

**Amending the Aboriginal Lands Act 1995 Additional consultation paper March 2023**

**Lia Pootah Aboriginal Corporation**

**Lia Pootah a Grassroots Aboriginal Community Submission**

**Approved by Wallatanalinany lydidder (Lia Pootah Elders Council)**

**For: Roger Jaensch Minister for Aboriginal Affairs**

## **PRELIMINARY INFORMATION**

Lia Pootah disagrees without reservation the premiss of Aboriginality still in use which is advanced from the 1995 *Koorie Report* because it effectively makes invisible the legitimate Traditional Owners of Native Title Lands and breaches the anti-discrimination legislation enacted by Federal and State Parliament. This is a deliberate act that clearly constitutes malfeasance against Lia Pootah.

It is the will of Lia Pootah that this longstanding deliberate act of nonfeasance, which constitutes is a violation of our inalienable rights by the Tasmania Government and Palawa complicity be corrected immediately to our satisfaction, by allowing Lia Pootah not only to vote in all advisory panels, in particular the ALCT elections, but have our history publicly and visibly for all to see. in order to prevent its escalation and Lia Pootah having no other recourse than to take remedial action.

That premiss for the following evidentiary points of law and history are displayed in the dot point format of the submission.

That the Tasmania Government encouraged by Palawa has for decades followed Governor Arthur's decree where any Tasmanian Native who

1. wore clothes
2. became a Christian
3. was a "half cast"

was no longer considered a Tasmanian Aboriginal Native but became white and automatically civilized. In other words; no one to fear. It was only the naked Natives that were troublesome and dangerous.

All the 204 naked Lia Pootah ancestors taken by George Augustus Robinson were clothed by law, thus making them civilized, not a broken people. All the traditional full blood ancestors still living free who became Christians and wore cloths fell under this decree and became "white". Many naked ancestors were recorded by the surveyor Erskine Calder in small bands living free, 1847 saw William Lannee's naked family captured in the northwest. In the 1850s Judd started a farm where the town of Judbury now is. A group of naked Natives arrived in the area and held dances, had conversations with Judd which he recorded in a journal. These accounts were long after 1832 when Robinson claimed he had rounded up all the naked natives and removed them. Even Robinsons journals state he did not round everyone up but only collected those who wanted to join him.

All the children that were fathered by convicts, farmers, whalers, military, free settlers and even by sealers on the Bass Strait Islands with unnamed Native women came under this Governor Arthur criteria. This included all the mixed race children on Trowernna/Van Deimens Land/Tasmania.

After the death of Trugganie in 1876, Fanny Cochran Smith a Bass Strait Island sealers daughter, became a token “Tasmanian Aboriginal”, rather than recognising she was a “half cast/hybrid”, through an act of parliament. Thousands of Lia Pootah half cast ancestors were ignored at this time. Politically sanctioned discrimination is nothing new in Tasmania.

John Shinnal a traditional ancestral man who lived, worked and died on Forcett Farm met Governor Arthur when he stayed there in 1830 during the Black Line. A Christian who wore cloths was ignored as he was considered civilized. But, he was still Aboriginal enough on death for his head to be removed and sent to the Irish College of Surgeons.

History, as recorded in primary documents shows that there was no interaction between the women living with the sealers and Lia Pootah imprisoned on Flinders Island. Material written long after the ancestors were returned to Oyster Cove, along with theories detailing ancestry, is not considered primary evidence of fact.

## **SECTION 1**

Clarifying the scope of the Act.

### **DOT POINTS**

1. It is a land handback Act that works well. Why make any changes?
2. Adding sea is unnecessary. Aboriginal people have additional licences.
3. Expansion of title cannot express culture and heritage
4. Having read the previous submissions requesting changes Lia Pootah find they are template writing, an obvious statement from a single survival group. Palawa.

### **HISTORICAL INFORMATION**

Why change the name of the Act? So what if it's a bit long it is self explainable as to what it is. Until things change politically in Tasmania it is just a case further empowering one group, Palawa and their faux cultural history, to the exclusion of the many Lia Pootah. These acts of Palawa empowerment on behalf of the Tasmanian Government are a brazen arrangements constitutes misfeasance against Lia Pootah and its interets.

After over 200 of years of making Trowernna into a British landscape, sustaining British technology, supporting British industry and permanently changing the climate and landscape, so many of the places of cultural land and water heritage have been lost. Even the oceans did not escape. Robert Roberts, a soap manufacturer, by 1840 had harvested all the kelp beds around Tasmania destroying for ever the ancestral fishing patterns. The Wattle bark industry

destroyed one of our seasons, plus permanently altering our ancestral landscape. Silica and ochre mining areas were numerous making them harder to destroy, although the Kaolinite, white ochre, beds were all destroyed by 1900 through over mining by the potter industries.

