



SUBMISSION FROM THE TASMANIAN REGIONAL ABORIGINAL COMMUNITIES ALLIANCE IN RESPONSE TO THE CONSULTATION PAPER ON PROPOSALS FOR AMENDMENT OF THE ABORIGINAL LANDS ACT 1995

September 2022

Summary

Ever since it was established, the Tasmanian Regional Aboriginal Communities Alliance (TRACA) has had concerns about the design and implementation of the Aboriginal Lands Act 1995 (the Act). These concerns have been expressed in meetings with Premiers and Ministers over those years, and also in a submission to the 2018-19 review of the model for returning land to Aboriginal people.

TRACA is pleased now to have the opportunity to comment on the Government's more detailed proposals for amending the Act to improve the model for returning land. However, we also welcome the fact that we will get a chance to look again, when the Government releases the draft exposure Bill that will show the details. We expect we will have more to say then.

TRACA has seriously considered whether it would be best now simply to abolish the Aboriginal Land Council of Tasmania and start completely afresh. However, at this stage we believe that a reformed body – as long as its membership is elected and its operations are governed under amended legislation incorporating the sorts of proposals outlined by the Government, plus our suggestions conveyed below – will be acceptable. We agree that, whatever the problems with the current arrangements, it will always be necessary to have a body that can hold the title of the land, in perpetuity, on behalf of Tasmania's Aboriginal peoples. But it needs to go back to the original intention, before it was taken over by one faction. Notwithstanding arrangements outside of the Act.

However, TRACA and the people we represent have become deeply opposed to the name "ALCT". We very strongly urge a rebranding to change the name, and especially not to use the acronym of "ALCT" as we feel that the negative associations with it may hamper acceptance of the body by many Aboriginal people moving forwards. We refer to the ALCT throughout this submission only for consistency with the Consultation Paper language. We also believe the rebranding needs to go beyond the name change.

TRACA is disappointed that the Government seems to be using the "Pathway to Truth-telling and Treaty" report as a record of our views. We don't believe it accurately represents what we said or what we believe.

We strongly support the broad intended outcomes for improved governance, accountability and inclusiveness of the ALCT that the Government is seeking to deliver through implementation of its proposed reforms to the Act. We recognise that the Government's proposals will lead to a significantly different sort of body once new elections are held. While we have some apprehension, we recognise we must put our trust in the reformed body making good decisions in relation to managing existing and future Aboriginal lands "for the benefit of all Aboriginal persons".

But we are concerned that the current Aboriginal Land Council of Tasmania might use the period until then to take unacceptable actions. We suggest the amendments should include some way to ensure this doesn't happen, with special 'caretaker' type provisions to apply to this period.



Responses to specific proposals presented in the Consultation Paper

<p>I: Clarifying the scope and intent of the Act.</p>	<ul style="list-style-type: none"> • That the long title of the Act be amended and/or a Purpose and Objectives provision be added to expand the Act’s scope and intent to reflect the importance and significance of land to Tasmanian Aboriginal people. • Health, wellbeing, housing and economic outcomes, and inclusion of water(s) may also be included in the scope.
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TRACA generally supports these proposals and make the following comments.

We agree that land could be returned for different reasons, and may afford a broad range of benefits and advantages to Aboriginal people. But we also recognise that the Act deliberately places limitations on the land – in particular, that it can’t be sold or mortgaged. This means that “Aboriginal land” will not always be the best mechanism to do certain things. For instance, for building community housing it might be better to have the relevant Aboriginal community organisation become the owner in the ordinary way, able to borrow against the land and so on in order to secure or otherwise lever funds to assist in community projects.

So the Aboriginal Lands Act is not the answer to all needs, and it will be important to keep the other options available for when they are more appropriate. But the sort of “in perpetuity” land return to Tasmania’s Aboriginal communities that the *Aboriginal Lands Act* provides for is seen as central to reconciling the wrongs of the past and recognising the rights of Tasmania’s Aboriginal people as the original inhabitants and custodians of all lands in Tasmania.

We definitely support the inclusion of water and want to be sure that this extends to Sea Country. We will be keen to see more detail on how this can be done and what it will mean in practice for access to and control of resources.

Finally, there’s a significant general point. We are keen to see the terminology used in the Act become more sensitive to Aboriginal viewpoints and attitudes. For instance, while the terms “owner / ownership” are legally necessary, we think the Act should find room for more appropriate words like “custodian / custodianship”, which better express the Aboriginal approach to our responsibilities for land.

<p>2: Revisions to ALCT elections.</p>	<p>Amend the Act to:</p> <ul style="list-style-type: none"> • 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.
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These proposals are fundamental and TRACA strongly supports them. TRACA agrees with the intention to reform ALCT so that it becomes properly representative of the Aboriginal people of Tasmania.

We also recognise that the key to making this work is to get out there and actually vote and put ourselves forward for election. The main thing that will drive change will be having the right people at the table. That will be a matter for all Aboriginal communities, and we will be looking to promote broad participation in election processes for the representative body. However we are concerned that not all communities are equal regarding the resources or mechanisms to promote enrolment and encourage voting.

We support the reference to the Government’s Eligibility Policy, which is more inclusive and is the result of what our organisations all put to Premier Hodgman back in 2015-16.

There are still some things that we’ll need to think about more, and perhaps come to a final view on only when we see the draft exposure Bill with the details. One of these is whether the allocation of election regions in the Act (ie 3 Tasmanian mainland regions [south, north, north-west] with 2 members each, plus one member each for Flinders and Cape Barren Island) is still the best. We want consideration of the option to consider more, and smaller regions, to better represent local organisations.

