Aborigines Act 1905, the consequences of which are still being felt. In section 65 of the Aborigines Act, they had to correct again the mistakes made back in the late 1800s with the passage of the repeal of section 70. They had to also confirm that everything that had happened between 1897 and 1905 was correct.

The reason I have given that constitutional lecture, members, is that it is worth remembering that Aboriginal people have always been, since Stirling sailed up the Swan, berated and pushed and bullied by the government of the day. That is why I do not have a real interest in the government’s priorities. I have an interest in what we do here. I know the Premier finds the timing of this bill awkward. I know he would prefer for this bill not to be dealt with now. But he also has an opportunity. The Premier has raised a few issues that could probably be resolved with a quick call to the Solicitor-General, probably before six o’clock, because that is about the thought that went into the problems that he raised, and we could all pass this bill now and send it to the upper house. The Premier could then satisfy himself in respect of those legal technicalities that he raised during his contribution, and then, when the Premier is satisfied, because I know he will be, that this bill will have no impact on freehold or native title—and I know the Noongar people are not going to be upset about the Constitution of Western Australia recognising them —

Several members interjected.

Mr B.S. WYATT: I am pretty sure they will not be—he can have the bill brought on in the upper house. We do not need to reject it now in this place. We can support this bill through this place.

I encourage those members who have not done so to go back and read the member for Kimberley’s second reading speech. It is very rare in this place that we have the opportunity to have a Gidja woman from the Kimberley—not a Labor member; a Gidja woman from the Kimberley—introduce a bill to recognise Aboriginal people in our Constitution. That is why we should be bipartisan. As the Deputy Premier said, and I quote again, “bipartisan manner is normally by the government of the day”. This is not something for the government to bequeath members. This is not something on which government finally works its way up and decides, “Do you know what? We will now recognise you.” This is something for us parliamentarians to grasp, well past its due-by date. And a Gidja woman introduced the bill! What an opportunity we have, members!

I implore members: stand up to the Premier on this, because he has got this wrong. On all these issues, if members still have a skerrick of doubt or are worried about the issues raised by the Premier—they should not be—we have an opportunity, when the bill goes to the upper house, to resolve those issues, because it will not take long to do so. We can then be the Parliament, standing proudly behind the member for Kimberley, that amended the Constitution of the state to recognise Aboriginal people. We are the last mainland state in Australia to do it, but we will do it. What a wonderful opportunity that presents us. The Premier has raised this new standard that every Western Australian must be across the brief of the legislation that we are debating here today. That does not stand, members. This issue—Aboriginal customary law and Aboriginal recognition in the Constitution—has been debated to death. The arguments made by the Premier outside this place that we must wait on the commonwealth process to conclude will effectively kick this legislation into the long grass. We do not need to do that. There is no link between what Canberra is doing and what we can do. We have the authority, because we can just pass this bill today, and it will be the right thing to do.

I say, members, in conclusion: our Constitution is the story of who we are. It does not yet tell our story. This bill will do so, in a small amendment to the preamble of the Constitution—a small but very significant amendment. I know that the Premier has got his range on this wrong. He has got it wrong. We will then all be able—all of us; I have never said it is a Labor issue—to stand with the member for Kimberley and celebrate its passage. I think that if we do not take this opportunity today, it will be an opportunity lost and one that with the passage of time

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we will regret. Ultimately, it will happen. But in these circumstances, now is the right time to send this message to the broader Western Australian community. I ask all members to stand up to the Premier on this, because I know all members agree that supporting the member for Kimberley, a Gidja woman from the East Kimberley, is the right thing to do.

Opposition members: Hear, hear!

[Interruption from the gallery.]

The SPEAKER: I have asked you upstairs, please do not disturb the proceedings.

MR J.R. QUIGLEY (Butler) [5.17 pm]: The member for Victoria Park has laid out in a very fulsome speech the merits of the Constitution Amendment (Recognition of Aboriginal People) Bill and of amending our Constitution and what it will do for us as a society. I want to deal with the disingenuous proposition put forward by the Premier of Western Australia in signalling the government's intention to oppose this legislation. It rests on the pillar of fear, in exactly the same way as a previous Liberal government in the 1990s raised questions of fear as a response to the federal land rights legislation that came after the High Court decision in Mabo. The Premier says that this Parliament and no members of this Parliament have any idea what impact an amendment to the preamble of the Constitution will have on the settlement of the Noongar land rights case. The Premier says also that a lot more thought and research would need to be put into what effect the inclusion in our Constitution of the recognition of our Indigenous brothers and sisters will have upon the land rights settlement and upon other legislation. The Premier says, "Who knows?", so he raises this question of uncertainty and fear.

The member for Victoria Park has noted that Western Australia is the last mainland state to do this; Victoria, New South Wales and Queensland all have these in their constitutions in various different ways, but I want to refer the house to a very well researched paper published by the constitutional reform unit of the University of Sydney Law School, report 2 of September 2011, titled "Constitutional Recognition of Indigenous Australians in a Preamble". The paper deals with the recognition of Indigenous Australians in constitutional preambles. In chapter 3 of that paper, headed "The Role of a Preamble and its Interpretation", there is a very interesting discussion on the role of a preamble. It needs to be emphasised that a preamble does not confer any power or derogate any right; it cannot. A preamble is there to introduce the legislation and to deal with the intent of the legislation. A preamble can be used by a court, not to determine or diminish a right, or confer an obligation or privilege, but when there is ambiguity in other sections of the legislation; that is, the court can return to the preamble to look at the Parliament's intention. As I said, chapter 3 of this very well researched paper published by the University of Sydney deals with the role of a preamble. It cites five different roles that a preamble might fulfil, and I will go through them just very briefly. Of course, Australian case law from the High Court is referred to in this paper. The paper proposes that —

A preamble 'walks in front' of a statute. It is an introductory statement that may fulfil a variety of roles.

Its first function may be —

... 'to explain and recite certain facts which are necessary to be explained and recited, before the [provisions] contained in an Act of Parliament can be understood'.

This does not confer a right on any particular Indigenous person in Western Australia; it is simply a narrative whereby the proposed amendment acknowledges Aboriginal people as the first people of Western Australia and the traditional custodians of the land. Does anyone in this chamber or in Western Australia dispute that as a fact? It is only walking in front of the Constitution to put it in its historical context.

The second function of a preamble may be —

... to explain the purpose of a statute or the intention of Parliament in enacting it.

It has been said in the High Court that it is —

... the 'key to open the minds of the makers of the Act and the mischiefs which they intended to redress'.

It does not confer anything.

Thirdly, the function of a preamble might be —

... to persuade people, so that they understand, respect and obey the law.

Of course, the amendment to the preamble to the Western Australian Constitution contained in this bill takes our citizens and other people looking at our state to an understanding of what we are on about and why they should respect and obey the law. It does this by recognising that Indigenous people are the first people of

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Western Australia and the traditional custodians of the land. That is what nearly every member of this Parliament, including the Premier, says when they acknowledge traditional owners before making speeches at schools and other places.

It was as long ago as the birth of democracy in Greece that Plato, in his dialogue on *The Laws*—I am going to quote the Sydney University paper again, because the Premier has missed this point —

... distinguished between the text of the law, which imposes obligations and duties by way of ‘dictatorial prescription’ and the preface to the law, being the preamble, which persuades people to obey the law by placing them in a more co-operative frame of mind towards the aim of the law.

Does not the recognition of Indigenous people as the first Western Australians and traditional custodians of the land place everyone in a more cooperative frame of mind in relation to obedience to the law?

Fourthly, a preamble may be used —

... to respond to an event or a court decision ...

We need not go there. This preamble is not in response to a court decision, but one such example might be the preamble to the federal native title legislation, in response to the High Court’s Mabo decision.

Finally, and importantly —

... a preamble may have a symbolic role. It may be used to give recognition to a group or to attempt to satisfy the concerns of groups that they have been previously overlooked or badly treated, without making any substantive changes to the law.