It was a Palawa sanction to forestry that saw the last of our Spirit Trees destroyed from their ignorance of Lia Pootah and Trowernna women's culture. Uncontrolled Palawa decision making has changed Trowernna, the home of the ancestral Tasmanian Aboriginals, to make Cape Barren Island the ancestral home of Palawa, another historical distortion. The Nomenclature Board decreed that Palawa Karni was the only Tasman Aboriginal language. A made up language does not supplant the ancestral language which gives Lia Pootah heritage true meanings of sacred places.

After over 150 years removal and developing a strong island cultural heritage the islanders decided they wanted to be Tasmanian Aboriginal. Palawa have always had a monetary view of what culture is and this is what they have. Yolla, muton birds, and shell necklaces spring to mind. Propped up by cash cows.

The recording of Fanny Cochran Smith supposedly singing in the ancestral language is another example of a faux history. In fact Fanny is singing an island sea shanty style in her native creole which was her heritage. The ancestors had a very different style of singing. Not even Fanny's words are from the ancestors, but use words from an islander heritage. It is reasonable that this would be the case as she had no contact with the ancestors and their heritage.

Since 1995, and the onset of the act malfeasance by the Tasmanian Government, the Palawa have had unopposed control and management of all the land that has been handed back.

What have they done in their responsibilities of care and management of the land handed back? With only an island heritage the Palawa are ignorant of true Aboriginal heritage and knowledge of areas being handed back. The Palawa demanded islands in first handback that were their culture rather than those with an Aboriginal heritage.

ALCT do not answer letters or phone calls, they are a law unto themselves. They have never had a watch dog to ensure they are doing the best for the whole Tasmanian Aboriginal community.

- Transparency is critical as are annual reports
- Broader selection of members to the advisory panel is crucial.

## **SECTION 2**

Revisions to ALCT Elections

### **DOT POINTS**

1. the Lands Act is a Tasmanian Government piece of legislation so the Electoral Office must be involved
2. Lia Pootah and Palawa are the only survival groups and both survival groups should be represented on the ALCT board
3. Remove the out dated ATSIC voting boundaries of 1995, which allows for Palawa domination, to allow for an unbiased membership panel
4. Elections of members Lia Pootah should be based on Federally recognised Corporation certificates of Aboriginal identity links to the 130 family names of the 2002 Federal Court case
5. No other Corporation can dispute the decisions of another
6. Nor should the Office of Aboriginal Affairs which is something they are starting to do to Lia Pootah members
7. Palawa are not the traditional owners of Trowernna having more than a 150 year gap, do not qualifying on the Federal Government Native Title Act. This lie should not be represented as a truth on government paperwork.
8. Palawa are not the only survival group and should stop being treated as such

### **HISTORICAL INFORMATION**

As proven in the 2002, there are only two survival groups of the original Tasmanian Aboriginal Lia Pootah and Palawa, each group should be recognised equally. Each group has

multiple corporations and Lia Pootah has a Corporation, but Lia Pootah includes Community Recognition as the second survival group.

By having ORIC recognition Lia Pootah and Palawa member Corporations being recorded with the Tasmanian Electoral Commission then there is no conflict of interest, each survival group can be recognised by their conformation papers. There are 130, out of the 200, individual Lia Pootah family lines covering the whole of Tasmania who won their Aboriginality in the Federal Court of Australia in 2002. This should be all the verification of Aboriginality needed to disprove the lie they are white.

The claim that the Palawa are the traditional owners now appearing on government records and assorted papers should be removed immediately. People removed for over 150 years cannot claim Traditional Ownership status just because the Palawa committed genocidal like against Lia Pootah. Lia Pootah have never left the land of their ancestors and come under the Federal criteria of the Mabo Native Title Act for Traditional Owners.

Tasmanian Governments by accepting the *Koorie Report* as the definition for Tasmanian Aboriginal identity over the next three decades did so knowingly with malfeasance as they defied both state and Commonwealth antidiscrimination laws. That the Palawa are guilty of genocide of Lia Pootah people is ignored. Lia Pootah people were always known to exist in the broader community as having Tasmanian Aboriginal ancestry but as the Tasmanian Aboriginal under the colonizers laws were legally extinct there was no reason the recognise them in a formal legal capacity.

