

Submission to the Government of Tasmania

on the proposed amendments to the Aboriginal Lands Act 1995

put forward in the Consultation Paper on Proposals for Change: An Improved Model for
Returning Land to Tasmania's Aboriginal people.

From: 24 members of the family of Mrs Fanny Smith

18 July 2022

This submission is made by members of the family of Mrs Fanny Smith (1834-1905) who lived at Nicholls Rivulet from 1858 until her death. Fanny Smith was the daughter of Tanganuturra and Nikaminik, both born free on their native land. Their people had lived on lutruwita for more than 2000 generations.

Fanny became a well known identity in southern Tasmania and was highly thought of by the people of the Port Cygnet district. She was a popular public speaker. She spoke about the ways of her people and sang in her own language at public gatherings. As much as she could she passed on her cultural knowledge and language to her children. Four hundred people attended her funeral in Cygnet.

There is no evidence, either in family oral history or the written records, of her knowing of or having had any association with any other Aboriginal person, apart from her own family, in southern Tasmania following the death of Trugannini in 1876.

The historical records show clearly that all of the surviving Tasmanian Aboriginal people have ancestry stemming from the people of the north east of lutruwita. There are no survivors of any other of the nine nations of the island. This has been established by the monumental archival work of NJB Plomley.

In preparing this submission we note that most members of the Tasmanian Parliament would have been children when the Tasmanian Aboriginal people began to organise in the early 1970s and therefore would have no first hand knowledge of recent Tasmanian Aboriginal history. Whilst understandable, this lack of knowledge is, unfortunately, evident in the terms of reference and the discussion and consultation papers relating to Aboriginal matters mentioned below.

1. Introduction

We note that in the introduction to the Consultation paper reference is made to the policy change called 'Resetting the Relationship', a Discussion Paper produced in 2018, a Consultation and Stakeholder Feedback Report: Improving the Model for Return of Land to Aboriginal communities in 2019 and the Pathway to Treaty Report by Professors Kate Warner and Tim McCormack.

We note that throughout these documents very loose reference is made to concepts such as 'reconciliation', 'treaty', 'Aboriginal communities', 'local communities', to being more 'inclusive' etc. The broad, and seemingly interchangeable, way these terms are used suggests confusion in public policy and it is having a detrimental effect on the administration of policy within government and consequently upon Aboriginal people.

An example of this is the repeated reference to 'regional Aboriginal communities'. Nowhere is there any explanation of what constitutes a 'regional Aboriginal community', how they are identified or how they might be different from a state wide Aboriginal community. And the Professors Warner and McCormack did not identify how they knew when they were talking to Aboriginal people. If, as they claimed, identifying who is Aboriginal is not a matter for them then they could not have known who was Aboriginal and who was not. In our view this tends to undermine the credibility of their report.

2. Clarifying the Scope and intent of the Act

The reference to 'reconciliation' in the current long title is condescending and most unfortunate and we hope it will not appear in the new legislation. We support a change in expression of the intent of the legislation. In our family land return is regarded as a right accruing to people who have been dispossessed of their land. Internationally it is usual that reparations are made to the losers of a war. Land return should be seen in that context. A war was fought on this island and the vast majority of the Aboriginal population either died in that war or in captivity in the following years. The few families who survived are the inheritors of the land of their forebears. We have had to accept that much of the land is no longer available for return to us but it should have been our inheritance. We refer you to the United Nations Declaration on the Rights of Indigenous Peoples as a guide to how the intent may best be expressed.

3. Revisions to the ALCT elections

The changes proposed here are deeply disturbing. It is not expressly stated anywhere in government documents what the new 'inclusive eligibility policy' actually is or how it is applied. If it means that there is no requirement to provide evidence of descent and that anyone can claim to be Aboriginal and be accepted as such by government then this would be an unusual basis upon which to base public policy. We can think of no other area of government policy where this would be acceptable to either the government or to the general public.

