



ICN: 7165

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**Re: Consultation – Aboriginal Lands Act Review**

25 March 2023

Dear ~~Minister Jaensch~~ (Roger)

Melythina Tiakana Warrana Aboriginal Corporation (MTWAC) are pleased to provide the following feedback to the recent second round of consultation on Governments review of the Aboriginal Lands Act. Please note on principle, our strong rejection to some of the proposals, as always we have made some moderate and appropriate recommendations for the Governments consideration.

- *Have the Land Council Electors Roll permanently open to applications for entry so that a person can apply at any time, not just in the lead-up to each election. A cut-off date for new additions would be applied at an appropriate time prior to any election.*

**MTWAC accepts the proposal as written with the following condition!**

**MTWAC firmly believe that as sovereign people of this island, only Tasmanian Aboriginal people i.e. Aboriginal people who can trace their ancestry back to an original Tasmanian person of this island should be on the ALCT Electoral Roll. An Aboriginal person from the mainland who cannot identify and be recognised as a Tasmanian Aboriginal person should not be able to be on the electoral roll, and they should not be able to make decisions relating to our country. Under Aboriginal protocols a Tasmanian Aboriginal person would not expect to go up to the Top End or into the Torres Strait and be on a similar body making decisions – it's not our traditional country. This is about having self-determination and recognising us as the First Peoples of Tasmania.**

- *Remove the current stressful and adversarial objection process and replace it with a consistent and equitable process where all new applications for the Land Council Electors Roll must present evidence of their Aboriginality in accordance with the three-part test.*

**MTWAC accepts the proposal as written!**

- *Retain the Electoral Commissioner's responsibility for determining, with advice from an Advisory Panel (see below), whether an applicant's evidence satisfies the three-part test of Aboriginality for the purposes of the Act (s.9(1)(a)); as now, the requirements would be published in Guidelines (s.9(3)).*

**MTWAC strongly opposes this proposal.**

**Aboriginal identity decisions must be determined by Aboriginal Communities and not a head of a Government authority. It is not appropriate for the Electoral Commissioner to be making determination of an Aboriginal person's Aboriginal identity. Identity is a very personal and culturally sensitive issue and should be made only by the people within the individual's community where they live or are recognised, period. MTWAC strongly recommend Confirmation of Identity should be made by approved communities or organisations as per the Governments current process and the Commissioner should use that confirmation as sufficient evidence for approval to place an applicant onto the ALCT electoral roll.**

**MTWAC strongly oppose the development of a two-tiered identity process to be utilised within Tasmania, that is, one for accessing normal Government services using the existing OAA process of community confirmation and another proposed process for the ALCT Electoral Roll. The Government needs to consider the consequences of the potential for an applicant to be accepted for Government Services yet potentially rejected for access to the ALCT Electoral Roll. This would not be an acceptable situation but is entirely plausible.**

**MTWAC questions how the proposed Advisory Panel can be successful, firstly the commissioner should use advice from the community or organisation where the individual lives or is known as appropriate and sufficient. The use of an Advisory Panel for Aboriginal Identity would be extremely contentious with people's identity being discussed by panel members without a direct connection to or knowledge of the applicant. MTWAC suggests strongly this process would be a deterrent for people applying to be on the ALCT Electoral Roll. MTWAC feels this process is flawed as it would be deemed culturally unsafe for many Aboriginal people in Tasmania. It is not a reasonable position for the Government to propose to have an individual's identity discussed, and recommended by a panel of unknown individuals, and it needs to be very careful in going down this road as it will not demonstrate it has been listening to communities concerns on this matter.**

**MTWAC also strongly suggests the Government would have great difficulty in finding Aboriginal people to agree to be on such an Identity Advisory Panel, under the current lateral violence conditions within Tasmania most individuals would steer clear of it completely. How will the Government ensure the best interests and cultural safety of panel members is guaranteed?**

- Provide for 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.