The Archival data recommended is suspect, incomplete and heavily in favour of Palawa devised and what is needed to be accepted. Births Deaths and Marriages registry did not come into existence in Tasmania until 1835. Between 1804 and 1835 records of Aboriginals Natives did not officially exist and depended on the Church of England Clergy and after 1823 Roman Catholic Priests to collect the records. The decree of Governor Arthur about if the Natives became half cast, wore cloths or became Christian and therefore no longer Aboriginal meant that Lia Pootah ancestors melted into the broader community, their Aboriginal identities common knowledge in the areas where they lived.

Initially those who were on Cape Barron Island were well documented in the late 1800s as the “hybrid descendants” of Aboriginal mothers. None of the women were recorded at this time with an Aboriginal name but recorded as 4 Tasmanian and 10 Australian Aboriginal women plus Maori. The 204 Lia Pootah ancestors taken to Flinders Island stayed separate. Forced into wearing cloths, attending church services and forbidden to speak their language or practice their ancient customs they still remained Tasmanian Aboriginal. There is no historic evidence to show there was any interaction between the sealer’s women and Lia Pootah ancestors before they were removed to Oyster Cove in 1847.

Cape Barren Islanders moved into the vacant Flinders Island settlement and for the next hundred years they gradually made self determined claims of nonverified historical links to those who were not related to them. With the aid of long distance British academics and British ethnohistorians the Palawa’s confused and faux history began. Claims of relationships which began to appear in the late 1990s were never openly questioned or substantiated with historic evidence other than claims of Brian Plomley. The notes in

*Friendly Mission* and *Weep in Silence* in fact are PLomley's theories explaining what was said and meant over a hundred years before when George Augustus Robinson wrote his diaries. Any Aboriginal community who relies solely on non Aboriginal colonizing laws and academics to determine their identity, culture and history has a problematic identity.

Random notes expanding and explaining a diary are not historical evidence relating to 1830/32. Keith Windschuttle was hounded for disputing the Palawa version of Tasmania's history by using historical evidence. And it is these Plomley notes that the Palawa have used to form their faux history when they wanted to be known as Tasmanian Aboriginals not Bass Strait Islanders, which they were and still are. Name changes after, your Elders who did not want name changes because they were extremely proud of their island heritage, have all died does not change the Palawa ancestry. An easily proven faux history does not change their ancestral heritage.

## **SECTION 3**

Simplification of hand transfer process

### **DOT POINTS**

1. Lia Pootah inclusion on the lands council ensures that all the Tasmanian Aboriginal Community is recognised in the land handback and management
2. Coming into any established governing body will always be a learning experience. The skill sets of Lia Pootah can only enhance the existing board members
3. Lia Pootah believes and agree that making better use of the unreserved land is a ALCT responsibility
4. Land should not have signs proclaiming TAC land, permission is needed to enter or cross when the TAC play no role in caring for the land

### **HISTORICAL INFORMATION**

Although in principle Lia Pootah agree to the proposal to simplify the transfer of land. However, we recognise simplification will lose transparency of transfers and management polices. The land hand back has already created conflict with the TAC accepted Palawa solely representing the Tasmanian Aboriginal Community, rather than the inclusive all Tasmanian Aboriginal people. TAC claiming ownership by placing signs claiming their permission is necessary to cross the area null and voids the ALCT. This is paramount to theft.

Giving the land back to the Aboriginal Community is a show of recognition of the value of land to Aboriginal people. However, it is not land chosen only by Palawa that is necessarily important. The islands in Bass Strait on the Eastern side have no historical meaning, other

than Flinders Island. Palawa's claim of faux ancestry from four randomly isolated women does not give the Palawa knowledge of any culturally important area.

Lia Pootah realises that many of their culturally significant places have been destroyed by first the invaders "improvement" of the land. Marshes, springs, rivers, sacred trees, landscapes and their pneumatic references to Songlines have all vanished in many places. As has the loss of flora and fauna compounded by over fishing, kangaroo, albatross, swan and yolla slaughtering and egg collection. Culture for Lia Pootah is not just a visible surface. Ice ages taught us that the people and the land have no boundaries or depth but encompass all that is sacred to us whether or not we can see or touch it, it is still there.

