



Amending the *Aboriginal Lands Act 1995*

Additional consultation

Message from the Minister

In June 2022, the Government released a consultation paper with our proposals for changes to the *Aboriginal Lands Act 1995* to improve the model for returning land to Tasmanian Aboriginal people. Those proposals were informed by previous and ongoing consultations, and careful consideration of the issues involved. The Government firmly believes that more land should be returned, but we know that the current Act does not provide a clear process for the proposal and consideration of new land returns, and some aspects of the current law and arrangements are not broadly supported by Tasmanian Aboriginal people.

The 70 submissions received in response to the consultation paper, and the many in-person discussions, provided valuable feedback and the Government greatly appreciated the thought and work that went into these contributions. The feedback will inform our approach to drafting the amending legislation, which we intend to consult on and then introduce to the Parliament in 2023.

Overall, our proposals have been well received; however, the issues of eligibility to participate in the Aboriginal Land Council of Tasmania election processes and the role of the Tasmanian Electoral Commissioner, in particular, need further clarification. Therefore, the Government is seeking further feedback on a refined approach to these issues, which provides significantly more detail on how the proposed new arrangements could operate. This feedback will further inform the preparation of a draft exposure Bill, which we intend to issue in the first half of 2023.

Feedback on this paper is invited by 12 March 2023.

Roger Jaensch MP
Minister for Aboriginal Affairs



Purpose of this paper and note on recent feedback

The Government is now moving into the drafting of the amendments ahead of their release for consultation in the first half of 2023. This consultation paper presents the refined proposals for change following the previous consultation paper released in June 2022, and seeks your views.

The refined proposals consider the 70 submissions received in response to the June 2022 Consultation Paper. The submissions received, with background information, are now available at <https://www.aboriginalheritage.tas.gov.au/legislation/aboriginal-legislative-reform/aboriginal-lands-act>.

For information on how to respond to this paper, see page 7.

Summary of main responses to the proposals in the June 2022 consultation paper

The responses on most issues were relatively straightforward and feedback from the submissions received indicated widespread agreement that amendments to the *Aboriginal Lands Act 1995* (the Act) would be useful. There were, however, differences of opinion between the submissions relating to Section 2 of the June 2022 consultation paper and the issue of reform of the Land Council election processes. This issue is the main focus of this consultation paper and is covered in detail in the final section.

The following is a summary of the feedback received in relation to the remainder of the proposals for change, and the Government's refined position in response to it.

Section 1: Clarifying the scope and intent of the Act

What was proposed:

That the long title of the Act be amended and/or Purpose and Objective provision be added to expand the Act's scope and intent to reflect the importance and significance of land to Tasmanian Aboriginal people.

This was not contentious in itself. Some submissions suggested text to express the intended scope of the Act more appropriately, and its justification. These suggestions will be considered in the drafting process and are expected to be the subject of further comment once the draft exposure Bill is released. There was also support for expanding the meaning of land to cover Sea Country. There are some legal issues to consider in relation to this, but it is intended that the draft Bill will provide as far as practicable for this extension of scope.

Section 2: Revisions to ALCT elections

This issue is the main focus of this consultation paper and is covered in detail in the final section - Proposed reform of Land Council election processes and the role of the Electoral Commissioner.



Section 3: Simplification of land transfer process

What was proposed:

That the Act would be amended 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'.

There was broad agreement on the basic proposal for the legislation to provide a clear, simple process for new parcels of land to be transferred to the Land Council, and to remove the need to amend the Act each time a significant return of Crown land is to be made. The details of the proposed instrument of transfer will be presented in the draft Bill.

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

What was proposed:

That the Act would be amended to provide, as part of the new instrument of transfer:

- 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

Some submissions noted that local Aboriginal people are excluded from managing Aboriginal land in their area, and in some cases from accessing land. Other submissions supported the current arrangements. There was also some objection, on principle, to the use of the instrument of transfer to impose conditions on land being returned.

The Government remains of the view that the original intent of the Act was to encourage participation and access by local Aboriginal people, and intends to provide for local Aboriginal organisations to be able to have defined roles in managing and accessing returned land where they have an interest and an ability to do so.





Section 5: Creating transparent processes and clearly specified criteria, both to propose land for return and to assess its suitability

What was proposed:

That the Act would be amended 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.

The objective of the proposals was to provide a consistent and transparent process for Aboriginal people to nominate lands for return, and for how those nominations will be considered. It would offer a full opportunity for Aboriginal people, and non-Aboriginal stakeholders with an interest in the land, to have their views heard and considered.

