Speech By

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MEMBER FOR COOK

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ABORIGINAL AND TORRES STRAIT ISLANDER LAND (PROVIDING FREEHOLD) AND OTHER LEGISLATION AMENDMENT BILL

Mr KEMPTON (Cook—LNP) (4.01 pm): On a windy morning on 26 January 1788, Captain Arthur Phillip was standing on the shore at Sydney Cove with a contingent of officers and marines. At about the same time a handful of mariners of a different ilk were setting off in an outrigger canoe from the beach at Mer Island in Torres Strait to hunt for turtle. They were Meriam people and their leader, an expert hunter, was quite probably an ancestor of Koiki Mabo. A few hundred miles to the south-west of Sydney Cove, a group of women and laughing children were fishing for cod in the Murrumbidgee River. They were from the Wiradjuri nation and were safe and relaxed as they were well inside their traditional lands and safe from any neighbouring tribe. All three groups were intent on the task at hand, oblivious that what was about to happen would forever reshape their lives and the lives of so many people.

Captain Arthur Phillip had rowed ashore at Sydney Cove early that morning, aware that the French, under the command of Captain La Perouse, were in close proximity. In his haste to beat the French to the prize and unable to wait for the rest of his contingent to arrive, Captain Arthur Phillip, with the usual pomp and ceremony true to British tradition, drove the Union Jack into the sands of Sydney Cove and thereby claimed the sovereign title to the great south land on behalf of King George III. It should be noted that the formal establishment of the colony of New South Wales did not occur on 26 January, as is commonly assumed. That did not occur until 7 February 1788, when the formal proclamation of the colony and of Arthur Phillip's governorship was read out. The vesting of all land in the reigning monarch, King George III, also dates from 7 February 1788.

By this simple act of proclamation, Captain Arthur Phillip wiped away the ownership of and entitlement to the lands of two entire nations—namely, the sovereign title of Aboriginal people of the Australian mainland and the islanders of Torres Strait. In the case of Mer Island, there was no warring party—no warriors from the south seas or headhunters from the northern tribes. There was no treaty or agreement with the foreign settlers. On the Murrumbidgee there was no invading force that conquered the Wiradjuri nation and no treaty negotiated. The invasion came much later.

The title to the traditional lands of these two nations were taken up by the British on the basis of terra nullius—that is, land belonging to no-one. This was not only factually wrong but also indefensible at law—a wrong that persisted for over 200 years and, amazingly, one of which many Indigenous people were unaware for much of that time. On 3 June 1992, over 204 years after settlement, Eddie Mabo from Mer Island was victorious in his quest to convince the High Court of Australia that at the time Captain Arthur Phillip drove the flag into the ground at Sydney Cove there were in fact a peoples living on these lands who enjoyed an ordered society, a system of law and custom. The High Court rejected the doctrine of terra nullius in favour of the common law principle of Aboriginal title, or native title. These rights and interests were subsequently enshrined in the Commonwealth Native Title Act 1993.

The impact of the Mabo decision for the Meriam people was to recognise that a system of customary law existed on the island at the time of sovereignty, a law that survived settlement and persisted to today. The Mabo decision recognised the traditional rights and interests of native title holders to lands in respect of which they exercised customary law; however, it did not return sovereign title in respect of those lands. It did not deliver freehold or any title as we know it. This did not come to Mer until the title held by the state was transferred to the Meriam traditional owners on 14 December 2012—20 years after the Mabo decision. Whilst this transfer effectively returned trustee title to the Meriam people as a community title, there remained an obvious anomaly. Notwithstanding the transfer of the deed of grant in trust in reserve areas to traditional owner groups across the state, no Indigenous person living in an Aboriginal community or on a Torres Strait island could own their own home. There was no process by which freehold could be granted to an individual. The Labor government, typical of its policy of control and paternalism, offered a 99-year residential lease as a solution to this inequity.

What started as a conversation with the Premier during the election campaign in 2011 has become the most significant piece of legislation to Indigenous Queenslanders in the short history of this state. I am proud and humble to have played a part in the development of this legislation and had the privilege of personally engaging the Indigenous people of Queensland in the process. I acknowledge the sincere interest taken by Minister Cripps. I commend the efforts of Ken Carse, Judith Jensen, Allen Cunneen, Andrew Luttrell and Chris Robson in supporting me in the engagement process.

I am disappointed that the committee was critical of the extent and nature of the consultation process. I personally worked with the departmental officers to engage with all Indigenous councils, traditional owner groups, community groups and land councils. I attended forums run by the LGAQ and other rep bodies. There was comprehensive engagement during the formulation, discussion paper and legislative process. To suggest that after 25 years of living in Cape York I am not culturally aware is regrettable. I reject the hypocrisy of the opposition's spokesman in his comments on the engagement process. It is time Curtis Pitt and Labor realised that this government intends to take the training wheels off and let these towns determine their own futures. All the doom and gloom Mr Pitt predicted does nothing to dim the bright opportunity Indigenous people face in the light of this bill.

This legislation does not impose freehold on any community. It simply places another tool in the tenure box should a community wish to take up the option. I have been a property rights advocate in Queensland for over 25 years, first as a lawyer and now as a member of this parliament. I was at the forefront of the historic settlement of the Wik claim. I met Des and Estelle Bowen from Hope Vale in 1988 and was mystified that they could not own the land upon which they brought up their children or the house in which they lived. It is with some satisfaction that I will report the passage of this bill to Des and Estelle Bowen.

It is significant that, notwithstanding the huge task Labor has left us, we as a government are not only determined to turn this great state around; we will bring all our people with us. I was appalled to hear in the media that Labor did not think the delivery of residential freehold was necessary for Indigenous Queenslanders as Labor's 99-year lease option was adequate to provide homeownership. I was very disappointed to hear these words attributed to Curtis Pitt, a former minister of the Indigenous affairs portfolio. However, I was not surprised as this attitude is the hallmark of the Labor years, both federal and state—a party that remains hell-bent on controlling Indigenous people across the country by prohibition, by penalty and punishment and, let us not forget, by paternalism. Labor talks about jobs yet is quick to buy votes by keeping people dependent upon welfare.

There is a simple philosophy underpinning this bill. Indigenous people are entitled to at least the same opportunity to have everything the rest of Queensland takes as a given. If we as a government shift from control to support and provide an opportunity to the Indigenous people of our state we will break the welfare cycle, and of course with every opportunity comes a responsibility. By supporting the development of an economy and encouraging community growth, we will see a quantum shift in the future of these towns. Too often we concentrate on the symptoms and never the cause and we rarely ask the communities what they want. We intervene, control, reform, consult when all we need to do is get out of the way and lend a hand. This bill will deliver to the Indigenous people of this state the rights that have eluded them since 26 January 1788. This bill is the key to unlocking institutionalised paternalism. I commend the bill to the House.