

Consultation and Stakeholder Feedback Report:

# Improving the model for returning land to Aboriginal communities



Looking towards Bass Strait Islands





Tasmania's East Coast

## Introduction

### ***Improving the model for returning land to Aboriginal communities***

Aboriginal people have a profound connection to the Tasmanian landscape. Connection to country, the health of land and water, and a responsibility to care for it, is central to Aboriginal culture and identity. For Aboriginal people, this relationship to land and country is much more complex than non-Aboriginal notions of land ownership and use.

The return of land to Tasmania's Aboriginal people has been an important way to progress reconciliation between Aboriginal and non-Aboriginal Tasmanians. To date, the Tasmanian Government has returned 55,617 hectares of culturally and historically significant Crown land to Aboriginal communities. This includes significant sites at *putalina* / Oyster Cove, Risdon Cove, Wybalenna and *truwanna* / Cape Barren Island.

The *Aboriginal Lands Act 1995* (the Act) is the key Tasmanian legislation providing for the return of land and its management. The Act establishes the Aboriginal Land Council of Tasmania (ALCT) as a statutory authority with responsibility for the use and sustainable management of statutorily defined

Aboriginal land, which it holds in perpetuity for all Tasmanian Aboriginal people.

The Act outlines the functions and powers of the ALCT and establishes a mechanism for electing members to the Council.

Under the Act, significant land returns require the Act to be amended by Parliament. Since the initial return of land in 1995, only a small number of additional land parcels have been returned to the ALCT under the Act. In 2012 and 2013 attempts to return Crown land including sites at *larapuna* / Eddystone Point and Rebecca Creek failed to pass the Legislative Council.

In November 2017, Premier Will Hodgman (then Minister for Aboriginal Affairs) agreed to the Department of Premier and Cabinet (DPAC) commencing a project to review the Tasmanian model for returning land to Aboriginal communities. The review is being managed by the Department of Communities Tasmania (Communities Tasmania) under the Minister for Aboriginal Affairs, the Hon. Jacquie Petrusma MP.

The return of more land to its original custodians forms a crucial part of the Tasmanian Government's Reset Agenda. Reviewing the model for returning land to Aboriginal communities is seen as the first step in this process. The review aims to identify barriers to returning land, and explore options to improve the land return process.

Through August and September 2018, Communities Tasmania invited all Tasmanians to have their say about the model for returning land to Aboriginal communities. A Discussion Paper was developed to support the consultation. Submissions were received by the Department up until 20 September 2018<sup>1</sup> and face-to-face consultations were available for Aboriginal community organisations and other key stakeholders.

<sup>1</sup> In some cases, extensions for the provision of submissions was granted by Communities Tasmania.

The aim of the Discussion Paper was to prompt discussion across Aboriginal and non-Aboriginal communities. The Paper did not ask for comment on specific reform options, but sought to more broadly identify what's working well with the existing model and what could be improved.

The Discussion Paper provided background information on land return in Tasmania and the *Aboriginal Lands Act 1995* and included 11 questions.

Tasmanian Aboriginal people, Aboriginal community organisations, Local Government, interested parties, and all members of the public were invited and encouraged to participate in the process. On conclusion of the consultation period, 151 submissions and Agency comments were received by Communities Tasmania.

This Consultation and Stakeholder Feedback Report summarises the responses to the questions outlined within the Discussion Paper as well as key points and themes raised during consultation. Due to the number of submissions, not all comments can be referenced in this Report.

This Report should be read in conjunction with the Discussion Paper and public submissions available at [www.aboriginalaffairs.tas.gov.au](http://www.aboriginalaffairs.tas.gov.au) in accordance with DPAC's Guidelines on the *Publication of submissions received by Tasmanian Government Departments in response to consultation on major policy matters*.

Thank you to all individuals and organisations who read the Discussion Paper and participated in the process by making a submission.

### Disclaimer

This Report summarises comments, suggestions and ideas outlined in the public submissions received. Some of the suggestions and responses contained in this Report were made and/or supported by multiple submissions, while others were made in a single submission. The Report does not seek to support any particular idea or proposal, nor does it aim to show any preference for specific ideas.

It aims to present propositions contained in the Discussion Paper on the basis of comments received throughout the consultation process.

### Next Steps

The responses and comments of this initial consultation process as summarised in this Consultation and Stakeholder Feedback Report, will inform a Draft Report making recommendations to improve the model for returning land to the Tasmanian Aboriginal people. A further round of consultation will be undertaken on the Draft Report, before final recommendations are made to the Tasmanian Government for consideration.