That is exactly what this preamble does. I strongly urge my fellow parliamentarians in this chamber to have a look at the paper I have just quoted, which deals with the recognition of Indigenous people in constitutional preambles, and bear in mind that both New South Wales and Victoria recognised Indigenous people not in a preamble, but substantively within their constitutions. Queensland did the same thing by doing what we are attempting to do today, which is to recognise Indigenous people as the first occupiers of the land and the traditional custodians through a constitutional preamble. Not one of these cases went to a plebiscite of the people; it was done in each of the Parliaments by the authority bestowed upon them by the people. The rhetorical question posed to all of us by the Premier can be answered in the affirmative. He asked us whether we knew what effect this preamble would have on the land rights settlement, and the answer is yes, we do know, Premier: it will have none; zero; no effect. That is not the opinion of just the learned professors of the University of Sydney Law School, when looking at the recognition of Indigenous people around Australia in constitutional preambles; it is also the opinion of the Solicitor-General of Western Australia. The Leader of the House and the Premier then grasped at straws and said, “What if something is changed in the interim?” They did not take this chamber to any law or to any circumstance that has changed; they raised this as a hypothetical question for the purpose of driving this debate down the fear path.

I can remember saying in my inaugural speech—given from the second row on the other side of the chamber before you joined us in this house, Mr Speaker—having been non-political all my life while practising law and having come from a very strong Liberal family, that one of the reasons why in the 1990s I walked across the Beaufort Street bridge to Curtin House, introduced myself, signed up as a member of the Labor Party and then sought preselection was the dreadful racist fear campaign run by members of the Liberal government through the land rights legislation. They wasted taxpayers’ money when they took us to the High Court of Australia and lost 7–0. They were driven by fear. The turning point in John Quigley’s life and making me political was when *The West Australian*, which was on the government side, published on its front page a map of the metropolitan area all blacked out and saying, “These suburbs will go. You’ll lose your home to land rights.” No member of the Liberal Party had read the Mabo decision. None of them wanted the public to realise that once freehold had been granted, that was the end of it; there was no claim of land rights over freehold land.

I am just depressed and find it deplorable that here we find ourselves 20 years later being subjected to the same argument of fear in this place this afternoon, when we know from as long ago as the dawn of democracy that Plato wrote that the preamble is not part of the legislation. I urge all members this afternoon to reject the argument of fear, to embrace our Indigenous brothers and sisters and to vote yes to this bill this evening.

DR A.D. BUTI (Armadale) [5.32 pm]: I am very proud to stand in this place to support the Constitution Amendment (Recognition of Aboriginal People) Bill 2014 moved by the member for Kimberley, but I am also very depressed, like the member for Butler, by the contribution from the Premier this afternoon. In some of the matters the Premier raised, he asked whether this bill would have an effect on native title. Native title is a federal matter dealt with in the federal jurisdiction. Whatever we do at the state level will not

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supersede or have priority over federal legislation. The Premier knows that. The Premier is just peddling an untruth and going back to the fears of yesteryear. The Premier knows that native title is a federal jurisdictional matter. What we do today will have no effect on native title. As the member for Butler stated, this bill proposes an amendment to the preamble. It will not have operational effect. The declaration will have no effect on the substantive law. The Premier knows that. All he has done today is go back to what he and his party did back in 1995. We can all remember those revolting, disgusting advertisements that were put out by the mining industry and supported by the Liberal Party. Members will remember those commercials showing the hand of a black child posted on a diagram that read, "Your land or your backyard is in danger." We remember that. All the Premier has done today is create uncertainty that if we pass this legislation, it may affect freehold title and native title. It will not affect native title; it is federal legislation. State legislation, as the Premier very well knows, does not override federal legislation. The Premier should know that from the 7–0 defeat in the High Court in 1995. This bill has been brought before the house and in many respects we should be celebrating that this Parliament has got to the stage at which we can bring something like this before the Parliament.

The Premier states that the people of Western Australia have not been consulted. Give me a break! When were the people of Western Australia consulted on the Aborigines Act 1905 or the 1936 act or the 1954 act—acts that had a major effect on Aboriginal people? When did our predecessors consult the people of Western Australia when the 1905 act came in, which basically gave the state complete control over Aboriginal people? When did they do that? They never did that. When did the Richard Court mob that the Premier was a part of consult Aboriginal people back in 1995? That is when the Liberal government asked the federal government to wipe out the federal Racial Discrimination Act and the rights of Aboriginal people and their land rights. The Liberal government in 1995 wanted the Parliament of Western Australia and the federal Parliament to override the Racial Discrimination Act for Indigenous people to have rights under the High Court Mabo decision, and it wanted the Parliament of Western Australia and the Parliament of Australia to override the native title legislation. Liberal members should not come into this place and talk about consulting Indigenous people or consulting the people of Western Australia, because we have never done that in our history when we sought to remove the rights of Indigenous people. Now we want to recognise Indigenous people in our Constitution and the Premier is saying we have to have a major discussion with the people of Western Australia. It is unbelievable!

Mr P.T. Miles interjected.

Dr A.D. BUTI: The member for Wanneroo would not even know what a piece of law is! I would keep my mouth shut if I were you; you never contribute anything to this Parliament.

Mr P.T. Miles interjected.

Mr J.R. Quigley: We saw the corruption in Wanneroo, if that's what he's into.

The SPEAKER: I am sorry, member for Butler.

Mr J.R. Quigley: I withdraw.

Withdrawal of Remark

The SPEAKER: I call you to order, member for Butler, for the second time I think, and I would ask you to stand and withdraw that comment.

Mr J.R. QUIGLEY: I withdraw.

The SPEAKER: Member for Wanneroo, I do not want to hear from you.

Debate Resumed

Dr A.D. BUTI: The member for Victoria Park gave us an early constitutional lesson on how governments in the Parliament of Western Australia have dealt with Indigenous people. That was an important lesson because it went to part of the reason why the member for Kimberley has brought this bill before the house. The member for Victoria Park mentioned the Aborigines Act 1905. I am sure members on the other side would understand, although I doubt the member for Wanneroo would, but I tell members one thing —

Several members interjected.

The SPEAKER: Member for Wanneroo, I call you now to order for the third time and I want you to speak through the Chair. I do not want to hear from you either, thank you, member for Jandakot.

Dr A.D. BUTI: I am pretty sure that if the members for Pilbara, Kalgoorlie and North West Central were in the chamber, they would be supportive of this bill. If they are not supportive, they can speak against it.

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The 1905 act basically gave the Western Australian government complete control over the lives of Indigenous people. One particular section of that act made the Commissioner of Native Affairs the guardian of all Indigenous children 16 years of age and younger. Do members know what that did? It allowed Aboriginal children to be removed from their families for no other reason than that they were Aboriginal. Compare that with the Child Welfare Act 1907. In order for a child to be removed from their family, it had to be shown that they were in danger or that their parents were neglecting them. That was not required under the Aborigines Act 1905; but was it required under the Child Welfare Act 1907, which dealt with non-Indigenous children?

Another interesting point is that under the Child Welfare Act 1907, if a non-Aboriginal child was removed by a court order after engagement in the court process, the child had to be put into an institution with foster parents who practised the same religion as the parents. For an Aboriginal child, that was not considered. If anything, they tried to convert Aboriginals into the religion that was thought appropriate at the time. Let us get this: in 1905 a legislative system was created in which the state basically became the guardian of Aboriginal children under the age of 16 years, which then gave the state the power to remove them. I tell the Premier this: the people of Western Australia were not consulted about the Aborigines Act 1905. That set up the legislative framework, as the member for Victoria Park mentioned, that is still being played out today. It has an intergenerational effect. The member for Victoria Park has personal experience because members of his family were subjected to this legislative framework.

In 1915, there was the appointment of Mr Neville. I am sure most people would know who Mr Neville was. He was the Commissioner for Native Affairs—later to become the Commissioner of Aboriginal Affairs. He was portrayed in the film *Rabbit-Proof Fence*. Mr Neville had some interesting views on Indigenous affairs, or Aboriginal affairs. He was very determined to enforce every part of the Aborigines Act 1905. Some of this man's thoughts are quite interesting. The Premier made a big point about Western Australians not knowing that this bill has been introduced into this house and that they need to be consulted. The problem with that is today the Premier put out the scare campaign: what effect will this bill have? As the member for Butler mentioned, it is a preamble that has no operative legal effect. It is a declaration. I know the Premier has problems with native title. In 1995 the court decided 7–0; even Justice Dawson, who was a minority judge in *Mabo*, saw the racist nature of that piece of legislation. I repeat: I have no trouble in saying that the 1995 Liberal Party act was a racist piece of legislation.