The process and criteria would then be developed in consultation with Aboriginal people and adopted under the Act, by the Minister, in the form of statutory guidelines or the like.

Submissions acknowledged the importance of all land to Aboriginal people. Clear identification of values in the transfer process will assist the development of management plans and the activities they prescribe.

Section 6: Governance issues

What was proposed:

That the Act would be amended 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.

The specific elements of the proposals here were broadly supported.

Differences in opinion between the submissions reflected differing attitudes and levels of satisfaction with the current operational practices of the Land Council.

Some submitters felt more detailed reporting by the Land Council on its activities and its dealings would provide greater accountability to Aboriginal people generally. Others insisted that the Land Council already has a community-based governance process and rejected any need for it to be prescribed in the Act.

There was overall agreement that greater publicity for the Land Council would increase understanding and appreciation of the important work it does.



Proposed reform of Land Council election processes and the role of the Electoral Commissioner

The proposals presented in the June 2022 consultation paper were directly responding to concerns that the current processes were not inclusive and could be unduly stressful and adversarial for Aboriginal people seeking to participate in the management and return of land.

What was proposed:

That the Act would be amended 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.

These were the focus of many submissions, all of which have been considered. As a result of the feedback received, the Government has refined and is providing more detail on the proposed changes. Subject to further feedback, the draft Bill will be prepared based on the following principles:

- Land is recognised as being central to the cultural identity and wellbeing of Tasmanian Aboriginal people.
- It is important that there is confidence that people involved in Land Council election processes, and in decisions about how Aboriginal land is returned and managed “for the benefit of all Aboriginal persons” are, themselves, Aboriginal people.
- There is consensus support for the “three-part test” as set out in s.3A of the Act (noting that the Government has never intended or proposed to alter that section).
- The current system, which provides for a person's enrolment to be objected to by any other person, is unnecessarily stressful and adversarial, which may in itself present a barrier to the participation of Aboriginal people in Land Council election processes.
- The Tasmanian Electoral Commissioner continues to manage the Electors Roll, including being responsible for making the decision on whether an applicant's evidence satisfies the three-part test of Aboriginality for the purposes of the Act.

It remains the Government's intention to remove any artificial or unnecessary barriers to Aboriginal people participating in Land Council election processes, while at the same time ensuring that sufficient process and safeguards are in place to provide confidence that people representing and making decisions on behalf of Aboriginal people are themselves Aboriginal people.



The refined proposal is to:

- 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.
- 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.
- 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)).
- 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.
- 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.
- Provide that people currently on the Roll will remain enrolled.
- Retain the Electoral Commissioner's ability to take advice from any person(s) whose expertise they consider necessary to inform their decision-making.
- 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.
- 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.)
- 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.

In recognition of the needs expressed by Tasmanian Aboriginal people in the consultation process, the Government will also facilitate an expanded service whereby the Tasmanian Archives / Libraries Tasmania, at sites around the State, are equipped to assist intending applicants to investigate their Aboriginal ancestry and gather relevant evidence from accessible records in a confidential and culturally safe environment.



This model is similar to services currently being delivered by the National Archives of Australia, Public Record Office Victoria, Queensland State Archives, both the State Libraries of Queensland and New South Wales, and similar approaches have been put in place in Western Australia, South Australia, Victoria, the Northern Territory and at the National Library of Australia in Canberra.

How to provide feedback:

You may respond either in written submissions, or at meetings, which will be recorded in agreed notes of the discussion. The consultation period closes on **Sunday, 12 March 2023**. The draft exposure Bill will then be finalised for further consultation purposes. Submissions can be made:

- Via email to: aboriginalandsact@dpac.tas.gov.au
- Via post to: Review of the Aboriginal Lands Act 1995, DPAC, GPO Box 123, Hobart TAS 7001
- By requesting a face-to-face meeting via the above email address.

Important information to note:

- Consistent with Tasmanian Government policy, all submissions will be treated as public information unless it is clearly indicated that a submission is intended to be treated as confidential. They will be published on the Aboriginal Heritage Tasmania website.
- If you would like your submission treated as confidential, whether in whole or in part, please indicate this in writing at the time of making your submission, clearly identifying the parts of your submission you want to remain confidential and the reasons. In this case, your submission will not be published to the extent of that request.
- No personal information other than an individual's name will be published. Further information on confidentiality and the *Right to Information Act 2009* can also be found [here](#).
- Copyright in submissions remains with the author(s), not with the Tasmanian Government.
- Defamatory or offensive material will not be published.