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## FACTS

151 submissions

115 from members of the public

10 from Aboriginal community organisations

7 from non-government organisations

5 from Local Government

2 from Tasmanian political parties

11 Government Agency comments

99 from Aboriginal people

27 from Cape Barren Island

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## Executive Summary

During a six-week consultation period, Communities Tasmania received 151 public submissions in response to the *Discussion Paper: Improving the model for returning land to the Aboriginal community*. The responses were from 115 individual members of the public;<sup>2</sup> from Aboriginal community organisations<sup>3</sup> 10<sup>4</sup> in total; seven from non-government organisations; five from individual Councils; and two from Tasmanian political parties. In addition, comments were received from 11 Government Agencies.<sup>5</sup>

Of the 115 individual submissions, four came from people identifying as an Aboriginal person and/or member of an Aboriginal community in Tasmania. A further 95 included submission content that indicated the writer was an Aboriginal person and/or member of an Aboriginal community in Tasmania.

Together, a total of 99 of the 115 individual submissions identified the writer as an Aboriginal person or from an Aboriginal community and 27 submissions were from residents of Cape Barren Island.<sup>6</sup>

One respondent requested a face-to-face meeting with representatives from Communities Tasmanian and the Department of Premier and Cabinet to discuss the review.

Some submissions were more detailed than others and at least two detailed submissions undertook separate consultation with third parties including Aboriginal people, and represented a variety of viewpoints.

Three respondents requested their submissions be treated as confidential under the *Policy for Publication of submissions received by Tasmanian Government Departments in response to consultation on major policy matters*. These submissions are cited in this Report; however are not published online.<sup>7</sup>

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<sup>2</sup> Two submissions were on behalf of more than one individual.

<sup>3</sup> Includes one submission from an alliance of Aboriginal organisations.

<sup>4</sup> Two of the ten submissions were identified from the one Aboriginal community organisation.

<sup>5</sup> Tasmanian Government Agencies include legislated Statutory Authorities (excluding ALCT), Government Departments, and Government Business Enterprises.

<sup>6</sup> Includes one submission from Badger Island.

<sup>7</sup> Submissions 42, 103 & 148 (confidential submissions)

## Key messages

There was a general view among submissions that the current model needed improvements.

Examples include:

- Government should return more land, either as part of the review, or instead of it;
- expanding the understanding of land;
- improving the land assessment processes by developing criteria for assessment of proposed land returns;
- maintaining support for limiting costs as well as increasing the economic benefit of land ownership by Aboriginal communities;
- support for changing the understanding of Aboriginal 'country' to include fresh water and sea country;
- improving the processes for ensuring broad Aboriginal representation in the voting processes for ALCT; and
- improving governance and accountability of the current management of returned land;

A total of 112 submissions were received as 'form' letters. The summary of these is as follows:

- eighty-five form submissions stated that they wanted no change to the current arrangement where the ALCT is the title holder and land manager of all Aboriginal lands;
- six form submissions stated that all Aboriginal land should be communally owned;
- twelve form submissions stated that land returns were important for Aboriginal people and particularly important to the reconciliation process; and
- nine form submissions stated that all Crown lands should be handed back to Aboriginal people.

There were a number of submissions that questioned the current ownership of Aboriginal land by the ALCT and proposed alternatives.

## Question 1

**'In what ways should the understanding of 'land' in the Aboriginal Lands Act 1995 as being of 'historic or cultural significance', be expanded? Should the Act refer to health, wellbeing, housing and economic outcomes?'**

All Australian jurisdictions, apart from Tasmania, provide for a broad understanding of Aboriginal land in their legislation.

Eleven submissions responded directly to this question with nine supporting an expanded understanding of the identification and prioritising of land return under the existing Act. Some submissions provided additional detail in response to this question, suggesting alternative understandings of 'land' and the importance of land and country to Aboriginal people for the purposes of the Act.