We are adamant that potential voters must be able to show a line of descent to one of the surviving families of the north east nation. The only exception should be families who have come to Tasmania from other parts of the country. These families now form part of the Tasmanian Aboriginal community. In Victoria, for example, all legislation relating to land requires people to prove their lineage to a particular Traditional Owner Group. A similar process would be easy to establish in Tasmania.

We do not accept that there is a 'widespread perception' that the current processes for determining eligibility are restricting and a source of conflict within the Aboriginal

community. To our knowledge no one in our family believes that. We know each other's families and can usually place family members we don't already know with one or two questions. A detailed genealogy of our family is publicly available and has been for decades.

Identity fraud is now a world wide phenomenon and there is a growing body of literature examining the issue. The term applies to people, mainly white, creating an identity which enables them to pursue careers which they otherwise would not have. They are able to occupy positions of power and influence, to win scholarships and awards and gain entrance to medical schools and other university courses. Consequently, Aboriginal people are excluded from these opportunities. This results in the further alienation of people who are already marginalised. The proposed change to the Aboriginal Lands Act 1995 risks having Aboriginal people further removed from ownership and management of land in the state.

The government's own Office of Aboriginal Affairs has examined the Aboriginality claims of many people in Tasmania and the results are in their files. A paper entitled 'Confirming non-Aboriginality using archival evidence' was presented by a staff member of that office to the National Archivist Records Management Conference in Hobart in 2001. The paper gives several examples of archival evidence which disproves claims of Aboriginality. In the face of such evidence government policy should not be based on a 'firm belief' by a person that they are Aboriginal. The historian Cassandra Pybus has revealed that, by 1850, there were 500 black settlers in Tasmania. At the same time the number of Aboriginal people on the Tasmanian mainland could be counted on the fingers of both hands.

In the 1970s some people with black ancestry genuinely believed they were Aboriginal and some still do today. Others have researched their family trees and have found out who they really are and make no claim to be Aboriginal. The great leap in the number of people identifying as Aboriginal came in the 1990s when the Aboriginal and Torres Strait Islander Commission was established. The allocation of public funds was given over to elected committees. This saw the establishment of new organisations under Commonwealth legislation where the membership was not required to provide evidence of Aboriginality. An account of how the 'Aboriginal' community in the Smithton area developed is to be found in their own words in the publication by Terrence Cox entitled 'Boots and a Billycan' which is available in the state reference library.

It is our view that eligibility to participate in elections for the Aboriginal Land Council of Tasmania must be established. The line of descent of the three family groups, i.e the Island families, (e.g Maynard, Mansell, Brown, Beeton, Everett, Burgess,

Thomas), the Briggs and Smith families are well established and publicly known and easily obtained from the archives. The archival evidence of descent should be applied to all other claims to eligibility except for those families from other parts of the country.

We acknowledge that a higher participation rate in the ALCT elections would be desirable but note that, in general, where voting is not compulsory voter turnout is low. Better resourcing of the Land Council might enable them to increase the voter participation rate.

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

We contest the assertion in this section that there are regional and local Aboriginal groups with separate identities and ongoing historical and cultural links to particular areas. As stated earlier in this submission the Tasmanian Aboriginal people have a common ancestry stemming from the people of the north eastern part of the state. These days we live throughout Tasmania, including in the cities, towns, islands and regional and rural areas. The fact that a small group of individuals are able to establish an Aboriginal organisation by filling out a form without showing any evidence of Aboriginal ancestry does not make them Aboriginal people. Surely, members of the government would know that the Tasmanian Aboriginal people were removed from their lands and sent into exile on Flinders Island before being moved to Oyster Cove where there were no children born. There were no Aboriginal people left living in small country towns or remote settlements. The growth of the Aboriginal population throughout the state stems from the migration (often forced) of people from the Furneaux Islands to mainland Tasmania and the growth of the Briggs and Smith families over the generations.