**MTWAC accepts this proposal with an additional recommendation.**

**That an “Approved Aboriginal Community Group or Organisation” is added into the wording.**

**This would allow for a legitimate “non-organisation” to be able to confirm Identity for the purpose of the Electoral Roll. As an example for discussion purposes, TRACA which is not a registered organisation, but a body made up of recognised and respected Aboriginal people who could confirm Identities if needed.**

**This proposal should be the only approved way Aboriginal Identity is determined for the purpose of the ALCT Electoral Roll as the determination is made by Aboriginal people as outlined in the previous proposal.**

**Regarding approved Organisations or Groups within the legislation, these should include a minimum of five (5) Aboriginal members. As it currently stands, the Office of the Registrar of Aboriginal Corporations (ORIC) has the provision that can allow a new Aboriginal corporation under the CATSI Act can be created with a membership of one person or an immediate family i.e. i.e. in Step I Identify your members: “By default, you must have at least five members. If you wish to have fewer than five (for example, a sole trader), you can apply for an exemption from that requirement.” <https://www.oric.gov.au/start-corporation/steps-register> . Membership on the ALCT Electoral Roll should be determined by an Aboriginal community-based organisation or groups which has the ability to confirm Identity and not potential for sole traders.**

- Provide that, when determining if a person is an Aboriginal person for the purposes of the Act, the Electoral Commissioner must take into account any court decision that previously determined that person to be an Aboriginal person.

**MTWAC accepts the proposal as written!**

- Provide that people currently on the Roll will remain enrolled.

**MTWAC accepts the proposal as written!**

- Retain the Electoral Commissioner’s ability to take advice from any person(s) whose expertise they consider necessary to inform their decision-making.

**MTWAC strongly opposes the proposal.**

**The Commissioner should only be taking advice from the direct community where the individual lives or is recognised, not from anyone else who may or may**

not know the individual. The Commissioner should not be questioning a community's confirmation of Identity of an Aboriginal person in Tasmania and therefore, should not have the authority to seek advice from "ANY Person". It is also not appropriate for the Commissioner to be discussing a person's Aboriginal Identity with any person/s without their expressed consent on who that person he/she is seeking information from, there is no mention of consent within the proposed wording.

- *Require the Electoral Commissioner to request advice from an Advisory Panel whose membership is broadly representative of all Tasmanian Aboriginal people. It is currently proposed that the Minister will appoint the Advisory Panel on a three-yearly rotation commencing on a date shortly after each ALCT election. The other option is for the current arrangement, whereby the Electoral Commissioner appoints the Advisory Panel, to continue. The Government is particularly interested to receive feedback on these options.*

**MTWAC strongly opposes the proposal.**

**MTWAC considers this model as flawed on the grounds previously mentioned that this identity checking process is overreach and totally inappropriate. The Government needs to stand by and use its existing process for confirmation of eligibility, it works and ensures only one level of Confirmation of Identity is used for Government as is appropriate.**

- *Assure the safety and dignity of applicants for the Land Council Electors Roll by requiring the Electoral Commissioner and Advisory Panel members to keep confidential at all times the personal information (identity and evidence) of applicants, including the personal information or details of applicants whose applications are unsuccessful. (This will also involve consideration of whether s. 10AA is still adequate / fit for purpose.)*

**MTWAC strongly opposes the proposal.**

**MTWAC considers, on the grounds previously mentioned, that this identity checking process is flawed and totally inappropriate.**

- *Restrict any right of appeal against a decision of the Electoral Commissioner to a person whose application has not been accepted – in all other circumstances, the Electoral Commissioner's decision is final*

**MTWAC strongly opposes the proposal.**

**As the Commissioner should not be making decisions of Aboriginal Identity but accepting advice of conformation from Communities or Organisations, that also includes the potential for new information to be provided.**

**Reference to a decision is final does not take into account human error or an applicant's ability to provide new information from a different source, and therefore, denies procedural fairness and an equitable and just process. MTWAC questions why this proposal is necessary at all.**

## Recommendations

1. The Government agrees to the principle that it is inappropriate for the Electoral Commissioner to be making determinations on Aboriginal Identity.
2. The Governments current process of Confirmation of Aboriginality for use to accessing Government Services is adopted for people to be accepted onto the ALCT Electoral Roll.
3. That the legislation clearly indicates only Tasmanian Aboriginal people, those with Tasmanian Aboriginal decent, are eligible to be on the electoral roll.
4. The Government consider allowing recognised Aboriginal Community Groups to be approved for providing confirmation of Aboriginality along with existing Community Organisations.
5. The Electoral Commissioner must only consult with the Community Group or Organisation that provided Confirmation of Aboriginality and at the consent of the applicant.
6. The right of appeal must be reinstated to allow a fair and equitable process.

Kind Regards,

Nick Cameron

A handwritten signature in black ink, appearing to read 'Nick Cameron', with a long horizontal flourish extending to the right.

Chair Melythina Tiakana Warrana Abogiginal Corporation