### **Support for similar wording to the preamble in the Constitutional Recognition of Aboriginal People Act 2016**

Of the nine supporting submissions, two submissions indicated support for a definition similar to that adopted under the *Constitutional Recognition of Aboriginal People Act 2016 (TAS)*. Comments and suggestions included:

- 'The Preamble statement in the Tasmanian Constitution should recognise the "enduring spiritual, cultural and economic importance of traditional lands and waters" and should provide an important reference point to the Act's intent, promoted outcomes and centering of future criteria around these goals'.<sup>8</sup>
- Including 'spiritual', 'social' and 'economic' in the Act will be consistent with the amendment made to the preamble of the *Constitution Act 1934*. This will also bring the Act in line with the broader meaning of 'land' adopted in other states, such as Queensland and New South Wales.<sup>9</sup>

<sup>8</sup> Submission 23

<sup>9</sup> Submission 42 (confidential submission)

## Support for health, wellbeing, housing, and economic outcomes

There was a general view expressed across submissions that the understanding of 'land' in the *Aboriginal Lands Act 1995* as being of 'historic or cultural significance', be expanded to capture and acknowledge a deeper understanding of 'land' to Aboriginal people as well as referring to health, wellbeing, housing and economic outcomes.

Comments and suggestions included:

- Specific examples should be provided about how expanding the understanding of 'land' could improve 'health, wellbeing, housing and economic outcomes. For example 'economic outcomes through tourism activity, fish leases on the water, abalone units and fish quotas would change outcomes for Aboriginal people in their health, wellbeing and housing situations'.<sup>10</sup>
- 'If the intention of an amended Act would be to establish a mechanism to enhance social, economic, cultural and spiritual benefits for the Aboriginal people of Tasmania, then there is a requirement to broaden the definition as required'.<sup>11</sup>
- Expand to incorporate spiritual, social, health, wellbeing, and housing and economic outcomes as this will 'reflect the fact that Aboriginal people feel an affinity to the land due to spiritual, cultural or historical reasons, including their use of the land for ceremonies, hunting and gathering, or other family purposes relating to their identity as an Aboriginal person'.<sup>12</sup>
- Widening the scope of 'land' to include 'housing and economic outcomes' will promote self-determination for the Aboriginal people of Tasmania; and 'formally acknowledging 'past injustices', and the effect those injustices have had on Aboriginal people, is an important step towards achieving reconciliation in Tasmania'.<sup>13</sup>

- 'The Act should be expanded to include wellbeing and economic outcomes in its scope which is consistent with those identified in the United Nations Declaration of Rights for Indigenous Peoples (2007) and the use of the definitions stated in the International Council of Monuments and Sites (ICOMOS) Burra Charter 2013 for places of Cultural Significance'.<sup>14</sup>
- 'For the most part, Aboriginal communities have previously nominated lands that are of cultural or historical significance and the Government should continue to trust these claim motives. However, there should be the option to nominate lands for return solely for economic benefit as a means to negate colonising injustices and loss of assets'.<sup>15</sup>

## Enhanced understanding of 'land'

Additional to responding to Question 6 about considering freshwater and sea country in definition of 'country', some comments indicated that the understanding of 'land' under the Act should be amended both as a criteria for return suitability and to acknowledge a deeper understanding of the cultural and spiritual importance of land or 'country' to Aboriginal people.<sup>16</sup> These comments and suggestions included:

- Two submissions which referred to the *Queensland Aboriginal Land Act 1991* as an example of how the Tasmanian Act may be amended to ensure respectful and authentic recognition of our First Nations people as continued custodians of country, and would strengthen the present Discussion Paper's objective 'to foster the capacity for self-development, self-reliance and cultural integrity'.<sup>17</sup>
- 'The Act should refer to profound spiritual connection, Aboriginal law and spirituality as they are entwined within the land, the people and the creation. This is what forms culture.

<sup>10</sup> Submission 95

<sup>11</sup> Submission 93

<sup>12</sup> Submission 42 (confidential submission)

<sup>13</sup> Submission 42 (confidential submission)

<sup>14</sup> Submission 89

<sup>15</sup> Submission 23

<sup>16</sup> Submission 86

<sup>17</sup> Submissions 42 (confidential submission) & 89

The land owns Aboriginal people and every aspect of their lives. Reference should be made not only to health and wellbeing, housing and economic outcomes but also land, sea and waterways'.<sup>18</sup>

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*'The remaining native landscapes of Tasmania are of the highest priority in regards to land handbacks as the Tasmanian Aboriginal people just like all other peoples, are in every sense, a product of the environment and for us, maintaining a connection to healthy country is of the greatest importance for the health and well-being of our people. So to put it simply, a preamble that acknowledges the traditional understanding of lands and waters, our rights to self-determination and the importance of community owned enterprises such as housing developments and how Tasmanian Aboriginal people are entitled to compensation similar to the objectives of the New South Wales Aboriginal Land Rights Act 1983'.<sup>19</sup>*