Point of Order

Mr C.J. BARNETT: That is the third or fourth time the term “racist” has been used in this debate. I think it is unparliamentary. If there has been any goodwill, the member opposite and the member before him are destroying it in front of the people of Western Australia.

Mrs M.H. ROBERTS: The term “racist” itself is not unparliamentary; it depends on the context in which it is used. In the context it was used, it certainly was not unparliamentary.

The SPEAKER: Be careful with your language, member for Armadale.

Dr A.D. BUTI: I have not accused any individual of being racist. I said the bill —

The SPEAKER: Okay, that is fine. Continue, please. I understood that.

Debate Resumed

Dr A.D. BUTI: I am not sure how referring to a bill as “racist” is unparliamentary, but anyway.

I go back to when the Aborigines Act 1905 came before this place. The member for Mount Magnet stated that he thought we should be separating half-caste from full-blooded Aborigines. I quote —

Regarding the half-castes, I think it very undesirable that they should be put on the same reserves with the aborigines. Half-castes, if bred with white people, become, in some respects almost as expert as the whites; but once they marry with aborigines, they become even more depraved than the aborigines themselves. If we have reserves, we should try to put the half-castes on reserves by themselves; because I firmly believe that they are a grade higher than the aborigines.

I know the current member for Pilbara would be absolutely appalled by this statement by the then member for Pilbara. When debating the 1905 act, the then member for Pilbara said —

There is a great deal of maudlin sentiment about taking away a child from the native mother; but the man who sees it done will lose all that sentiment; because when you take a child away from a native woman she forgets all about it in 24 hours and, as a rule, is glad to get rid of it.

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What the Premier does not seem to understand is that the members for Kimberley and Victoria Park can tell us what happened in Western Australia in regards to the way this Parliament, and state governments of various persuasions, have treated Aborigines over our history. We should be applauding this bill. It goes some way, only part of the way, to try to reconcile our history.

Of course some people on the government side will say that we should not engage in a black-armband approach to history. The history is the history—this cannot be denied—but the way this generation and the way this Parliament will be judged is how we deal with that history. We are not necessarily responsible for what happened, but we are responsible for what we do today. What we can do today is recognise that the Aboriginal people of Western Australia were the first people here. They were here before Captain Stirling came up the Swan River. They deserve a unique place in our Constitution—in a declaration. That is all this preamble is; it is a declaration.

I will be incredibly surprised if members of the National Party, and I think many members on the back bench of the Liberal Party, are not supportive of this legislation. Do not allow the Premier once again to ride over you. This is a historic moment that we can all rejoice. When the history books are written in 100 years' time, yes, they will mention that it was the member for Kimberley who introduced this bill, but as the member for Victoria Park said, the fact she is a member of the Labor Party will be irrelevant. As a Parliament, we can all be proud when we pass this bill. This bill, when passed, will not determine the next state election. Do not be concerned that this bill has been introduced by the Labor Party; rejoice in the fact that we have got to this stage. Western Australia has a sordid history when it comes to Indigenous affairs.

Why do not we, as this generation of politicians, as this generation of parliamentarians, do something to try to redress what happened in the past? Of course no-one in this Parliament would dare agree with the views of the member for Mount Magnet or the then member for Pilbara in 1905. None of us would.

Mr A.P. Jacob interjected.

Dr A.D. BUTI: I beg your pardon?

The SPEAKER: Carry on, member for Armadale.

Dr A.D. BUTI: Typical coward behaviour.

The SPEAKER: Member for Armadale!

Mr J.H.D. Day: It was not derogatory.

Dr A.D. BUTI: Anyway, this is a historic moment that all of us should grasp. After the next election, some of us will not be here, for whatever reason. That is why we have an opportunity. It is fantastic that this bill has been introduced by the member for Kimberley. The Premier can say that he respects the member for Kimberley et cetera, but if he truly respects the member for Kimberley, he can show his respect by supporting this bill. It has no legal operative effect. This concern about native title, freehold title, or the effect on the Noongar claim is absolutely ridiculous.

[Member's time extended.]

Dr A.D. BUTI: If members need any more reason to accept this bill, let us go to Mr Neville's statements. In a newspaper article in 1937, Mr Neville was reported as stating —

Mr Neville holds the view that within one hundred years the pure black will be extinct. But the half-caste problem was increasing every year. Therefore their idea was to keep the pure blacks segregated and absorb the half-castes into the white population. Sixty years ago, he said, there were over 60,000 full-blooded natives in Western Australia. Today there are only 20,000. In time there would be none. Perhaps it would take 100 years, perhaps longer, but the race was dying. The pure-blooded aboriginal was not a quick breeder. On the other hand the half-caste was. In Western Australia there were half-caste families of 20 and upwards. That showed the magnitude of the problem.

In order to secure this complete segregation of the children of pure blacks, and preventing them ever getting a taste of camp life, the children were left with their mothers until they were but two years old. After that they were taken from their mother and reared in accordance with white ideas.

In 1936, a royal commission into Aboriginal affairs was established in Western Australia known as the Moseley royal commission. Its report came out in 1937. I want to quote from that report. A submission was made by Dr Cecil Bryan—these terms of course are very offensive today—stating that half-castes should not mate with other half-castes as it would perpetuate the black and coloured elements. This is what he submitted to the Moseley royal commission —

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The mating of half-castes with half-castes means nothing more than the perpetuation of the black and coloured element against which we all of us are so set against. If we want to do the fair and just thing by these half-castes and their progeny, and if we have desire to save our own children from the terrible problems presented in the United States today, and growing worse with the minutes as they tick by, we will do all in our power to prevent the mating of a half-caste and a half-caste, and especially with a black. We will on the other hand do all in our power to displace the black strain by an infiltration of white blood. I am not advocating the marriage of white with half-caste. I am dumb on that aspect. What I am advocating is the mating of half-caste with a coloured person who has more white blood in him or her, with one who, as a quadroon ... is higher up on the white scale.

As time went on and the removal of Aboriginal children became more government policy, a number of homes were established. One of the homes was Sister Kate's Children's Home in Queens Park, which was to be an institution mainly for light-skinned Indigenous children. Measurements were done to try to work out the so-called white blood content of each individual, and if they were considered to be slightly darker than was desirable, they were excluded from Sister Kate's. This is a request from a native welfare file —

I regret it is not possible to agree to Mr Cadoux's request. James is a near-white boy. He is being reared as a white child at Sister Kate's Home, and in due course he will be placed out in employment, and will live as a white person. It would be detrimental to his future welfare to permit him to return to his mother who lives in association with natives. If this were agreed to it would undo all the good work in rearing James to white standard.

... Children placed with Sister Kate are never released to their parents. This would be a direct contradiction of the principle of their segregation from native persons, as they are placed with Sister Kate for this very reason. By Section 8 I am James' legal guardian up to 21 years, notwithstanding that his mother is alive, and since the principle consideration is the lad's welfare I regret I am unable to accede to ... request. If I did so I would be inundated with similar requests from other native mothers.

Some of us may have seen the *Four Corners* special the other night about the Irish situation. We may have said, "Isn't that terrible?" I think we need to look at what happened in our own backyard.

I used to work for the Aboriginal Legal Service and the CEO for part of the time I was there was Robert Riley. Robert Riley was removed to Sister Kate's and when he asked where his mother was, he was told that his mother was deceased. He was told that his mother had died, but his mother was not deceased. We can imagine how he would have felt to find out that his mother was still alive, even though he was belted when he kept asking for his mother. That is why this bill is only a small gesture by this Parliament to acknowledge and recognise the wrongs of the past. In one step, we will give rightful recognition to Aboriginal people in our Constitution.

The Premier talked about the Noongar single native title claim. That is another act of reconciliation that will be applauded. Why can the Premier not show generosity of spirit? This is his chance to show that he can be bipartisan and will join this Parliament—Liberal, Labor and National—in a sign of reconciliation with our Indigenous people through a reparation bill brought forward by the member for Kimberley. This is a reparation measure. This is a historic occasion. Members should not let it be wasted because the Premier has decided otherwise.

Mr J.R. Quigley: On a racist basis.

Withdrawal of Remark

The SPEAKER: Member for Butler, will you please withdraw that.