Palawa history shows culture represents a way to make money for the few,

## SECTION 4

A land management role for local or regional Aboriginal Community Organisations

### DOT POINTS

1. Lia Pootah do not consider any heritage area should be given over to a corporation nearby to control no, to manage yes.
2. A single rock art site is not an isolated artifact but part of a whole tied with song and dance. Giving a local group control of the site destroys the song. This is especially so when the corporation has no idea of what the area represented to the ancestors.
3. It is the view of Lia Pootah that the jurisdiction and responsibilities of the Lands Council and Aboriginal Heritage overlaps and captures the matters under the jurisdiction and responsibilities of Aboriginal Heritage
4. Happenstance does not qualify a corporation to have the ancestral knowledge associated with an area. Care and maintenance of an area is as important as associated songs and dance.
5. Lia Pootah have heard of the lies being told about certain areas. This is a shame on the Ancestors.
6. All Aboriginal land should be accessible to all Tasmanian Aboriginal people no matter where they live. All Tasmanian Aboriginal culture was an all inclusive society until it was decided by the Palawa that they wanted to be the only ones and with the aid of the Premier Jim Bacon and Clyde Mansells *Koori Report* they divided the Tasmanian Aboriginal Community into European paddocks and controlled everything with the invaders law.

7. Heritage areas were looked after by the entire community on a seasonal, cultural or Songline determined time frame as Lia Pootah cultural Lore dictates

## **HISTORICAL INFORMATION**

How can a modern Aboriginal Corporation be responsible for an ancient cultural site when they are basing their claims on proximity not knowledge or Lore. All Aboriginal land should be accessible to all Aboriginal people. There should be no ownership of knowledge, artifacts or land. There should only caretakers.

Academic theories should be removed from all Aboriginal culture. Distortions play no role in any land council. Local rock art sites are not exclusive to any one group but form part of culture and Lore shared in storytelling and dance. A rock art site is only a mnemonic to the song or story associated with it. How can ALCT claim the rock carving sites when all such sites come under Aboriginal Heritage control. The Mersy Bluff site proves neglect and destruction of an important site.

Silica mining sites and deposits of ochre were there for all, not those who are near them now. We had no need of a trade or barter system.

What the Palawa has never understood is the total isolation and total island cultural isolation that made the ancestors who they were. The Palawa by using mainland Aboriginal culture

and academic theories about who the Tasmanian Aboriginal were, has distorted our heritage until it no longer publicly exist.

Enough damage has been done with the invention of Palawa Karni which ignored ancestral language that recorded the true names. The true meaning of Mt Wellingtons ancestral name told of a Songline and a story. Lia Pootah Lore is that everything belongs to all.

## **SECTION 5**

Creating a transparent process and clearly specified criteria, both to propose land for return and to assess its suitability.

### **DOT POINTS**

1. Lia Pootah agrees that there should be a clear identification of the land ie; the recognition of what the ancestors recognised as sacred sites and not be transferred from the whole of the Tasmanian Aboriginal Community both Lia Pootah and Palawa
2. The closest group to a site should be given care responsibilities
3. The development of a clear criteria for future evaluation of land nominated to be returned would be a real and fair electoral nomination and vote
4. To be fair if the elections were held for half the advisory board every three or four years that way with Lia Pootah being elected there would be experienced members to help with learning the ropes

### **HISTORICAL INFORMATION**

Since 1995 when then Premier Jim Bacon approved the self identification of one small group, Palawa, as Tasmanian Aboriginal based on the 1995 *Koori Report* written by Clive Mansell, the Lia Pootah survival group have been with malfeasance and deliberate discrimination systematically removed from everything relating to Tasmanian Aboriginal. Despite having won in the Federal Court of Australia on their Aboriginality in 2002, Lia Pootah have been

vilified on a continuous basis by Palawa with claims of Lia Pootah self identifying whites pretending to be Aboriginal.

Lia Pootah accepts in principle the draft dot points under the heading “what was proposed” and agree with the government’s intention to remove any artificial or unnecessary barriers to all Tasmanian Aboriginal people participating in the Land Councils electoral process.

Lia Pootah is foremost a grassroots Survival Community from Governor Arthurs genocide policy where if the Natives wore cloths, became half cast or Christians they were no longer Tasmanian Aboriginal; and has over 200 ancestral women who gave birth to Aboriginal families identifying and being recognised as Aboriginal in their Community until 1995.

It is time that the ATSIC divisions for the electoral process be opened to the acceptance of a more diverse population and less discriminatory.

## **SECTION 6**

Governance issues

### **DOT POINT**

1. Why are there no existing management plans for each of the land handback areas already in place
2. Why is there no annual reports available
3. Why is there no transparency or accountability policies already in place
4. It is obvious the Palawa desire for secrecy and ownership doesn't show community inclusivity
5. As it is a Parliamentary decreed department with government funding why is there no paperwork relating to ALCT publically available
6. why are all the dot points listed not already in place

### **HISTORICAL INFORMATION**

The ownership presumption of ALCT with its inhouse board members, lack of transparency along with no accountability is appalling. Patching up and tightening the control of an Act is a sign of desperation. The Palawa have had thirty years controlling ALCT making sure that only relatives were elected to the advisory panel. No information has been forth coming publically about how the ALCT is working, though gossip and rummers abound.