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### Other comments and suggestions

- 'The legislative objectives of returning land to Aboriginal people is of less importance than the amount of land available to be returned. If the legislation is to be amended, it might broaden the scope of available land if the current reference to historic or cultural significance is deleted'. This submission also stated that, 'Whether the objective is said to be reconciliation, or land justice, or a rights-based treaty settlement or indeed anything else is of no consequence if the land to be returned is minimal. There is absolutely no reason why a reconciliation objective should exclude the return of land that is of social or economic importance as suggested in the Discussion Paper'.<sup>20</sup>

- An example definition under the Act was provided by another responder to support their comments. 'An Act to promote reconciliation with the Tasmanian Aboriginal communities by granting to Aboriginal people certain parcels of land of spiritual, social, cultural, historic and economic significance. It is recognised that granting parcels of land to Tasmanian Aboriginal people will further their health, wellbeing, housing and economic outcomes by promoting self-determination'.<sup>21</sup>

### Not supported

Two submissions outlined a preference for no change to the current understanding under the Act, with one indicating that there should be 'no expansion of the understanding of 'land' under the Act – land for historical and cultural purposes only'.<sup>22</sup>

This position was supported by a second submission which stated 'no I believe that 'land' at this stage should only refer to land and not health, wellbeing, housing and economic outcomes'.<sup>23</sup>

### Question 2

***'How could the land return process under Tasmania's Aboriginal Lands Act 1995 be improved? If the process was to be more independent from Parliament, what form could it take?'***

### Improving the current system

Suggestions for improving the system included:

- Land return processes should be considered more broadly as part of a draft Treaty with Tasmanian Aboriginal people; and 'the Treaty could be based on sharing sovereignty with Aboriginal people, establishing a reparations fund and making settlement'.<sup>24</sup>

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<sup>18</sup> Submission 86

<sup>19</sup> Submission 148 (confidential submission)

<sup>20</sup> Submission 87

<sup>21</sup> Submission 42 (confidential submission)

<sup>22</sup> Submission 21

<sup>23</sup> Submission 84

<sup>24</sup> Submission 27

- Some ambiguity exists regarding the existing land return model in Tasmania including a general lack of understanding. ‘At present, we believe the Tasmanian Act is lacking in transparency, clarity and consistency. It is clear from our consultation with stakeholders that many don’t properly understand the process of land return in Tasmania and this is largely due to the fact the process is unclear. We believe the Tasmanian Act would benefit from incorporating a clear and structured process, as contained in the Queensland Act’.<sup>25</sup>
- However, another respondent stated that ‘the provisions within the Act, are well understood by the community and this is not an easy thing for anyone to understand’.<sup>26</sup>
- Support for the Queensland model that preferences the development of a Land Tribunal or similar body, for example ‘Queensland’s procedures for validating land returns appears to have merit, however a Land Tribunal must have equal representation between government representatives and Tasmanian Aboriginal people’.<sup>30</sup>

### Question 3

**‘Should Tasmania have a set of criteria to assess the suitability of land for future return? What should the criteria include? What would this criteria-based approach achieve?’**

One submission noted the importance of trust between Tasmanian Aboriginal people and the Tasmanian Government is integral to the land claim and return process.<sup>31</sup>

### Support for criteria

Nine submissions supported the development and establishment of a criteria-based (or similar) process to guide the identification and suitability of land for return to Aboriginal communities. One submission commented that the land claim process under the existing Act is unclear and not entwined with broader Aboriginal policy frameworks, with land claim proposals being submitted on an ad-hoc basis.

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*‘Everyone has the right to participate and have a say in land return. Whatever happens it must take into account Aboriginal communities and how Aboriginal communities interact’.*<sup>27</sup>

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### An independent approach

Nine submissions supported the notion of an independent assessment process for the consideration of land return claims in Tasmania. Suggested approaches included:

- ‘The land return process should be assessed by an independent tribunal that can take into account anomalies and allow community to have a say’.<sup>27</sup>
- ‘A Tribunal could be required to determine these processes [land return claims], this should be separate from Government’.<sup>28</sup>
- ‘Any future claims or proposals should be removed from the political arena and [are] to be fairly assessed by an independent expert body and the process should involve open, transparent and rigorous assessment’.<sup>29</sup>