Mr J.R. QUIGLEY: "Racist" is not unparliamentary.

The SPEAKER: Member for Butler, just be careful with your language.

Debate Resumed

Dr A.D. BUTI: I do not have much time left. Because of Mr Neville's unique position in Aboriginal-white relationships in Western Australia, I want to quote ostensibly from something he said at a conference. I am glad that the member for Pilbara is in the chamber, because I said in his absence that I believe he will be supportive of this bill. A previous member for Pilbara said some very appalling statements about it. It is a shame that the member is leaving the chamber, but so be it. At the commonwealth-state native welfare conference held at Parliament House in Canberra on 23 April 1937, Mr Neville took a prominent position. He said —

The opinion held by Western Australian authorities is that the problem of the native race, including half-castes, should be dealt with on a long-range plan. We should ask ourselves what will be the

Extract from *Hansard*

[ASSEMBLY — Wednesday, 12 November 2014]

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position, say, 50 years hence; it is not so much the position to-day that has to be considered. Western Australia has gone further in the development of such a long-range policy than has any other State, by accepting the view that ultimately the natives must be absorbed into the white population of Australia. That is the principal objective of legislation which was passed by the Parliament of Western Australia in its last session. I followed closely the long debates which accompanied the passage of that measure, and although some divergence was, at times, displayed, most members expressed the view that sooner or later the native and the white populations of Australia must become merged. The Western Australian law to which I have referred is based on the presumption that the aborigines of Australia sprang from the same stock as we did ourselves; that is to say, they are not negroid, but give evidence of Caucasian origin.

He went on to say —

If the coloured people of this country are to be absorbed into the general community they must be thoroughly fit and educated at least to the extent of the three R's. If they can read, write and count, and know what wages they should get, and how to enter into an agreement with an employer, that is all that should be necessary. Once that is accomplished there is no reason in the world why these coloured people should not be absorbed into the community. To achieve this end, however, we must have charge of the children at the age of six years; it is useless to wait until they are twelve or thirteen years of age. In Western Australia we have power under the act to take any child from its mother at any stage of its life, no matter whether the mother be legally married or not ...

... in order to prevent the return of those half-castes who are nearly white to the black, the State Parliament has enacted legislation including the giving of control over the marriages of half-castes. Under this law no half-caste need be allowed to marry a full-blooded aboriginal if it is possible to avoid ...

...

... I see no objection to the ultimate absorption into our own race of the whole of the existing Australian native race.

He also said —

... Every administration has trouble with half-caste girls. I know of 200 or 300 girls, however, in Western Australia who have gone into domestic service and the majority are doing very well. Our policy is to send them out into the white community, and if a girl comes back pregnant our rule is to keep her for two years. The child is then taken away from the mother and sometimes never sees her again. Thus these children grow up as whites, knowing nothing of their own environment. At the expiration of the period of two years the mother goes back into service so it really does not matter if she has half a dozen children.

The state's ability to remove Aboriginal children because they were Aboriginal—not because they were neglected as would be the case for non-Aboriginal children, in which case a court order would be needed—was not removed until 1963. The 1963 Native Welfare Act removed the guardianship power that the state had over Indigenous people. Where do we stand today? Thankfully, the state does not have that power; however, due to that history, due to the first six decades of the twentieth century, the effects of that policy of separation are still being played out. Today we ask in this Parliament to acknowledge what happened. This bill provides this Parliament the opportunity to state that the Indigenous people were the first peoples of this state and they deserve a unique position in our preamble. That provides a reconciliation and reparation effect that seeks to redress some of the wrongs that took place in the past. Of course, it can never overcome the sorrow and hurt that the children felt or that of the unfortunately now-deceased mothers. Those children are living today, but we forget that their mothers suffered day in, day out not knowing where their children were, and even if they did know where their children were, they were unable to see them. During my time at the Aboriginal Legal Service I read a number of letters in native welfare files from mothers pleading with the authorities to allow them to see their children and being refused that permission. There were many times when children were told that their parents were deceased. It is appalling. We do not condone that—none of us do. All we ask is for this generation of parliamentarians to say that what happened was terrible. It was not our fault—it was the previous generation's fault—but we will be judged by what we do today, and what we can do today is pass the Constitution Amendment (Recognition of Aboriginal People) Bill 2014. It is a simple bill that tries to insert a preamble that has no legal operational effect into the Constitution. The Premier can say what he wants. He can put up all the straw hats that he wants. He can put up all the positions of fear and uncertainty that he wants, but the fact remains that I would like the Premier to

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show me one legal scholar in Australia who tells us that the preamble of this piece of legislation or any constitutional act in Australia will have an effect on native title or the other effects that the Premier put up.

Mr D.J. Kelly: Ask Andrew Bolt!

Dr A.D. BUTI: The member for Bassendean may be right about Andrew Bolt, but I am not sure that he is a legal scholar!

The point is that the Abbott government is talking about a preamble in the federal Constitution that has no operative legal effect. Today is the first time I have heard that a preamble to a constitutional act would have a legal effect, and even more so, that a state constitutional preamble would override a federal piece of legislation, being the Native Title Act.

Mr C.J. Barnett: No-one said that.

Dr A.D. BUTI: The Premier may not have said that, but he put it up as an uncertainty.

Mr C.J. Barnett: No I didn't.

Dr A.D. BUTI: Yes, the Premier did. He said we do not know what effect this legislation will have on native title if we pass it. It can have no effect. Native title is federal legislation. Section 109 of the Constitution —

[Member's time expired.]

MR R.S. LOVE (Moore) [6.04 pm]: I would like to thank all speakers for their contributions thus far to what has been to this point a very interesting debate on the Constitution Amendment (Recognition of Aboriginal People) Bill 2014. I know there are many other speakers on both sides of the house who want to speak, including the good member for Mirrabooka over there who is indicating she would have liked to have spoken at this point! However, I think it is important that at least someone from the National Party has a say at this point in the evening. I do not know how long this actual debate will go for, but, as I say, I am sure that many members of this house will want to contribute to the debate and I hope there is no move to curtail their right to have a say on this very important piece of legislation, in so far as the Constitution is of utmost importance to everybody.

The bill that has been introduced today by the member for Kimberley seeks to amend the Constitution Act 1889 to recognise Aboriginal people as the first people of Western Australia. As she is an Aboriginal person herself, I am sure I understand how important it would be to her to introduce that matter, although, as a non-Aboriginal person I can only have some semblance of understanding of how important that issue would be to her and other members of the Aboriginal community. This year, 125 years have passed since the original Constitution Act was enacted. As we have heard, it has been amended many times in that period and it probably is high time that Aboriginal habitation of this land was recognised. We have heard the other states did move to consider and include constitutional recognition of Aboriginal Australians in their Constitutions. South Australia was the most recent and I think Victoria was the first to do so. At a federal level the Aboriginal and Torres Strait Islander Peoples Recognition Bill 2012 was passed last year in 2013. Passage of a bill of recognition would make Western Australia the last mainland state to recognise in its Constitution Aboriginal people as the first original custodians of this land.

The bill apparently uses the same wording as an amendment in the 2004 bill and advice on that 2004 bill was given by the Solicitor-General about any legal consequences flowing from the preamble. The Solicitor-General is quoted in the explanatory memorandum as stating —

I do not believe that an amendment to the preamble in these terms would have any significant legal consequences. I would see it as principally a statement of historical fact.

...

“In terms of its constitutional significance, it could only be relevant to the extent that it might be the foundation for some implied limitation on the legislative power of the Parliament. However, I find it difficult to see how any limitation of substance could be constructed from such a provision.”

As I have mentioned already, other states have already made changes in similar preambles and I understand that the sky has not fallen down in those states. That being said, it may well be here that we would like to re-examine that advice given back in 2004, now 10 years ago, and certainly in a matter of this magnitude, the change to the Constitution of Western Australia deserves all the time and consideration that is needed to make sure it is done correctly without any unforeseen circumstances. I note that the Queensland preamble has an exclusion clause and I will just take time to read from section 3A in chapter 1 of the Constitution of Queensland dealing with the effect of the preamble that was inserted in that Constitution. It states —

The Parliament does not in the preamble—

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- (a) create in any person any legal right or give rise to any civil cause of action; or
- (b) affect in any way the interpretation of this Act or of any other law in force in Queensland.

