

Responses to the consultation paper on Returning Land to Tasmania's Aboriginal People

Due by Sunday 24th July 2022 aboriginallandsact@nre.tas.gov.au

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Minister for Aboriginal Affairs Roger Jaensch

Dear Minister,

My responses to the proposals are as follows:

1. Clarifying the scope and intent of the Act

I agree with all aspects of the proposed approach and to include 'water' and that the use of the word 'land' should be expanded to include health, wellbeing, housing and economic outcomes to also be considered, when handing or granting land to our community.

Suggested wording:

An Act to promote reconciliation with the Tasmanian Aboriginal community by granting certain parcels of land, sea and water where there may be historic, cultural, wellbeing or economic significance.

2. Revisions to the Tasmanian Aboriginal Land Council of Tasmania (ALCT) election process.

I agree with all aspects of the 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.

Recommendation:

That the current Eligibility Forms and that registration process of those successfully submitting an Eligibility Form, be used to allow 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, this could be a matter of appeal to Magistrates Court – NOT the Supreme Court.

On commencement of the amendments to the Act, all positions shall be declared vacant and elections under the new eligibility criteria shall be held.

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 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 persons Aboriginal ancestry and connection to their community.

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.

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. Identification of land suitable for transfer.

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.

7. Any other aspects

I would also like to recommend that these amendments be made as soon as practicable and that we do not wait for any changes or developments in the truth-telling and treaty process and that these changes not be made dependent on any aspect of truth-telling and treaty process.

Amanda Ripper