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*‘The current process of alerting government to a land return claim is characterised by ad hoc proposals that are not under the remit of broader management plans, linked to economic development opportunities or reflective of diverse Aboriginal Tasmanian communities’ needs. Without criteria or reference to broader policy frameworks or indicators for outcomes, the current mechanism for registering an interest or claim is opaque’.*<sup>32</sup>

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<sup>25</sup> Submissions 42 (confidential submission), 89 & 92

<sup>26</sup> Submission 80

<sup>27</sup> Submission 21

<sup>28</sup> Submission 24

<sup>29</sup> Submission 42 (confidential submission)

<sup>28</sup> Submission 42 (confidential submission)

<sup>30</sup> Submission 23

<sup>31</sup> Submission 27

<sup>32</sup> Submission 23

## Possible criteria

One submission stated that ‘there should be a transparent set of criteria to assess the suitability of land for future return and that the criteria should be accessible to all Aboriginal people.

It should include ongoing use or connection with the land; cultural and historical significance - anthropological remains, middens etc; importance to local Aboriginal community at a regional level – what does that group say about the importance of lands; potential productivity and manageability of the land – fertility, soil quality; economic viability – business/tourism prospects as a resource for employment/development by local organisations for communal benefit; location – proximity to infrastructure and transport and zoning’.<sup>33</sup>

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*‘Establishing a criteria depends primarily on the intention behind the whole exercise. It would be absurd, for example, to ask Aboriginals to prove that their lands were stolen when this is an historical fact. It would be equally silly to ask Aborigines to justify why lands taken from them by force should be handed back. Either the state accepts that Aborigines owned the lands or it does not. If it accepts historic facts then a criteria could be established to determine whether there are impediments to return in ownership and occupation, of lands to Aboriginal people’.*<sup>34</sup>

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### Question 4

**‘Are the current rights and fetters under the Aboriginal Lands Act 1995 appropriate in the contemporary environment? If not, please suggest alternatives?’**

Rights and fetters on Aboriginal land (Section 35(A) of the Act) enables any land acquired by ALCT outside the statutory process to be

<sup>33</sup> Submission 42 (confidential submission)

<sup>34</sup> Submission 42 (confidential submission)

<sup>35</sup> Submissions 20 & 21

<sup>36</sup> Submissions 42 (confidential submission), 87 & 93

<sup>37</sup> Submissions 23, 89 & 148 (confidential submission)

declared Aboriginal land and thus held by ALCT in trust for Aboriginal persons in perpetuity.

Comments and suggestions on this issue include:

- Two submissions from Tasmanian Councils stated that they would not support a rating exemption for Aboriginal land being used for other than cultural purposes.<sup>35</sup>
- Three submissions from Aboriginal organisations stated that there should be no change to rights and fetters on Aboriginal land regardless of the use of that land but that the land should not be able to be sold or mortgaged.<sup>36</sup>
- Three submissions supported the view that there should be no change to current rights as this would inhibit Aboriginal community use for economic or cultural development.<sup>37</sup>
- Two submissions suggested that concessions on rating etc. could support economic development of Aboriginal land while addressing the issue of any change being anti-competitive.<sup>38</sup>

### Question 5

**‘Should the Act allow for other organisations, aside from ALCT, to have the land they acquire declared as Aboriginal land? Should this land be bound by the same exemptions and controls as land returned under the Act?’**

The Act does not enable other Aboriginal organisations (aside from ALCT) to have the land they own be declared as ‘Aboriginal land’. This means that land held by these organisations does not benefit from the same rights and fetters as land declared to be Aboriginal under the Act. This question elicited a range of responses.

Seven submissions stated that there should be no change to the entity that can declare lands as Aboriginal lands. The reasons for this included:

- There would be no obligation for the land to be ‘properly managed’ or provide access.<sup>39</sup>

<sup>38</sup> Submissions 22 & 23

<sup>39</sup> Submission 22

- This could contribute to divisions between Aboriginal organisations.<sup>40</sup>
- Organisations do not have systems that enable them to be representative of the current Tasmanian population dispossessed of land.<sup>41</sup>
- Aboriginal organisations may close down.<sup>42</sup>
- Land management would be made more difficult given the limitation of funding and problems created in coordinating land management.<sup>43</sup>

Five submissions supported Aboriginal organisations apart from ALCT being able to declare land as Aboriginal land. The reasons for this included:

- The current situation discriminates against other Aboriginal organisations.<sup>44</sup>
- Governance by local community organisations will provide regional benefit.<sup>45</sup>
- Local enterprise and commercial development would be supported by the ownership of land.<sup>46</sup>
- In the event of organisations being able to declare Aboriginal land, there would still need to be an overarching governing body.<sup>47</sup>

Four submissions suggested that ALCT should be disbanded and a new entity created. Comments included:

- Regional bodies should be created specifically for land and sea management with a peak body to support regional processes created to administer funds.<sup>48</sup>
- A peak body should provide advice and support but not engage in daily business of land management.<sup>49</sup>
- Regional bodies should be based on the Office of the Registrar of Indigenous Corporations (ORIC) reporting accountability structure with the Reset Steering Committee and

Office of Aboriginal Affairs required to assist with good governance.<sup>50</sup>

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*'We believe that the government could find ways to return land to us as a community and as a collective not to individual groups'.<sup>51</sup>*

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### Question 6

**'Do you think the Act should incorporate the traditional understanding of Aboriginal 'country' as including freshwater and sea country? What benefits would you see as flowing from this kind of change?'**

From 1 February 2019, the Indigenous Land Corporation was renamed the Indigenous Land and Sea Corporation (ILSC) taking on the broader remit to not only support land based projects but fresh and salt-water activities to create more opportunities on country for Aboriginal people. These changes allow the ILSC to acquire water rights, provide loans and support indigenous businesses operating on sea country as well as land. This expanded understanding of the concept of country is becoming increasingly accepted in Australia.

### **Include fresh water and sea country in 'country'**

Six submissions supported the view that fresh and sea water should be added to the definition of 'country'; with one submission adding that assets and resources including government owned fisheries should be returned to communities. The potential benefits of this action were seen as:

- This will make it 'consistent with the *Constitution Act 1934*'.<sup>52</sup>
- It would provide economic and community development opportunities.<sup>53</sup>

<sup>40</sup> Submission 22

<sup>41</sup> Submission 27

<sup>42</sup> Submission 22

<sup>43</sup> Submission 27

<sup>44</sup> Submission 86

<sup>45</sup> Submission 23

<sup>46</sup> Submission 42 (confidential submission)

<sup>47</sup> Submission 92

<sup>48</sup> Submission 92

<sup>49</sup> Submission 23

<sup>50</sup> Submission 23

<sup>51</sup> Submission 42 (confidential submission)

<sup>52</sup> Submission 42 (confidential submission)

<sup>53</sup> Submission 89

- It will address the issue ‘that it has always been Aboriginal land’.<sup>54</sup>

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*‘There should be Aboriginal marine parks – eg. Lake Tiberias, around Bruny and the Bass Strait Islands reserves just for Aboriginal people in the area – there is potential income from marine parks’.*<sup>55</sup>

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### Question 7

**Does the Tasmanian Act include sufficient provisions for interested Aboriginal groups to participate in the ongoing management of returned land? Please outline what is currently working well and what could be improved.**

Under the Act, the ALCT has primary responsibility for the sustainable management of Aboriginal land. Section 18 of the Act sets out the functions and powers of ALCT, including:

- to use and sustainably manage Aboriginal land and its natural resources for the benefit of all Aboriginal persons;
- to exercise for the benefit of all Aboriginal persons, the Council’s powers as owner of Aboriginal land;
- to prepare management plans in respect of Aboriginal land; and
- to use and sustainably manage any other land in which the Council acquires an interest;

### Adequate participation

There were four responses that supported the view that the Act does provide for sufficient participation in the ongoing management of land. The responses included:

- ‘As a farming tenant of Badger Island, I am happy with the arrangement with ALCT’.<sup>56</sup>

- ‘We have had good experiences with ALCT on Kings Run and suggest no change’.<sup>57</sup>
- ‘I suggest no change to ALCT and Aboriginal organisations’.<sup>58</sup>
- ‘I support the functions and responsibilities of ALCT’ but consider land grants and acquisition via other mechanisms will provide cultural, social and economic benefits to local groups’.<sup>59</sup>

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*‘There should be one branch of the ALCT in each area - one for the islands, one for the North/North East and one in the South. Then they should all come under the governance of the Southern branch of ALCT and encourage uniformity, accountability and ensure everything is done correctly’.*<sup>60</sup>

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### Improvements to the Act

Suggestions for improvements to the Act included:

- ‘Complaints handling procedures, codes of conduct and procedures for dismissal; improve provisions to enable interested Aboriginal groups to participate; increase levels of local sense of ownership and control of land; include local Aboriginal groups in the management of returned land; change definition of local Aboriginal group; institute multiple regional Aboriginal Land Councils with a central body that provides land management training/support; and provide information about funds available for land returns’.<sup>61</sup>
- Better embed outcomes that advance the promotion of reconciliation in the objects of the Act.<sup>62</sup>

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<sup>54</sup> Submission 87

<sup>55</sup> Submission 42 (confidential submission)

<sup>56</sup> Submission 109

<sup>57</sup> Submission 10

<sup>58</sup> Submission 148 (confidential submission)

<sup>59</sup> Submission 149

<sup>60</sup> Submission 42 (confidential submission)

<sup>61</sup> Submission 42 (confidential submission)

<sup>62</sup> Submission 82

One submission made reference to inclusion in the Act of the United Nations Declaration on the Rights of Indigenous Peoples that ‘recognise the need to respect and promote the inherent rights of indigenous peoples ... especially their rights to lands, territories and resources’.<sup>63</sup>

### Question 8

**Should organisations responsible for the management of Aboriginal land provide regular reports on the use of this land? To whom should these reports be provided?**

Currently there is no requirement for ALCT or managing organisations to report to Aboriginal communities on the use of Aboriginal land, although ALCT does provide an audited annual report to Parliament.

Ten submissions stated that reporting could be improved. Comments and suggestions included:

- All organisations responsible for Aboriginal land should provide regular reports regulated by an independent body and provided to all Aboriginal people in Tasmania.<sup>64</sup>
- Reports should go to the Secretary, Department of Primary Industries, Parks, Water and Environment.<sup>65</sup>
- Better resourcing ALCT will improve reporting.<sup>66</sup>
- Improve requirements for reporting but not just by ALCT. The Office of Aboriginal Affairs, Indigenous Land Council and regional Aboriginal groups should also be required to report to Aboriginal people.<sup>67</sup>

<sup>63</sup> Submission 93

<sup>64</sup> Submission 42 (confidential submission)

<sup>65</sup> Submission 93

<sup>66</sup> Submission 103 (confidential submission)

<sup>67</sup> Submission 148 (confidential submission)

<sup>68</sup> Submissions 7, 26, 87 & 103 (confidential submission)

<sup>69</sup> Submission 87

<sup>70</sup> Submissions 84, 92 & 93

### Question 9

**How could the current ALCT electoral process be improved to enable participation by greater numbers of Aboriginal people?**

The ALCT is established under Section 5 of the Act. It comprises eight elected Aboriginal persons, two representing the South region, two for the North region, two for the North-West region and one each representing the Flinders Island group and the Cape Barren Island group.

Under the Act, to be entitled to vote in ALCT elections an individual needs to be on the ALCT Electors Roll, which is prepared and maintained by the Tasmanian Electoral Commissioner.

Four submissions suggested no change to the current ALCT electoral process.<sup>68</sup>

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*‘In the absence of a better system, keep the use of the Tasmanian Electoral Commission’.*<sup>69</sup>

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### Improvements to the electoral system

Six submissions suggested the following improvements to the current system:

- Increase the numbers of people being represented and able to vote by using the same eligibility criteria for Aboriginality used to access Aboriginal programs.<sup>70</sup>
- Changes are needed to enable transparency across nomination.<sup>71</sup>
- Ensure all Aboriginal people have the opportunity to vote.<sup>72</sup>
- Make voting compulsory.<sup>73</sup>
- Use the same process as used in Local Government elections including voting forms and information posted to each eligible voter.<sup>74</sup>

<sup>71</sup> Submission 86

<sup>72</sup> Submission 86

<sup>73</sup> Submission 148 (confidential submission)