In the case of Queensland it was seen to be important that that was an exclusion clause put in when the preamble was inserted. I understand that other states may well have done similar and no doubt other speakers may know more about what happens in other states. In the case of Queensland, from my research, that certainly appears to be the case. Leaving all the political argy-bargy between parties aside, this is a matter of such importance, I think, to Aboriginal people that if we are to move to change the Constitution to give legal recognition to Aboriginal people, it should be done in a way that has the complete support of the house. I do not think it would be wise to push forward with a bill when a party is uncertain about its effect in the future.

Ms S.F. McGurk: How much time do you want?

Mr R.S. LOVE: We have had 125 years, so if we give ourselves a bit of time to look at these matters a bit more fully and give the government time to consider its position, I am sure a good result will be achieved for Aboriginal people.

Mr D.J. Kelly interjected.

Mr R.S. LOVE: I do not think we can put a stopwatch on legislation in that way, member.

Ms M.M. Quirk: You say that every time.

The ACTING SPEAKER (Mr I.M. Britza): Members!

Mr R.S. LOVE: Thank you, member for Girrawheen, but I do not think I have spoken before on this matter so I do not think I should be held to account for what I have not said about the state Constitution. The Constitution Amendment (Recognition of Aboriginal People) Bill seeks to repeal section 42 of the state Constitution, which dates to the early formation of the Legislative Council. Perhaps its repeal also is overdue not only because it might be considered to be redundant, but also because of its divisive language in our Constitution where it reads —

When 6 years shall have elapsed from the date of the first summoning, under section 6, of persons to the Legislative Council, or when the Registrar General of the Colony shall have certified, by writing under his hand to be published in the Government Gazette, that the population of the Colony has, to the best of his knowledge and belief, exclusive of aboriginal natives, attained to 60 000 souls, whichever event shall first happen,

I think it would be entirely appropriate to see that provision struck out of the Constitution. It is time language that seeks to characterise Aboriginal people as distinct from the rest of the community or, in some way of lesser importance, is struck out of our Constitution. The removal of that particular section is certainly overdue. As we know, Aboriginal occupation of this land represents the oldest continuing culture in the world. Western Australia as a society cannot reach its full potential until it can embrace that culture and recognise the position of Aboriginal people in our society and until it values fully and honours that unique culture that we have the privilege to share here in Western Australia.

I note that the member for Kimberley, who has proposed this legislation, represents a vast electorate, and that electorate has a rich and ongoing culture of Aboriginal people. I represent a rural electorate, which is the size of a postage stamp compared with the Kimberley electorate. In my electorate there has been greater disruption, I suppose, of Aboriginal culture than may have occurred in the Kimberley, although there has no doubt been disruption wherever we look in the state. Yet in my electorate of Moore, there remains a sizeable population of Aboriginal people. Some of those people are now separated from their traditions and do not fully understand their history. Nonetheless, they still identify strongly as Aboriginal people. In my electorate also, there are very many different Aboriginal groups. One group is the Yued people, whose traditional lands are found in the Moore River area. The mouth of the Moore River is known by Europeans as the town of Guilderton. To the Aboriginal people it is known as Gabbadah, mouth of water.

At Guilderton earlier this year I was privileged to be present at the launch of what was known as a reconciliation action plan between the Yued people and the relevant shire council there, which is the Shire of Gingin. Many state government agencies have developed reconciliation action plans aimed at building strong relationships and enhancing respect between Aboriginal people and other Australians. The Shire of Gingin's reconciliation action plan has been initiated and drafted to formalise a partnership between that shire and the Yued people in the area. The shire aspires to be a leading regional example of having good-faith community relationships with local Aboriginal people; namely, the Yued–Noongar people. The shire formally recognises the Yued–Noongar people as important stakeholders in the development and progression of the shire. The reconciliation action plan is

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designed to improve and progress awareness of the Yued–Noongar people both within the shire community and to its visitors and to encourage an understanding of their role as traditional owners of the area. That involves the relationship between the shire and the Yued people being recognised in a more formal capacity to encourage a wider understanding of the relationship.

As for the Yued, they hope that through that reconciliation action plan, they are recognised by the non-Aboriginal community as the traditional owners of their land; that their strong cultural and spiritual links to the land and water are fully acknowledged and respected; that their culture, history, language and heritage are acknowledged and respected by all of society; that their laws, customs and beliefs are embedded in the structure of the Yued region; that inspirational Noongar leaders are identified throughout the development of ongoing leadership training; that collaborative partnerships are built that represent shared visions and outcomes; that agreements with government and industry are developed to improve employment and training opportunities; and that Noongar businesses are developed and grown. As well as congratulating the Shire of Gingin and the Yued people for their determination to work together for the benefit of not only Aboriginal people, but also the shire as a whole, it is important to note that as an indicator, communities in regional Western Australia are embracing and celebrating the importance of Aboriginals within their communities and embracing the very significant contribution Aboriginal people have made to this state in the past and will continue to make into the future, I am sure. It is sentiments like that that I am sure will lead to a bipartisan approach in the long run to the development of a constitutional recognition of Aboriginal people in Western Australia.

Right throughout my electorate there are other examples of developing respect for and continuation of Aboriginal culture and recognition of the place of Aboriginal people in our region. Another example is the Nhanda people, who occupy the north of my electorate from the East Bowes River, just out of Northampton, through Kalbarri up the Zuytdorp cliffs as far north as Tamala in the member for North West Central's electorate. Recently, I have been involved with a small group of Aboriginal people who are seeking to re-instil the value of their culture in the young people of that area. They operate from a facility that was once the primary school in Northampton, and they are called the old school mob. They have been involved in reinvigorating appreciation of their history and their culture and the understanding of the kids in that area and, through that, the families they belong to. I pay particular note to the work done by Colleen Drage in that area. I recently had the privilege of receiving a number of message sticks at a festival in Kalbarri that portrayed the history of that area and the interaction between Europeans and Aboriginal people. The Nhanda people participated in the opening of the AWESOME Festival at the Western Australian museum in October this year. It is great to see that level of engagement with the young people of the area coming through.

My electorate, member for Armadale—who raised the matter of Mr Neville, a protector of Aborigines in times gone past—has the old Moore River mission within its bounds. The importance of that mission and the need to find a suitable model for its development has been raised with me by several groups of Aboriginal people. Its place in Western Australian history goes beyond just the local Aboriginal people. Many Aboriginal people from the area had a very strong ongoing connection to it. But there are people as far north as the Kimberley, I believe, and all over Western Australia who have had an experience with the Moore River mission which, of course, we all remember from the movie the *Rabbit-Proof Fence*. That mission needs to be taken in hand in some way by the state of Western Australia, and the aims of Aboriginal people, both local and distant from the area, need to be fulfilled in trying to see that become a centre of culture and leaning for Aboriginal people as well as being a place that is respectful of the historical significance it has for Aboriginal people. It is important for European people to remember what was once policy for Aboriginal people in this state. The other area of great significance for Aboriginal people and interaction between Aboriginal people and Europeans in my region of Moore in recent times is the New Norcia mission, which has a very long history of interaction with Aboriginal people. It, too, was a place where Aboriginals were raised separately from their families, as we have heard in some fairly distressing accounts related to us by the member for Armadale. There continues to be a strong connection with local Aboriginal people in New Norcia as well as with people distant from that area.

That history of interaction between Aborigines and whites is particularly relevant in my electorate, as the member for Geraldton would know as well. The wrecks of the Dutch East India Company ships along the coast in that region—the *Gilt Dragon*, the *Zuytdorp* and the *Batavia*—had impacts on Aboriginal people as they were really the first point of contact with European settlers. Some people were marooned from the *Batavia*, and there are believed to be survivors from the *Gilt Dragon* and the *Zuytdorp* as well. Pretty well the first European settlers in Australia interacted with Aboriginal people up and down my electorate and the electorates of the members for Geraldton and North West Central.

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Aboriginal people in the electorate are also increasingly becoming involved in the mainstream economy. I would like to pay tribute to the work of groups such as Midwest Aboriginal Employment and Economic Development Inc out at Mullewa, which is involved in training young people and helping them seek gainful employment.

[Member's time extended.]