ALCT want the election model to remain the same, even though the influx of new people on the advisory panel would benefit.

The attitude of ALCT with the recent handback of the rock art was not community orientated. It was not even ALCT responsibility as Rock engravings come under the auspices of Aboriginal heritage. ALTC has become a fiefdom.

## **PROPOSED REFORM OF LANDS COUNCIL PROCESS ELECTION AND THE ROLL OF THE ELECTORAL COMMISSIONER**

### **DOTPOINT**

1. Electoral Commissioner only needs to confirm that certification of Aboriginality is from an Oric registered corporation
2. As Lia Pootah has 130 families that won their right to vote in the 2004 lands council election all the Electoral Commissioner has to do is verify the Aboriginality of the person to the accepted family the Federal Court of Australia recognised
3. Lia Pootah is foremost a Grassroots Community whose members often belong to other corporations. This is why Lia Pootah certification has Elders and Corporation certification on their identification papers.
4. Because of the ongoing bullying tactics of TAC, Palawa and OAA, the last in 2022, against Lia Pootah members and recognition refusal in 2004 by ALCT our members names do not appear on public listings other than their certificates
5. Lia Pootah Corporation - ITAC = First Nation Corporation –CHAC either represent Lia Pootah members or have Lia Pootah members in their corporation.
6. Other corporations are exclusively Palawa/TAC representatives

7. The Office of Aboriginal Affairs have no legal right to verify Aboriginal identification certificates as they recently did with a Lia Pootah certificate in 2022 by refusing to accept Lia Pootah verification of Aboriginality
8. The Office of Aboriginal Affairs cannot be allowed to determine which Aboriginal certificates are acceptable and which are not
9. Only the Electoral Commission should receive the Aboriginal certifications
10. With accompanying certificates of Aboriginality people should automatically go on the Electoral Commissions voting list
11. The Fanny Cochran Smith family submission states that OAA is creating a list of corporations whose members they consider to be non Aboriginal. The minister of Aboriginal Affairs Roger Jeasch should take OAA to task destroying their intended bullying paper work
12. Such intent of OAA not only is intentionally deliberate discrimination that contravenes the Federal and State antidiscrimination acts but defies the legal statements of malfeasance and misfeasance.

## **HISTORICAL INFORMATION**

Where is the level playing ground when the Palawa self determination of Aboriginality is sanctioned by parliament and money for the whole Tasmanian Aboriginal Community is an annual statement in the Tasmanian budget but only reaches the Palaw coffers. Even the this money only reaches the small number of Palawa for control of education the running of the TAC etc, etc big wages are paramount. Reading the budget report is distressing and a criminal waste of money.

Lia Pootah have been constantly told it would be a duplication of services to give them money for legal, education material, health services, and prison support, all the while no

support was available to the largest part of the Tasmanian Aboriginal Community because the Tasmanian Government only supported one small group, Palaw.

For over thirty years Lia Pootah has been forced to constantly prove who they are in both state and federal courts to a government who passes it to OAA which constantly state they are white. Until the ATSIC money started to flow we were all recognised as Aboriginal. Then there became too many Tasmanian Aboriginals to share the money with. Lies compounded by ignorance and bullying cemented in the false biased histories of theoretical concepts of white academics.

Instead we have open malfeasance, misfeasance and nonfeasance on an ongoing grand scale perpetuated by:

1. A series of lazy governments who only wanted to deal with one Aboriginal organisation and so the TAC became virtually part of and funded by government making them powerful.
2. Politian's, who were and are, both ignorant, lazy do gooders are deciding that only one survival group of the Aboriginal Community should be empowered to make decisions for the whole community, half of which aren't recognised.
3. At the same time offering platitudes, but refusing to hear the voices of those who were suffering a racial genocide

Lia Pootah recommends a minor selection of references for perusal a broader list can be obtained.

Mollinson's Genealogies

Koorie Report by Glyde Mansell

The Legislative Council Select Committee on Aboriginal lands met at Henty House Launceston on Thursday 9 March 2000: Clyde Vincient Mansell and Daryl Arthur West Aboriginal Lands Council of Tasmania were called, made the Statuary Declaration and were Examined

Legislative Council Selective Committee on Aboriginal Lands met at Henty House Launceston Thursday 9 March 2002 Chair Mrs Sue Smith questions Sue Napier MP

Members of the Fanny Smith family Submission 18 July 2022

Professor Maggie Smith submission July 2022