Proper management of lands means that someone has to be allocated responsibility. No one Aboriginal family has any greater claim to land in a particular area than any other. In our family, for instance, Fanny Smith's mother was from Cape Portland, her father was from Robbins Island, she was born on Flinders Island and spent much of her life in Nicholls Rivulet. The whole idea of the land council was to hold land in trust for all Aboriginal people, not for people who want to be Aboriginal people and not for people who have settled in a particular area in recent times. (And incidentally, the idea to have a land council came from within the Aboriginal community.) Which ever group is given responsibility for the management of lands needs to have processes in place for its proper management and care and this requires accountability. There cannot be an unfettered coming and going of all and sundry.

5. Identification of land suitable for transfer

Again we reiterate that all Tasmanian Aboriginal people today are descended from people from the north eastern part of the state. No other families survived colonisation. This is simply a fact easily verifiable in the literature and in the archives. It is disappointing that each piece of land should need to be argued separately. The United Nations Declaration on the Rights of Indigenous Peoples identifies land as a right. The hand back of land is not to be seen as a favour bestowed upon Indigenous peoples by colonising nation states. Land hand backs should be negotiated between the government and the Indigenous leadership. And government should lead the way in educating the general population about the internationally accepted rights of Indigenous peoples, including their right to land.

6. Impact of proposed changes on Aboriginal people

It is well known that the arrival of the English on this island in the early 1800s was responsible for a genocide that left no Aboriginal person of the full descent alive after 1905. This last census shows Tasmania as having the second highest proportion of Aborigines to total population in the country. This cannot be an accurate count of the Aboriginal population. The increase is too great and the census relies solely on self identification. Anyone at all can tick the Aboriginal and/or Torres Strait Islander box.

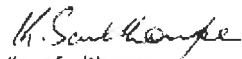
It was seventy years after the death of Fanny Smith before the Aboriginal people began to come together as a community to reassert their rights as the original owners of this island lutruwita. In the twenty years between the 1970s and the 1990s the Aboriginal people gained strength and acceptance in the wider community. In the past thirty years the gains made have been slowly eroded with the aid of the Commonwealth government. Of the nineteen organisations currently registered under Commonwealth legislation nine have a membership which is predominantly not Aboriginal, that is, most or all members cannot trace a line of descent to an Aboriginal family. If the Tasmanian government is now proposing to open up membership of the Aboriginal Land Council of Tasmania to the membership of these organisations the impact on the Aboriginal people will only be to further alienate and disenfranchise the very people who have fought for the past fifty years for recognition of their very existence.


Law makers in this state may not be aware of the overt racism, discrimination and open hostility faced by many Aboriginal families up until the establishment of Commonwealth funded services for Aboriginal people in the 1970s. The very people who have born the brunt of this are now at serious risk of becoming voiceless again. There is no good to come from the Tasmanian government giving land to the

descendants of the colonising families - people with no Aboriginal ancestry. Aboriginal participation will become even lower than it currently is. The adverse impact on the well being of the Aboriginal people of Tasmania and their descendants will be immeasurable. Don't do it!

-----END OF SUBMISSION-----

See over for signatories


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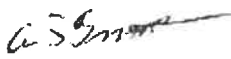
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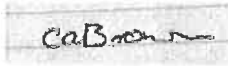
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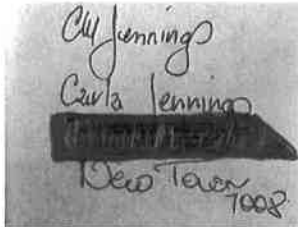
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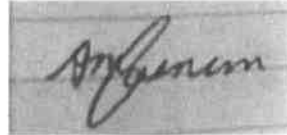
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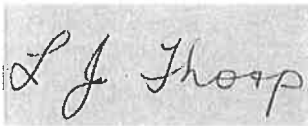
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