Mr R.S. LOVE: Yamatji people in that area will be able to take part in the mainstream economy as it grows in the region. There are opportunities in mining. Companies such as Yamatji Contracting have taken the opportunity to stand on its own two feet and compete with everybody else. It is doing a great job of making a go of a business, employing many Aboriginal and non-Aboriginal people. Right throughout my electorate there are examples of the continuing and increasing understanding of and respect for Aboriginal history and culture and the important place that our First Australians in Western Australia today play and will play increasingly into the future.

More generally, the Nationals have shown a level of support for Aboriginals, along with the state government, in the development of the royalties for regions Aboriginal initiatives program, a copy of which I have here, if anyone is interested in looking at it. It outlines \$350 million in projects that directly benefit Aboriginal people throughout regional Western Australia. Of course, Aboriginal people also benefit from the \$1 billion a year being spent by royalties for regions generally throughout the regions, which affects everybody in the regional areas of Western Australia.

In conclusion, I support the aims of this bill, which are very important indeed. I think we need to take time to ensure that the details are acceptable for all parties so that all parties can support this bill or a similar bill going forward through the Parliament of Western Australia in the future.

MS J.M. FREEMAN (Mirrabooka) [6.23 pm]: I, too, rise to speak to the Constitution Amendment (Recognition of Aboriginal People) Bill 2014. It is a great pleasure to do so. I recognise the traditional owners of the land on which we meet and the elders, past and present.

As part of the consultations that the Leader of the Opposition spoke about, I discussed the bill with the Aboriginal community in Mirrabooka. In particular, I discussed it with the elders Doolan Leisha and Walter Eatts. Many people here would know Doolan and Walter, who have given many of the welcomes to country that we have been present at. I have a letter that Doolan wrote to the Leader of the Opposition, and I would like to read it to the house. It states —

Dear Mark,

Thank you for the opportunity to comment on the Private Members Bill to WA Parliament to amend the WA Constitution.

As one of the Aboriginal Nyungah Elders in the Northern Suburbs I have worked with my husband Walter Eatts to advance the wellbeing of Aboriginal people in Western Australia.

In particular Wally and I have been the directors of Aboriginal Urban Services which undertook a successful program supporting Indigenous Families and Youth until funding ceased in 2010.

During this time we were the only Aboriginal support service in the Koondoola, Balga, Girrawheen and Mirrabooka that worked with families that had intergenerational issues, including substance abuse, homelessness and poor educational outcomes.

The service ensured that Aboriginal people in the area had a voice with service providers that they otherwise felt disrespected their cultural heritage and the disadvantage they faced.

You can appreciate that we found this both rewarding and challenging. We combined our commitment to community development with our work educating the broader WA community on Aboriginal history through many Welcome to Country ceremonies.

It is in this context of being active in seeking recognition of Aboriginal people in Western Australia that we congratulate the Member for Kimberly Josie Farrer for introducing a Aboriginal recognition bill into Parliament.

Paramount to making Aboriginal history fundamental to the identity of WA is to ensure that every person who comes to live here knows that Aboriginal people were the original owners of the land they now call their home.

It is our belief that loosing our land was the greatest setback for Aboriginal people, it resulted in us loosing our identity as valued people of this society. To have a constitution of WA that disrespected the first people of the land perpetuates this dispossession and disrespect.

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Righting this historical wrong is therefore very important in moving to a place of identity, acceptance and unity for all Australians.

I congratulate —

Josie Farrer and —

the Labor oppositions commitment to ensure that Aboriginal people are officially recognised as the first people of Western Australia and document this in the WA Constitution.

In note that the intention of the Bill is to demonstrate the injustice that settlement by Europeans was without consultation with our ancestors, the original inhabitants.

I understand the Bill is a step in the ongoing journey of reconciliation that must continue for Aboriginal Australians to be recognised, acknowledged, valued and accepted in our contemporary society.

Wally and I would like to extend our heartfelt support for the Bill and wish it a successful journey through the house to proclamation by the Governor.

Yours sincerely,

Doolan Leisha Eatts.

Doolan would have liked to have been here this evening but she has been suffering a few heart problems that found her in hospital last week. Because it was not certain that this bill would go through, she felt that it would hurt her heart just as much as the heart problems to come here and see it not be successful today. Although she commends the bill to the house, she feels very strongly that she would have liked to have seen it passed today because that would have made her heart feel glad and much better.

MS A.R. MITCHELL (Kingsley — Parliamentary Secretary) [6.27 pm]: I am pleased to speak to the chamber during the debate on the Constitution Amendment (Recognition of Aboriginal People) Bill 2014 because there are many aspects of it that we are all very much involved in and we are very pleased that it is before the house but we also very much want to ensure that we do this properly. The member for Armadale has raised all the wrong things that happened previously and why we could not possibly repeat what has happened, saying that everything is so bad. This side of the chamber has been criticised when we are trying to ensure that we do this in the best possible way we can to ensure that situations that occurred previously do not occur again in the future. I appreciate the fact that the member for Moore raised an issue relating to the Queensland act. I wish to raise that again because we face a very large duty of care when we debate this sort of legislation. It might seem that it is simple and something that can get through, but we place a great deal of care on our responsibility to all people, particularly, in this case, the Aboriginal people, and we want to ensure that we get it right.

I will give a couple of examples of legislation that has been enacted in other states. I will start off with our own draft Noongar (Koorah, Nitja, Boordahwan) (Past, Present, Future) Recognition Bill 2014. I refer members to clause 5, which refers to the recognition of the Noongar people. I am referring to this provision and outlining it because we have in this draft bill a specific clause about the recognition of the Noongar people. Clause 5 of the draft bill states —

- (1) Parliament acknowledges and honours the Noongar people as the traditional owners of the Noongar lands.
- (2) Parliament recognises —
 - (a) the living cultural, spiritual, familial and social relationship that the Noongar people have with the Noongar lands; and
 - (b) the significant and unique contribution that the Noongar people have made, are making, and will continue to make, to the heritage, cultural identity, community and economy of the State.

Clause 6, “Effect of this Act”, states —

This Act does not —

- (a) create any right, title or interest, whether in law or equity; or
- (b) give rise to or affect any civil claim, action or proceeding; or
- (c) give rise to or affect any right of review of an administrative decision; or
- (d) affect the interpretation of any law of, or that applies in, the State.

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That is one example of legislation that will be coming through, showing that we are making sure that we get this done correctly. I will also refer to the acts from the other mainland states. I take members to the act from South Australia and a specific provision in part 2 titled “Amendment of the Constitution Act 1934” that inserts new section 2(3), which states —

The Parliament does not intend this section to have any legal force or effect.

South Australia has put something into its act as well. In the New South Wales legislature, section 3 of the Constitution Amendment (Recognition of Aboriginal People) Act 2010 states in new section 2(3) —

Nothing in this section creates any legal right or liability, or gives rise to or affects any civil cause of action or right to review an administrative action, or affects the interpretation of any Act or law in force in New South Wales.

In Victoria, section 1A(3) of the Constitution Act 1975 states —

The Parliament does not intend by this section —

- (a) to create in any person any legal right or give rise to any civil cause of action; or
- (b) to affect in any way the interpretation of this Act or of any other law in force in Victoria.

In the Constitution of Queensland 2001, to which the member for Moore also referred, section 3A, headed “Effect of Preamble” reads —

The Parliament does not in the preamble —

- (a) create in any person any legal right or give rise to any civil cause of action; or
- (b) affect in any way the interpretation of this Act or of any other law in force in Queensland.

Therefore, members can see that we do not take this matter lightly; we take it very seriously. We are very committed to the principles of what we are doing and we also believe that we need to do this correctly. As members have said previously, unfortunately a great deal of hurt has occurred in this state over many years for reasons that were thought to be right but did not come out the way people had planned in the long run. The member for Kimberley is well aware that many people on this side of the house are very much supportive of what she is doing not only with this piece of legislation, but also what she does in the Kimberley. Many of us on this side of the house have a strong association with Aboriginal people and have worked with Aboriginal people. I think the member for Kimberley knows and understands that our commitment to Aboriginal people is very strong. I am one of those members because I believe that a Constitution is one of the most important documents we have. It is the document that we make sure we live by and operate by, and I take my role in any change to the Constitution very seriously, as I have done with any other constitutions for any other organisations. This one is probably the most important constitution that I have ever had to deal with and I want to get it right for the member for Kimberley’s people and the people of Western Australia.

