

**CONSTITUTION AMENDMENT (RECOGNITION OF ABORIGINAL PEOPLE)
BILL 2015**

EXPLANATORY MEMORANDUM (E138)

(Introduced by Ms J. Farrer, MLA)

OVERVIEW OF THE BILL

On 11 June 2014 the member for Kimberley, Ms Josie Farrer MLA, introduced the Constitution Amendment (Recognition of Aboriginal People) Bill 2014 (“the 2014 Bill”) into the Legislative Assembly. The 2014 Bill had progressed to the Second Reading Debate stage when on 26 November 2014 the Legislative Assembly passed a motion to establish a Joint Select Committee to “*consider and report on the appropriate wording to recognise Aboriginal people in the Constitution of Western Australia.*”

The Legislative Council concurred with this motion and the Joint Select Committee on Aboriginal Constitutional Recognition was established.

The Joint Select Committee on Aboriginal Constitutional Recognition Report Number 1 ‘*Towards a True and Lasting Reconciliation: Report into the Appropriate Wording to Recognise Aboriginal People in the Constitution of Western Australia*’ (the Report) was tabled in both Houses on 26 March 2015.

The Report’s 16 Findings concluded that the words in the 2014 Bill were “*a suitable starting point for considering an appropriate form of words for constitutional recognition in Western Australia*” and recommended some minor amendments to improve readability.

The Report also supported the removal of Section 42 of the *Constitution Act 1889* (WA).

In addition the Report recommended the amendment of Section 75 to remove the definition of the **Aborigines Protection Board**.

The Report found that the “*continued presence of these spent provisions within the Constitution Act 1889 (WA) would be inappropriate and inconsistent with the spirit of reconciliation inherent in a statement of recognition by the Parliament.*”

The Report’s two Recommendations recommended firstly some minor amendments to the 2014 Bill’s wording for the *Constitution Act 1889* (WA) preamble and secondly that the 2014 Bill “*appears to be an option available to the Parliament*” should it wish to consider a bill to recognise Aboriginal people in the *Constitution Act 1889* (WA).

More importantly, the Report found that if the 2014 Bill was passed “*the risks of unintended legal consequences appear to be negligible.*”

As a result, this 2015 bill is substantively the 2014 bill with the Joint Select Committee’s recommended changes incorporated.

Parliamentary legislation in other jurisdictions has been enacted, or is currently in passage through Parliaments, to provide constitutional recognition of Aboriginal Australians as the first peoples of our country.

South Australia was the most recent State to recognise Aboriginal people in its State constitution through the *Constitution (Recognition of Aboriginal Peoples) Amendment Bill 2012*, which was introduced into the South Australian Parliament on 29 November 2012, passed on 5 March 2013 and assented to on 28 March 2013.

The New South Wales Parliament introduced the *Constitution Amendment (Recognition of Aboriginal People) Bill 2010* on 8 September 2010, passed the Bill on 19 October 2010 and received Royal Assent on 25 October 2010.

Queensland introduced the *Constitution (Preamble) Amendment Bill 2009* on 24 November 2009, passed it on 23 February 2010 and the Bill received assent on 25 February 2010.

The first State in Australia to give constitutional recognition to Aboriginal people was Victoria, which introduced the *Constitution (Recognition of Aboriginal People) Bill 2004* on 24 August 2004, passed the Bill on 4 November 2004 and it was assented to on 9 November 2004.

At a Federal level, the *Aboriginal and Torres Strait Islander Peoples Recognition Bill 2012* was passed by the House of Representatives on 13 February 2013 and was read into the Senate on 25 February 2013.

This Western Australian Bill recognises that Aboriginal people are the original custodians of Western Australia and that the settlement by European people was done without consultation with those original inhabitants.

Advice was sought from the Solicitor General in 2004 as to whether any legal consequences flowed from inserting these words into the Preamble of the *Constitution Act 1889* and the advice was as follows:

“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.”

The advice from the Solicitor General of 2004 goes further:

“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.”

NOTES ON CLAUSES

Short title

This Clause sets out the title of the proposed Act.

Commencement

This Clause cites the commencement of the Act, which will be on the day it receives Royal Assent.

Act amended

A simple statement saying which Act this Bill amends. In this case the *Constitution Act 1889*.

Words added to the Preamble

This Clause provides an update to include Western Australia's accession to statehood as a part of the federation of Australia. These words also contain the recognition of the Aboriginal inhabitants of Western Australia as the First People of Western Australia and that they are also the traditional custodians of the land.

The amendment also makes explicit that, through this Bill, Parliament seeks to effect reconciliation with Western Australia's Aboriginal people.

Section 42 deleted

This section of the Act is no longer applicable, since Parliament has been constituted.

Section 75 amended

The definition of the **Aborigines Protection Board** in Section 75 is redundant as the Board no longer exists.

The Joint Select Committee noted that the “*continued presence of these spent provisions within the Constitution Act 1889 (WA) would be inappropriate and inconsistent with the spirit of reconciliation inherent in a statement of recognition by the Parliament.*”