To the Minister for Aboriginal Affairs, Roger Jaensch

These responses to the proposals are:

1. Clarifying the scope and intent of the Act
Agree with the concept to include "sea country" where possible.

2. Revisions to the Tasmanian Aboriginal Land Council of Tasmania (ALCT) election process.
I agree with all aspects of the **initial** proposal to:

- remove the process for objecting to a person's enrolment on the ALCT Roll (s.10(3)(c) etc);
- apply a method consistent with the intent of the Government's Eligibility Policy to determine eligibility to participate in ALCT election processes, creating consistency with the practices of the Commonwealth and other jurisdictions; and
- implement appropriate procedural reforms to reflect a reduced role of the Electoral Commissioner.

I **completely disagree** with the December 2022 proposal to in effect, return to the current system where division within the Aboriginal community is promoted and the fact that as of today, around 85% of the Tasmanian Aboriginal community is disenfranchised by the current system and the December 2022 proposal. This is simply not acceptable and extremely disappointing considering the massive strides forward this government has made resetting the agenda. The fact that the government appears to have been successfully lobbied by those sharing a common view in respect of a very narrow definition of a Tasmanian Aboriginal person who also happen to have the positions of influence at the Tasmanian Aboriginal Centre (TAC) (an organisation that has about 1,900 members and approx. 5,000 recognised Aboriginals in the whole state versus the 2021 census figures of 30,000 Tasmanian Aboriginals) is of great concern and completely negates the government's own policy concept with the Eligibility Form system managed by the Office of Aboriginal Affairs.

The new proposal's attempt to appease the small number who have had court decisions in their favour declaring them to be Aboriginal persons (about 135 persons) is extremely tokenistic (if the Advisory Committee remains in place). I would also take it that the persons who have their identity confirmed in courts or tribunals **would need to also include their direct relatives**.

The vast majority of Tasmanian Aboriginals are not recognised by the TAC, who still to this day, use tests that do NOT comply with Australian law (as is clear in those court cases of the 135 persons) and does NOT comply with the 2016 Tasmanian Government policy and interpretation of the three-part test. The retention of the current Advisory Committee deciding on Aboriginality also negates the many court and tribunal decisions as the TAC have publicly advised on many occasions, that they do not recognise the many court and tribunal decisions on Aboriginality. This would be a recipe for further disaster.

The 2016 policy is by this current government and to adopt the December 2022 proposals is not only contrary to this government's own policy but a complete sell-out of the resetting of the agenda policy of this government. It also puts in jeopardy all future Indigenous reforms including the current Aboriginal Advisory Group on state Treaty, Truth-Telling and Voice as well as the stated public support by Premier Jeremy Rockliff's support for the Voice to

Parliament referendum which was warmly received by the majority of Tasmanian Aboriginal persons, apart from the small vocal elitist minority in the TAC hierarchy.

The December proposal almost reverses all the changes since 2016 back to the 1995 initial divisive Aboriginal Lands Act tests and methods of determination.

To also propose to deny any appeal to say the TASCAT if the divisive Advisory Committee to the Electoral Commissioner were to be retained, is a complete denial of justice and will certainly result in extremely costly appeals where possible to the Tasmanian Supreme Court – which is way beyond the resources of the Tasmanian Aboriginal people. It is completely unfair and completely unjust.

When these electoral rolls become important in a short time implementing the Voice federally as well as the other initiatives federally with Treaty and Truth-Telling (as well as potential developments within Tasmania), these proposed changes will result in total chaos as the vast majority of Tasmanian Aboriginals will be denied a say and will challenge in the Federal system like the AAT – as happened in the 2002 Patmore case.

The proposals will result in the majority of Tasmanian Aboriginals having no confidence in the amendments. This is a completely backward step and negates any gains in the proposals and development of the 2016 resetting the agenda policy.

IF the current December proposals of the Advisory Panel proceed, then it would be a travesty of justice to not allow a simple appeal process to TASCAT where the biased Advisory Panel decisions can be examined under Australian legal requirements and application of the three-part test, rather than a retention of the lateral violence committed by the current advisory committee system and the proposed advisory panel. If similar members are on it to the current members, and there is no reason to anticipate any changes given the TAC complete control of the advice, then the current biased and laterally violent system will perpetuate itself under the December proposals.

Rotating the members will not change that they are all from the TAC as the current December proposals will ensure the TAC members retain absolute control of the whole process which is of course in line with their submission and the current December proposals.

The proposals renege on the government's commitment to change and are also contrary to their clear support for the Voice referendum. If these proposals of December go ahead, you will be negating the voices of around 25,000 Tasmanian Aboriginals, not recognised by the TAC.