I have had the pleasure of being involved with Aboriginal people throughout Western Australia. I have had Aboriginal staff and I have had the pleasure of learning from them and understanding what they go through, how they operate and what goes on. When I had Aboriginal staff, I was looking after regional Western Australians—so everything outside of Perth—and, as members can well imagine, I spent quite a bit of time sitting in a car driving. That is the best way to learn about Aboriginal culture and what Aboriginal people have had to go through and how they have lived their lives, and that is what they are doing now. But then I go to other places, so I might deal with one group of Aboriginal people and then I will see another group of Aboriginal people. I have learnt a lot, I have gained a lot, and I hope that I might also have been able to assist them in my journey with Aboriginal people.

There is no doubt that I gained from taking an interest in my Aboriginal staff. I still call them my staff even though in many ways they are no longer my staff because they are still my friends, and I am pleased that they see me as someone they can still call on and ring up and ask if we can have a coffee. I am pleased that that happened not long ago. A number of people were quite interested to see who I might be having a coffee with out in the courtyard one afternoon. I wanted to investigate a little more because my inquiring mind wondered why our Aboriginal people did not seem to have progressed as much as Indigenous people in other countries. I started talking and reading about it and other people mentioned it. That took me on a wonderful learning journey as well. It was not one that I necessarily gained knowledge on from my staff, but that they had created an interest in me that helped me to want to go further. I spent a great deal of time talking, then reading about and understanding the issue. It was actually a university professor in California who talked to an elder of Papua New Guinea who raised the same question: why is it that my people do not seem to have progressed as

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much as people in other societies? He was concerned about it and those two people then started a journey that looked at Indigenous people in other countries with different climates. They came up with some commonalities and things that demonstrated why some societies seemed to progress more easily through the hunter-gatherer stage and the Iron Age to the agricultural stages. The way in which our Indigenous people, whom I admire and respect greatly, operated and lived was incredibly good for our land, and I found that very interesting. I will give members a couple of examples of the reasons they came up with those findings. One was that our climate was not conducive to storage. Even though we have a vast land, a lot of area does not accommodate storage and keeping things together, so our Indigenous people really were a hunter-gatherer society and there is no doubt that as hunter-gatherers, the Aboriginals looked after the land extremely well and we could learn a lot from them. The other reason that really piqued my interest involved our lovely Australian animals, before white men and other peoples came to our country and brought exotic animals onto our shores. It is interesting that if we look at our natural animals that we all love and wear proudly and things like that, we see that they could not be herded, kept or worked because they did not have a hooved foot, which was the key to having animals that could work and be herded and gathered to make sure that a person had a supply of food. We did not have any of those types of animals in Australia. We were in a very unique place and the lifestyle that our Aboriginal people developed suited that way of life. It was quite interesting to read that; we just assumed they all fit that way. I encourage any members who have not read Dr Jared Diamond's book, *Guns, Germs and Steel* to take some time to go through it because it really is quite an enlightening piece of—it is not literature; it is actually a research project that he undertook.

Some people in Australia have the perception that we have been here for a long time, but we have not. Our Indigenous people have been here a lot longer than we have; there is no question about that. The white people in Australia and in Western Australia have been here for what is very much a short time frame.

It is a fact that some of our Aboriginal people did not see a white person—I am talking about the Martu people in the East Pilbara—until 1960. Yet we expect them to make a massive change in the way they live and the way they operate in, I guess, our former white society, and that has not been easy. That is why some of our struggles occur and why we need to take note of some of the situations that they find themselves in.

As I have said, I have sat in the car and I have listened and I have admired what they have said and what they have told me. I have experienced some of the things that they experienced—not all the time, obviously, but certainly some of the things. I want to relay a couple of situations that I have looked back on at times—quite often, in fact; I talked about it the other day. I will give members an example of travelling with an Aboriginal staff member, a male. It would not be uncommon to go into a cafe or restaurant to have dinner at night and we would know that half the eyes would be looking at us and thinking, “What is going on here?” I was very proud of my staff, and they were always very well mannered. The arrangement was that my staff member would knock on the door of my hotel room at seven o'clock in the morning and we would go to breakfast and head off at a certain time. Once again, members cannot imagine the looks that both he and I got when we walked into the dining room of a country hotel in the morning, with people wondering what on earth is going on here. So I felt for my staff. I had that experience, and it was not always the case; I am just giving examples of things that occurred.

At the same time, I was thrilled that I had the pleasure of attending a number of Indigenous girls' camps, particularly one through the Argyle Diamond mine and Rio Tinto, in the Kimberley. I was probably one of the only two white women at the camp that night, and we went through some icebreakers while waiting for the next phase of the session to commence. The icebreakers required the girls to give a definition of a couple of things, and then give an example, as a way of getting to know each other. I am talking about 14 or 15-year-old girls at a camp. They were young girls who had sporting ability and things like that, but they were asked much broader questions. One girl was asked to give a definition of discrimination, and also to give an example. I thought that was an incredibly difficult icebreaker, I must say, and for one brief moment—I am sure the member for Kimberley will understand—I sat there and thought, “This is going to be interesting.” To the credit of this young girl, whom I did not know, she gave a very well described definition of discrimination. The part that blew me away was when she said—she was just talking very naturally among these other young people, whom she did not know well; it was one of these opening nights—“Well, because I play sport, I have got white friends and I have got black friends, and I have to explain to my black friends not to discriminate against my white friends, because they are an important part of my circle of friends as well.” I just sat there and I thought, “Wow! We have got a great future here. We have got a future where people understand the issues that both sides are facing.” I followed that girl as well as I could for a while, and I certainly believe she would have become a leader in her community, because those sorts of statements are what will make the state of Western Australia a wonderful place to live in and grow up in. We have people who can, and will, make our state, as I said, a wonderful place to live in.

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I learned a lot from these people. I learned many things. As the member for Moore has said, I had to learn, because I did not always understand, that there were places where Aboriginal people felt uncomfortable to go. We talk about the Moore River mission. Yes, when we getting together, there were certain places we did not organise to stay at. We did not stay at New Norcia. Obviously we never went to Rottnest. There were a whole lot of places that they explained quietly to me—there was no offence about it—were not the best place for them to go to. We now understand those sorts of things. There was even Point Walter, because that is a women’s place. I spent a lot of time in my childhood at Point Walter. I would never have known that, and when I explain it to people, they say, “There is so much we can learn about our Aboriginal culture.” It is important that Aboriginal people understand their Aboriginal culture.

[Member’s time extended.]

Ms A.R. MITCHELL: But it is also very important that we understand Aboriginal culture. It is very interesting. It is something that is within us and it is within our state. I know there is a need—I say that very nicely—for many young Aboriginal people to learn more about their own culture and to find out where they belong in that. There is no doubt that we have a bit of a cross-section—I am not going to say this is just about Aboriginal people; this is about white people as well—where the significance of the family, the significance of the elders and the significance of the context of who we are and where we fit in, is not always as good as we would like it to be. That is about white people as well as Aboriginal people. I commend many of the Aboriginal people, and I will say particularly the Noongar people, because that has been my last work, and I am still being updated on it. Many of those were my staff. They were not the elders, but they knew that they had to step up and do something, because there was a problem with the young people. They had lost that connection to the family and they had lost that connection to the land, and these people saw that they had a responsibility. I will do anything for those people, because they are doing it for themselves and they are making a difference. It is not something that happens overnight. I know that probably some of them will take two steps forward and one step back. It will not work out straightaway. We have to be patient. We have to work with them. We have to give them that opportunity.

Several members interjected.

The ACTING SPEAKER (Mr I.M. Britza): Excuse me, member, but the noise in the chamber is just rising a little. Keep it down a little bit, members, please.

Ms A.R. MITCHELL: We have to give them the opportunity to make progress in that area and we have to support them. But, as I said, that also needs to apply in white society, because we also have young people who are disconnected, who are not engaged, and whose family structures are not strong. What I say here I say to both. But I am commending many of those Aboriginal people, and I will say Noongar men, because that is the last group I worked with. I was working in the Yamatji area as well. They are taking responsibility. They are building those systems. They are taking their young people out on the dream trails and they are getting young people out of offending, and I know they will be successful. As I said, I will support those people very much, because that is key to our future and that is key to making sure that any injustice that has occurred over the past does not occur going forward.