<sup>74</sup> Submission 92

- Change the process to have different electoral boundaries to reflect nine biodiversity regions.<sup>75</sup>
- Use the recommendations of the report from the Legislative Council Select Committee on Aboriginal Lands.<sup>76</sup>
- Membership of ALCT should include an Elder, an eminent Aboriginal person of statewide standing, and a member with legal expertise.<sup>77</sup>
- ALCT membership should be drawn from Aboriginal biodiversity regions rather than geographical areas, to better reflect the connection to land.<sup>78</sup>
- Provide compulsory training programs for newly elected representatives.<sup>80</sup>
- Limit the time a person can be elected and sit on the ALCT – max two terms; election of members in a rotational basis like the Senate; Council to be a working committee with portfolio responsibilities and reporting requirement to each member; and performance reporting on an ACLT website and committee minutes.<sup>81</sup>
- Reporting and consulting Aboriginal communities prior to decision making on land held by ALCT.<sup>82</sup>
- Ensure local Aboriginal people are included in negotiations.<sup>83</sup>
- Adopt a Code of Conduct similar to NSW Land Councils.<sup>84</sup>
- Require annual reports on finance, audits and actual reporting of all work undertaken as against agreed management plans to ensure transparency.<sup>85</sup>
- Develop a governance manual to guide operations.<sup>86</sup>
- Use government policy as guidelines for decision-making where applicable and include a dismissal process of members and appeal process against decisions.<sup>87</sup>
- The current ALCT should be disbanded and reformed with a new constitution and practices that reflect best practice governance principles with increased Board numbers to encourage broader representation.<sup>88</sup>

### Question 10

#### What changes do you suggest to enhance ALCT's governance arrangements under the Act?

The Tasmanian Government has a relatively 'hands-off' approach to ALCT's operations under the Act to support self-determination and the community-driven management of Aboriginal land. This has fostered a perception that ALCT could be more transparent and accountable in its operations and decision-making.

A number of submissions commented on the lack of consultation by ALCT.

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*'There is no mechanism to ensure that the organisation or its members will be informed or benefit from ALCT decisions. There is a need to build respectful and reciprocal relationships'.<sup>79</sup>*

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### Improving governance

Six submissions provided suggestions to improve ALCT governance. These included:

<sup>75</sup> Submission 148 (confidential submission)

<sup>76</sup> Submission 42 (confidential submission)

<sup>77</sup> Submission 42 (confidential submission)

<sup>78</sup> Submission 148 (confidential submission)

<sup>79</sup> Submission 89

<sup>80</sup> Submission 148 (confidential submission)

<sup>81</sup> Submission 93

<sup>82</sup> Submission 89

<sup>83</sup> Submission 91

<sup>84</sup> Submission 148 (confidential submission)

<sup>85</sup> Submission 42 (confidential submission)

<sup>86</sup> Submission 87

<sup>87</sup> Submission 84

<sup>88</sup> Submission 98

## Question 11

### **Are there any other comments that you would like to make with regards to Aboriginal land management and return?**

Some submissions provided comments outside the designated questions but as these comments were central to their submission they are summarised below:

- 'We are being asked to comment on a non-existent process as land returns have not happened for 13 years. The review is limited, failing to distinguish land returns (which are land rights and addressing dispossession) from land grants (which are instances of government social and economic policy)'.<sup>89</sup>
- 'A Treaty Commission should be established that would see land settlement as part of the discussion. Returned lands could include Wilderness areas, National Parks and other Conservation areas. Processes should be in place for the return of all Crown lands by a Working Group whose task is to determine any practical impediments to returning ownership of, for example the world heritage areas, the West Coast Aboriginal landscape or the Arthur-Pieman Wilderness area'.<sup>90</sup>
- The review should look at other models such as Tasmanian Land Conservancy's approach for land sharing arrangements; look to economic development initiatives; consultative review to check any amendments to Acts; user friendly guide of Aboriginal Lands Act.<sup>91</sup>
- 'Rather than handbacks make more national parks'.<sup>92</sup>
- Protect any hand backs to ensure current usage.<sup>93</sup>

- There is a need to build respectful and reciprocal relationships ie: the Western Australian model is good; the ALCT does not include other groups in decision making and there is no mechanism to ensure that the organisation or its members will be informed or benefit from ALCT decisions.<sup>94</sup>
- 'We support the Aboriginal communities decision making about the best model for return of land; and support the return of land'.<sup>95</sup>

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<sup>89</sup> Submission 27

<sup>90</sup> Submission 27

<sup>91</sup> Submission 42 (confidential submission)

<sup>92</sup> Submission 83

<sup>93</sup> Submission 81

<sup>94</sup> Submission 89

<sup>95</sup> Submission 91



**Department of Communities Tasmania**

Office of Aboriginal Affairs

**Phone:** (03) 62327130

Email: [oa@communities.tas.gov.au](mailto:oa@communities.tas.gov.au)

**[www.communities.tas.gov.au](http://www.communities.tas.gov.au)**