The proposal to restrict appeal is also opening a potential minefield and unnecessary court action where the Supreme Court will be asked to adjudicate on the lawfulness of the Advisory Panel recommendations as to whether they comply with Australian law – and it is almost guaranteed that they do not comply as the public position of the TAC and their 'understanding' (and I use the term very loosely) of the application of the three-part test. It is a highly discriminatory proposal to maintain the status quo and contrary to the position of government to advance and update the Aboriginal Lands Act.

Recommendation:

That the current list of those successfully having submitted Eligibility Forms to the OAA for eligibility for certain Tasmanian government services, be incorporated with the roll of individuals currently enrolled on the Tasmanian State electoral rolls, to enrol on the Tasmanian Aboriginal electoral roll.

This newly created or expanded roll, shall then be used to determine eligibility to vote for the positions on the Aboriginal Lands Council.

The Electoral Commissioner shall have no role in deciding eligibility and should there be a dispute as to whether the proscribed process has been followed correctly by the OAA, this could be a matter of appeal to TASCAT or the Magistrates Court – NOT the Supreme Court.

That the Tasmanian government provide a "guide" to Aboriginal organisations on the law and policy of the Tasmanian government that could be used when determining the eligibility of a person seeking endorsement of the Eligibility Form. That guide shall include sections on plain-speak as well as more comprehensive legal language, to assist organisations determine eligibility under the 'three-part test' used by the Tasmanian Government 2016 policy and ORIC (listed on their website) as well as the major legal cases from courts and tribunals, including some discussion and advice on analysing the weighting of evidence for eligibility and assessment of a person's Aboriginal ancestry and connection to their community.

This could be done by appointing an Indigenous Advisor or Indigenous Ombudsperson, with legal qualifications, to prepare a guide for organisations on how to conduct the recognition process. Although having no power to change an Aboriginal organisations assessment of recognition, they could provide advice to the organisation or persons who make complaints about not being recognised or similar taskings from government. This can be followed-up by providing an Annual Report to Parliament identifying issues that may arise for consideration of the parliament.

That there be an appeal to TASCAT or Magistrates' Court IF the December 2022 proposal is implemented. This would be a high priority.

IF the proposals of December 2002 are introduced to retain the Aboriginal Advisory Committee to the Electoral Commissioner, then the government to be fair, needs to introduce an automatic avenue of appeal to say TASCAT and appoint a legally qualified member of TASCAT to decide such appeals, whose decision will be binding on the commissioner, or an Indigenous Ombudsperson to at least ensure the national three-part test, not the elitist and exclusive TAC version of the law.

3. Simplification of the land transfer process

I agree with all aspects of the proposal to:

• create a new instrument of transfer for significant parcels of Crown land, including reserved land, which will simplify the process; and

• otherwise make greater use (for both freehold and unreserved Crown land acquired by ALCT) of the ability to declare land as 'Aboriginal land'.

4. A land management role for local or regional Aboriginal community organisations.

I agree with all aspects of the proposal to incorporate into the new instrument of transfer of land:
• the option to specify a land manager or co-manager, in addition to ALCT, including where appropriate a local Aboriginal group; and

• consolidated details of access rights, ensuring that Aboriginal land vested in ALCT would be (as far as practicable) freely available to access by Tasmanian Aboriginal people and organisations.

Recommendation:
If an organisation is accepted a being able to endorse Eligibility Forms, they also can be eligible to perform the land/sea/water management role as a land manager or co-manager with the ALCT. In some cases this should be complete management with an oversight by the TALC and in other cases this could be co-management.

Any restrictions on access by others not from that local Aboriginal management group be limited as much as practicable to preserve uniform access whilst respecting cultural practices or ceremony that might be unique to that area.

5. Creating transparent processes & clearly specified criteria, both to propose land return and to assess its suitability.

I agree with all aspects of the proposal to provide for:

• clear identification of the values, and the significance to Tasmanian Aboriginal people, of any land proposed for transfer;
• a way of identifying whether the significance is primarily to all Tasmanian Aboriginal people (ie, statewide) or is specifically local/regional; and
• development of clear criteria to support future evaluation of land nominated for return.

6. Governance issues.
I agree with all aspects of the proposal to:
• require management plans to be prepared and published that are proportionate for the size or complexity of the land parcel involved; and

• require ALCT to publish an annual report to support transparency and accountability to Tasmanian Aboriginal people on whose behalf they hold and manage land, and to increase understanding and appreciation among the broader Tasmanian community of the work that ALCT and other Aboriginal land managers undertake.

Thankyou for taking the time to read my submission.

James Lockheed