<p>3: Simplification of land transfer process.</p>	<p>Amend the Act to:</p> <ul style="list-style-type: none"> • Create a new <i>[disallowable]</i> instrument of transfer for significant parcels of Crown land, including reserved land, which will simplify the process. The new instrument of transfer would provide a clear, set of management conditions for each piece of newly transferred land; and • Otherwise make greater use (for both freehold and unreserved Crown land acquired by ALCT) of the ability to declare land as ‘Aboriginal land’.
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TRACA supports these points. We understand that many important matters are intended to be covered in the proposed instrument of transfer.

The key question this raises for us – and it applies to the next points as well – is funding. It’s all very well to hand back more land, but how will Aboriginal people be funded to manage it?

We accept that this is not strictly part of the Act or its amendment, but it’s the critical question for the Government to consider, and it will have to underpin discussions and decisions on all future land handbacks.

There are some related issues about costs that fall on Aboriginal land, such as rates and taxes. We acknowledge that land under the Aboriginal Lands Act itself doesn’t pay rates or land taxes, but we have problems with paying rates on land owned by Aboriginal community organisations. We note that the Government is looking at the issue of stamp duty on land being sold or donated to Aboriginal people, for the purpose of becoming Aboriginal land.

<p>4: A land management role for local or regional Aboriginal community organisations.</p>	<p>Amend the Act to provide, as part of the new instrument of transfer:</p> <ul style="list-style-type: none"> • 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.
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TRACA broadly supports these points, but it's a key area, and we have some qualifications and additional points.

Our basic position is that a new ALCT is there to hold title, but that local people should manage the land, through their own organisations. It's quite wrong, for instance, that ALCT should be looking to run tourism ventures on its own account. The principle should be that it's the local Aboriginal people who will get the benefit from Aboriginal landownership.

Therefore we don't think it should be an "option" to have local organisations specified "in addition to ALCT". Instead, it should be the default position that local organisations are the managers. We do acknowledge, however, that there may be some land (especially remote places) where there simply isn't a suitable local organisation, or where the local organisation may choose to decline the responsibility.

Another key issue for TRACA is the position of the current ALCT in relation to land that has already been returned. The proposed changes will address our concerns relating to how new transfers will be more fairly and inclusively managed, but they don't specifically address problems with the existing ALCT land. Some of that land is the source of very longstanding grievances and disputes between ALCT and the local people.

This can be complicated. But ultimately we agree that it will be best to rely on the election of a new and more representative ALCT, which will then be the most appropriate body for reviewing current management arrangements.

The Government also needs to consider the ALCT's role in managing IPAs and associated Commonwealth funding for land management activities, to ensure that incoming funding equitably benefits all Aboriginal communities.

Finally, ALCT can affect the viability, and ability to raise funds, of neighbouring Aboriginal ventures. It needs to consider how it can give positive assistance to other organisations, and this is something that can be considered when consideration is given to returning land and which should be captured in the instrument of transfer.

<p>5: Identification of land suitable for transfer.</p>	<p>Amend the Act to provide for:</p> <ul style="list-style-type: none"> • Clear identification of the values, and the significance to Tasmanian Aboriginal people, of any land proposed for transfer;
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	<ul style="list-style-type: none"> • 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 and process to support future evaluation of land nominated for return.
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TRACA supports these points.

We agree that there are different types of value when looking at different lands. It's a simple fact that there are places – such as Wybalenna or Oyster Cove – that have great significance for Aboriginal people all over Tasmania, and there are others that are more of local interest and significance. It makes sense to recognise this when land is being assessed for transfer.

<p>6: Governance issues</p>	<p>Amend the Act to:</p> <ul style="list-style-type: none"> • 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.
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TRACA supports these points, but we think they don't go far enough. Governance is an issue that we think is extremely important and has to be got right.

We recognise that at the moment ALCT doesn't report to the Minister or even the Parliament. If it's accountable to anyone, it's the Courts. We understand why, but think it's essential that accountability is stronger.

The annual report is a basic governance tool. We feel that its effectiveness will be enhanced if the types of things that it must include are prescribed. It should be clear that it's to report against some "KPIs" that relate to the fundamental purposes of ALCT, which should include "to recognise, engage with and consult local Aboriginal community organisations". We also think it would be appropriate and improve transparency and accountability that the annual report is tabled in the Parliament.

One of our great concerns is with lateral violence, including in ALCT itself. We think it's necessary to have a proper Code of Conduct for ALCT. Naturally the Government or the Parliament shouldn't be dictating our behaviour. But the need to have a Code, and to review it each year, could be added to the relevant Schedule to the Act. Breaches should be grounds for removal of members.

Finally, the Act will need to be "future proofed" in some way. Even if all the reforms proposed are introduced successfully, there will remain a risk of "branch stacking" and distortion of the real



representativeness of ALCT. There are many other function and performance matters that will also need to be checked through time.

At the least, then, the Act should be reviewed (probably in 5 years), to ensure it's working well and that the amendments have delivered the intended improvements, and to identify any further improvements that could be made. A review of the Act itself will presumably cover also the operations of ALCT. It may be best, if possible, that the Review is conducted independently of Government, and that the outcome of the review be formally considered by Government.

We thank you for your consideration of TRACA members and their views and also welcome the fact that we will get a chance to look again, when the Government releases the draft exposure Bill that will show the details. We expect we will have more to say then.

TASMANIAN REGIONAL ABORIGINAL COMMUNITIES ALLIANCE