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Response to Second Consultation Paper on Aboriginal Lands Act Review

Introduction

This Consultation Paper makes it even more obvious than the previous paper that the government has decided where it wants to go with the Aboriginal Lands Act. The summaries of the previous consultation inputs put this beyond doubt. In particular, we learn there were 70 written submissions and overwhelmingly, those submissions said there was no need for changes to the Aboriginal Lands Act. Yet the Minister's forward continues to insist that "some aspects [of the current Act] are not broadly supported by Tasmanian Aboriginal people." That assertion is not borne out by an examination of the submissions.

Electoral Process

The only change that could perhaps be considered is to restrict the ability to challenge those seeking enrolment on the ALCT electoral roll to Aboriginal people. It is entirely consistent with Aboriginal cultural practice for Aboriginal people to ask others who their family is. The ability to challenge people seeking enrolment on the ALCT roll is the most obvious translation of this practice to the legislative electoral process. It is difficult to see any process that could work as well.

The suggestion of requiring all new applicants for enrolment to present evidence of all 3 parts of the 'Aboriginality test' with their enrolment application is not supported. This would certainly deter new enrolments and would serve no purpose other than to turn Aboriginal people against ALCT. An Aboriginal community panel would know most people and the rationale sometimes given of 'treating all people equally' fails to recognise Aboriginal community dynamics – not all people nor all families are known equally well.

The suggestion that evidence of Aboriginal community recognition could be given by any 'registered Aboriginal organisation' is not supported. As has been pointed out in an earlier stage of this consultation process, the process of becoming registered as an 'Aboriginal organisation' does not require any evidence of Aboriginalty except for self-assertion and it is well known that many of the organisations registered by ORIC in Lutrwita/Tasmania do not have majority, or even any, Aboriginal governance or membership.

The proposal to have the Minister appoint an Advisory Panel to advise the Electoral Commissioner on disputed claims for eligibility to enrol to vote in ALCT elections is not supported. The potential for political interference is just too great. Every one of the advisory bodies appointed by the current Minister has included non-Aboriginal people who claim to be Aboriginal.

The proposal not to enable appeals against decisions to accept applicants as Aboriginal people is not supported. This appeal of last resort has been used very sparingly in the past and there are no indications that would change.

The idea that the Tasmanian government will assist expanded services by the Archives Office to assist intending applicants is farcical. The Tasmanian Aboriginal Centre has been making these referrals for half a century with no support at all from the Tasmanian government for that service which currently would amount to at least one full time equivalent staff member from our 7 office locations.

The suggestion that the Electoral Commissioner must take into account any court decision that determined a person to be Aboriginal is deceptively simplistic and is clearly designed to appease those who feel aggrieved by TAC decisions and express those grievances freely and often to every politician who will listen. To attempt a simple explanation of a complex issue, there is only one court decision that can be properly considered equivalent to the decision on eligibility that would be required in the scenario contemplated in this consultation paper. That decision was made by the Tasmanian Chief Justice in the case of Watson. The other cases were made by a Tribunal and not a court and was made in a very hasty and barely considered manner; or by a Federal Court single judge where the Aboriginal applicants had the impossible task of proving a negative rather than those seeking to be part of the ATSIC elections needing to prove their eligibility – a quite different task and a situation which means the analogy with ALCT elections just does not stand up.

It is instructive to recall that the Federal Court judge in Shaw v Wolf regretted his role and expressed his strong preference for the relevant Aboriginal community to make the decisions about Aboriginality. The current method of Aboriginal advice to the Electoral Commissioner is the closest we have been able to come.

New instrument of land transfer

The consultation paper still gives no details but says this will be presented in the draft Bill. Again this lack of transparency is alarming and potentially holds many dangers for Aboriginal self-determination. The suggestion appears to be that the government will impose conditions on land transfers that are not negotiated with Aboriginal people and are not acceptable to most. This would include government specifying which organisation must manage each parcel of returned land, a government interference of the worst kind.

Accessibility of Aboriginal land

The repetition of the scurrilous suggestion that Aboriginal people are currently denied access to Aboriginal land is a political attack with no factual basis. It seems to be a reference to non-Aboriginal people who claim to be Aboriginal and assert a right they do not have to freely access sacred areas.

Role of ‘local Aboriginal organisations’

The suggestions show a failure to understand the make-up and development of Aboriginal organisations in this State; and of the role of most of those organisations. The suggestions would not have been made by any Aboriginal person with knowledge of the Aboriginal community and without a political axe to grind. It is code for the Tasmanian Aboriginal Centre not being a local organisation whereas exactly the opposite is true given that we have offices in 7 locations throughout the State and employ a workforce in 5 more locations. Our activities are the most widely dispersed of any organisation and our membership reflects that diversity unlike other organisations which call themselves “local” but have a membership with very little representation in the local area in some

cases or have a distinctly national membership base in other cases. In a third category is that group of organisations that have a maximum of 7 members, mostly all Board members, but continue to seek funding on the basis of being “Aboriginal community controlled”. A farcical situation indeed.

Specified criteria for return of land

The suggestion that any land can be claimed only on the basis of specified values and significance is to ignore the violent history of this State and makes a lie of the government’s stated intention to enter into a process of truth telling and treaty. Aboriginal people are the original owners of all Lutruwita and our dispossession was violent and barbaric. That is the significance of all land in the State. Any requirement for an extra layer of significance is to ignore the truth of how white Tasmania came to be in control of our lands and lives. It is difficult to imagine a situation in which land could be of significance only to ‘local or regional’ groups and not to the entirety of the Tasmanian Aboriginal people.

Accountability of ALCT

The groups who receive funding from the Commonwealth to manage Aboriginal land already have contractual obligations to report on performance and finances regularly and to publish management plans for each area of managed land. That management function is undertaken by delegation from ALCT but with no financial compensation from either ALCT of the State. If the State wants to require further public accountability, it should expect to pay for it.

Conclusion

This is the third round of consultations on this topic starting with submissions to the original Discussion Paper of 2018, There has been an overwhelming lack of transparency throughout the process with both the submissions which were referred to overwhelmingly in the subsequent ‘feedback report’ remaining confidential as to both author and content. The corrections of fact and interpretation raised in our own public submissions have been totally ignored throughout the process – except perhaps for the insistence that the government does not intend to do away with the ‘3-part test of Aboriginality’ and the application of that test clearly does not extend to requiring applicants to prove they are descended from Aboriginal ancestors. Political interference in Aboriginal community affairs shows all the signs of increasing despite the rhetoric about truth telling and treaty.

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