Amending the Aboriginal Lands Act 1995

Please find below my response to the additional consultation.

Linda Seaborn

I note that in the section *Proposed reform of Land Council election processes and the role of the Electoral Commissioner* of the Paper for additional consultation, it says:

"Subject to further feedback, the draft Bill will be prepared based on the following principles:

- It is important that there is confidence that people involved in Land Council election processes, and in decisions about how Aboriginal land is returned and managed "for the benefit of all Aboriginal persons" are, themselves, Aboriginal people.
- There is consensus support for the "three-part test" as set out in s.3A of the Act (noting that the Government has never intended or proposed to alter that section)."

and

"It remains the Government's intention to remove any artificial or unnecessary barriers to Aboriginal people participating in Land Council election processes, while at the same time ensuring that sufficient process and safeguards are in place to provide confidence that people representing and making decisions on behalf of Aboriginal people are themselves Aboriginal people."

For reference, the three-part test referred to is -

(1) An Aboriginal person is a person who satisfies all of the following requirements:

(a) Aboriginal ancestry;
(b) self-identification as an Aboriginal person;
(c) communal recognition by members of the Aboriginal community.

There is a phenomenon called "race shifting" which is becoming well documented in the United States, Canada and Australia where non-indigenous people assert an untrue identity as a Native American or Aboriginal Australian. This issue is predominating tracked through implausible changes in census data such as we see in Northwest Tasmania.

In the words of University of Sydney academic and Wiradjuri woman Suzanne Ingram who has studied race shifting, "the problem lies not only with the individual, but also rests upon the non-Indigenous "enablers" who accept the potential misrepresentation, without having knowledge or qualifications to know what is truthful and what is cultural identity fraud."

I have family who have claimed Aboriginal ancestry. This was challenged by the Tasmanian Aboriginal community and ended up in several legal challenges that determined that my family were Aboriginal persons on the basis of their strong belief that they were, and some photos that "looked Aboriginal". I have researched this genealogy for ten years. There is no evidence of Aboriginal ancestry and there is clear evidence of mistakes being made in the claim. Yet this mistaken identity, or race shifting, was enabled by a non-Aboriginal appeals processes.

There is nothing in the proposed legislation that gives assurance that actual evidence of Aboriginal ancestry will be required, as opposed to a "belief". There is nothing indicated to ensure that the Commissioner responsible for the decision making will have the knowledge or qualifications to know what is truthful and what is cultural identity fraud.

The proposed Act says "a declaration of community recognition from any registered Aboriginal organisation to be sufficient evidence for the Electoral Commissioner that the applicant meets that part of the 3-part test."

The ALCT submission to *Improved Model for Returning Land to Tasmania's Aboriginal People* gave multiple examples of unreliable recognition given by registered Aboriginal organisations, including two cases where the persons claiming Aboriginality wanted to avoid immigration restrictions and were given Aboriginal "recognition" to support this, with no evidence of actual Aboriginal descent. There is clearly something broken here. This section of the proposed Act gives the appearance that the Commissioner will have no support from the Act to verify what is truthful and what is cultural identity fraud.

Replacing community recognition with organisational recognition with no right of appeal by Aboriginal community members seems to weaken this part of the criteria.

The *United Nations Declaration on the Rights of Indigenous Peoples* (Article 33) states that:

> "Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.
>
> Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures."

It would appear that in giving the Electoral Commissioner, an appointee of the Tasmanian Government, the right to determine identity for the purposes of participating in the Land Council, that the Tasmanian government will be contradicting the UN Declaration.

The requirement to provide actual evidence of Aboriginal ancestry will be paramount. Given previous recognition being granted to people without evidence (ie my family) there would appear to be a high risk that the process outlined in this Act is going to grant Aboriginal identity to non-Aboriginal people and give them rights to make decisions that impact on Aboriginal people in ways that undermine Aboriginal identity and wellbeing.

I note that in Section 4 of the Paper for additional consultation, *A land management role for local or regional Aboriginal community organisations*, says:

"The Government remains of the view that the original intent of the Act was to encourage participation and access by local Aboriginal people, and intends to provide for local Aboriginal organisations to be able to have defined roles in managing and accessing returned land where they have an interest and an ability to do so."

Again, it is paramount that there be an ability to have knowledge or qualifications to know what is truthful and what is cultural identity fraud in order to responsibly handle giving regional organisations roles in land returns. An example which highlights this the case of Tony Young in Devonport reported in The Advocate in March and May of 2006. In this case, Alan Wolf of CHAC

is quoted as saying “CHAC had never confirmed Mr Young’s Aboriginality, but had accepted him as a members as required under Federal law because of his declaration.“ Conversely Mr Young said he signed a statutory declaration stating he was an Aborigine based on what he was led to believe by CHAC basic research. According to the interviews, Mr Young went on to assert that he was not Aboriginal, and CHAC maintained the claim that he was.

If this approach is applied more broadly than one case, then bringing this particular regional organisation into land management is likely to resort in eroding Aboriginal people’s management of Aboriginal lands by introducing non-Aboriginal people as Aboriginal. I think the Act needs to do better.