There are many stories that I would love to tell, but I will give just another couple of examples. I was at Kalumburu one time, and we were going out with one of the young guys to look at the rock art, and we were chatting away, and he said, “You know, it really hurts me when I take people out on tours and I talk about how it is and what has happened.” He went on to say that he had done that the other day, and there were a couple of American travellers —

The ACTING SPEAKER: Members! The conversation is just getting louder.

Ms A.R. MITCHELL: No disrespect to American travellers, but he said to these people, “There used to be a stream here; I can feel the water under my feet”—we were walking on sand—and he said they laughed and said, “You must be joking! You don’t expect us to believe that sort of thing, do you?”, and he said, “I can; I know these people were here, because I can feel it”. He said to me, “Why don’t people understand me? Why don’t people understand that our connection to the land is such that we can feel it?” He then said to me, “Do you believe me?”, and I said of course I do. Those sorts of things hurt. It hurts that a society would not accept and take on board that another society might have a different way of connecting with people and with the land. It was very interesting that this young man—who left Kalumburu to go to university in Sydney the summer after that; and he would be an outstanding young person—found that his conversation with me and with a couple of the people I was with changed considerably and he could open up more and give more of himself and talk about the things that were important to him.

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As I said, there is no doubt that the government is very much behind the principle of the member for Kimberley's bill. There is no doubt that we want to see that recognition given, but I am absolutely behind the Premier and his statements that we want to do this right. We want to make sure that we do not again have situations that have occurred in the past, and everything we can possibly do to ensure that that does not happen is really our responsibility. I take that responsibility very, very seriously; I take the Constitution of Western Australia very, very seriously, because I believe in this state and I believe in the people who live in it, both Indigenous and non-Indigenous, and people who have come here from other countries.

Mr D.J. Kelly interjected.

The ACTING SPEAKER: Member for Bassendean, I call you for the third time.

Ms A.R. MITCHELL: Those matters are extremely important to us. I hope that not many people in this chamber have not had the experiences that I have been fortunate enough to have had. Yes, I have had some upsetting experiences as well, but I have had them with white people as well as Indigenous people, whether they have been let down or something has not quite worked out, but I know that if any of them ever came to me and said, "Can we have a chat?" or, "I've let you down; I need to go and move on", that is fine, and I will help them to move on. But in those situations, those people are genuine, just as most white people are genuine. We have work to do with all of our society, not just Aboriginal people, but white people as well, and I have stated that in this chamber before. I have stated that we need to make sure that we are providing the systems within our society to ensure that we have the very best place to live, and we believe that at the moment. The member for Kimberley knows how I feel about this legislation. She knows that this is important to the Indigenous people of Western Australia, but I can assure her that it is also important to white people in Western Australia. It is also important that we get it right, and I stand behind what the Premier said. I am sure that we will have a very, very positive outcome out of this and all the other pieces of legislation that will be involved with it. I am particularly interested in the Noongar one as well, because I know the work that has gone on and the work that still needs to be done over the next couple of months with the consultation. There is nothing wrong with consultation, and I am very pleased that we are going to do that and make sure we achieve the best result we possibly can.

MR R.H. COOK (Kwinana — Deputy Leader of the Opposition) [6.52 pm]: I want to make a few comments on the Constitution Amendment (Recognition of Aboriginal People) Bill 2014. I do not have a great deal of time, so I might be the final speaker for tonight and perhaps will be able to continue my remarks at a later date, if we are allowed to do so.

Being a member of Parliament is an extraordinary privilege; being the representative of a group of people known as the electorate of Kwinana is an extraordinary privilege and opportunity; and being a member of the whole of the Parliament is, as I say, an extraordinary privilege. It is very apparent to me and, I am sure, to all members of Parliament that when we are in this place we must act in a manner that takes account of our obligations in history and as leaders of the community to move forward. For that reason I think it is extraordinary that, time and again throughout Western Australia's history, we see members come into this place and fail the people in our community, particularly the Aboriginal people in our community, and fail to take a stand to wipe clean a lot of the historical blight on our community. I cannot remember the number of times that people have come into this place to utter platitudes such as, "We want to do this properly"; "We're not ready yet"; or "This isn't bipartisan; you're disturbing us". I cannot remember the number of times people have resisted the opportunity to progress as a community in the name of people wanting to do things their way rather than doing it someone else's way.

Earlier today the Premier gave that great historical cry of Western Australian governments throughout history of, "Not now; it's not convenient for us now."

Mr C.J. Barnett: I didn't say that.

Mr R.H. COOK: The Premier did say "not now", and he went on to use that other great mechanism that governments have historically used—to weave that bit of fear into everything they do and say—to undermine this sort of legislation.

Several members interjected.

The ACTING SPEAKER: Members! I have already called the member for Bassendean for interrupting, and I will not hesitate to do the same on the government side. We have only five minutes left, and I think we need to hear the debate, even if it is difficult.

Mr R.H. COOK: A number of members have recounted times in our history in which very alarmist claims have been made, such as people coming to take our backyards and things like that. We saw that writ large in the advertisements that appeared at the time, but we should never forget that these were not alarmist claims to begin with; these were little, niggling doubts that were woven into the debate and were allowed to escalate so that they

Mr Mark McGowan; Mr Colin Barnett; Deputy Speaker; Dr Kim Hames; Mr Ben Wyatt; Mr John Quigley; Dr Tony Buti; Speaker; Mrs Michelle Roberts; Mr Shane Love; Ms Janine Freeman; Ms Andrea Mitchell; Mr Roger Cook

got to the point that they finally arrived at. We saw those same little niggling doubts being woven into the debate we have had today. First of all, there was the reference to the impact of the legislation on native title. As we know, there is no such impact on native title claims. We know that the South West Aboriginal Land and Sea Council supports this legislation. That is the organisation that potentially has the most at stake with this legislation, but it supports it, because it knows that there is no threat. We know that other Aboriginal land councils and native title representative bodies also support what we are doing. I refer to a letter from the Yamatji Marlpa Aboriginal Corporation to the member for Kimberley that states, in part —

Quite simply, YMAC very strongly supports your Bill. It is simple, impossible for a fair-minded person to argue against, and without any real legal controversy. It is important and long overdue.

That is the nub of it: there is nothing in this legislation that a fair-minded person could possibly oppose. We know that the South West Aboriginal Land and Sea Council supports this legislation 100 per cent, because although some very important actions are being undertaken in relation to the agreement on outstanding native title issues in the south west claim area, it also knows that this is an important symbolic gesture that is being undertaken to provide other Aboriginal people with some form of recognition.

I would find it extraordinary, if there is some point of legal controversy or any sort of legal uncertainty, if the Premier has not already sought some form of legal advice. Were it not for the fact that he just scurried from the chamber, I would ask the Premier whether he had. Perhaps I can instead ask the Leader of the House, as the most senior representative of the government in the chamber: has the government sought legal advice from the Solicitor-General or the State Solicitor's Office on this legislation?

Mr J.H.D. Day: I haven't personally, but the Premier spoke earlier. He has had to attend another event relating to the SES, which is why he has left at two minutes to seven.

Mr R.H. COOK: I appreciate that, but my question to the Leader of the House is: has the government sought recent advice from the Solicitor-General or the State Solicitor's Office on the legislation that is currently before the house?

Mr J.H.D. Day: That's not something I'm informed to answer.

Mr R.H. COOK: Okay. If the government has received such advice, I think it is incumbent on the government to table it. I am quite sure that the State Solicitor's Office—off its own bat, let alone following a formal request from the state government—would have gone to the government and said, "We notice the member for Kimberley has put forward this legislation and, by the way, here is some advice in relation to that legislation." So let us see it; let us see this legal controversy or legal uncertainty that the Premier claims is inherent in this legislation. Let us see what is so wrong about this very simple bill that, as the Yamatji Marlpa Aboriginal Corporation has observed, is impossible for a fair-minded person to argue against.

Today we also heard the Premier say, "This is not a priority for us at the moment; we can't possibly do the negotiations with the Noongar people on the south west native title claim and do this incredibly complex process of just saying 'aye' today."

Debate adjourned, pursuant to standing orders.

House adjourned at 7.00 pm
