



PARLIAMENT OF TASMANIA

**HOUSE OF ASSEMBLY STANDING COMMITTEE
ON COMMUNITY DEVELOPMENT**

**Inquiry into the Constitutional
Recognition of Aboriginal people as
Tasmania's First People**

MEMBERS OF THE COMMITTEE

Mr Barnett (Chair)
Ms Courtney
Mr Jaensch,
Ms O'Connor
Ms Ogilvie

Table of Contents

1	Appointment, terms of reference and conduct of the inquiry	3
2	Summary of Findings.....	4
	Recommendations	7
3	The Constitution of Tasmania	8
4	Other jurisdictions	9
	New Zealand.....	13
5	Support for change	15
	Previous Tasmanian Government support.....	16
	Recognition of Tasmania’s history	16
	Heritage.....	20
	Absence in Constitution	24
	Reconciliation / First step	24
	Inclusion	26
	Benefits to be part of the amendment	31
6	Proposed wording of recognition	40
	Terminology	40
	Proposals submitted to the Committee	40
	Consideration of other States	44
7	Legal Issues	47
	Justiciability.....	47
	Non-justiciability clause	51
8	Community consultation	54
9	Aspirations for sovereignty and treaty	58
10	Views on Selected Recognition.....	67
11	Concluding Statement.....	70
	Appendix A: Submissions Received.....	72
	Appendix B: Documents received	73
	Appendix C: Minutes	74

1 APPOINTMENT, TERMS OF REFERENCE AND CONDUCT OF THE INQUIRY

1.1 The Standing Committee on Community Development was established by resolution of the House of Assembly on 26 June 2014 to inquire into and report upon any issues and legislative proposals arising within the scope of the Committee as follows:

- (i) Aboriginal affairs;
- (ii) arts;
- (iii) corrections;
- (iv) health;
- (v) human services;
- (vi) justice;
- (vii) police and emergency management;
- (viii) racing;
- (ix) sport and recreation; and
- (x) women.

1.2 The Committee comprised of five Members of the House of Assembly. The Committee resolved at its meeting of 3 June 2015 to inquire into amending the Tasmanian Constitution to recognise Aboriginal people as Tasmania's First People with the following Terms of Reference:

The Terms of Reference for the inquiry are for the Community Development Committee: to inquire into and report upon:—

- a) proposals for amending the Tasmanian constitution to recognise Aboriginal people as Tasmania's First People; and*
- b) any matters incidental thereto.*

1.3 The Committee resolved to invite, by way of advertisement on the Parliament of Tasmania website and in the three major Tasmanian newspapers and community papers on Flinders Island and King Island, interested persons and organisations to make a submission to the Committee in relation to the Terms of Reference. In addition to such general invitation, the Committee directly invited a number of persons and organisations to provide the Committee with any information they deemed to be relevant to the inquiry.

1.4 The Committee received 14 submissions and held 2 public hearings, including one in Hobart and one in Launceston, with 14 witnesses.

2 SUMMARY OF FINDINGS

- 2.1 The Committee notes that every Australian state, except for Tasmania, has enacted legislative reforms in recent years to acknowledge Aboriginal people as their First People. The legislative reforms in each case are slightly different and Tasmania can learn from the different approaches.
- 2.2 The Committee notes that the Australian Government has initiated a process that it hopes will lead to a referendum and constitutional reform acknowledging Aboriginal people as Australia's First People. The Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples Committee tabled its final report in June 2015, recommending recognising Aboriginal and Torres Strait Islanders as the original inhabitants of Australia, but recommended that wide spread support be achieved prior to calling a referendum.
- 2.3 The Committee notes that the Premier of Tasmania, the Hon. Will Hodgman MP has publicly stated his intention to reset the relationship with Tasmanian Aboriginal people as outlined in the Premier's March 2015 State of the State address and the Government's 2015 'Our Plan for the Next 365 Days'.¹
- 2.4 The Committee notes that the Tasmanian Government is consulting with Aboriginal groups about issues important to them and is currently considering a broad range of short, medium and long-term actions across three outcome areas: connection to country and culture, recognition of Aboriginal people and closing the gap on disadvantage.
- 2.5 The Committee notes that meaningful reconciliation requires a long-term approach that has many steps, and the Committee considers constitutional recognition as a significant part of this process.
- 2.6 The Committee considers that the process of reconciliation can only be achieved through positive and proactive engagement by all parts of the Tasmanian community including Tasmanian Aboriginal people.
- 2.7 The Committee received arguments for and against constitutional recognition but the weight of evidence was in favour.

¹ Submission 13, Department of Premier and Cabinet, p 1

- 2.8 The Committee finds that should the Tasmanian Parliament wish to amend the Constitution to provide recognition of Aboriginal people as Tasmania's First People, then a simple majority vote in both Houses in favour of such an amendment is all that is required.
- 2.9 The Committee notes a referendum is neither necessary nor warranted to achieve constitutional recognition at a state level. However it is noted that a referendum will be necessary to achieve an amendment to the Australian Constitution.
- 2.10 The Committee welcomed representatives of Tasmanian Aboriginal Centre's appearance as witnesses before the Committee at a public hearing; however, the Committee was disappointed that the State's peak body for Aboriginal Tasmanians did not make a written submission to this inquiry.
- 2.11 The Committee considers that meaningful legislative reform is more likely with the full engagement of Tasmanian Aboriginal people.
- 2.12 The Committee notes the example presented in New Zealand of the relations between the Government and the Maori people and considers that Tasmania can learn from New Zealand's appreciation of indigenous culture.
- 2.13 The Committee finds there are two main options for constitutional reform:
- Option 1: an amendment to the preamble of the Constitution similar to amendments made to the Constitutions in Queensland and more recently in Western Australia.
 - Option 2: an amendment by including an acknowledgement as a new section at the beginning of the Constitution. Such an acknowledgement could be similar to New South Wales South Australia or Victoria.
- 2.14 In both options, a concise and carefully worded acknowledgement of Aboriginal people as Tasmania's First People or similar wording would be an historical fact and would be one proposal to consider.
- 2.15 In relation to Option 2:
- (a) A more expansionary amendment could include acknowledgement of Aboriginal people as the

traditional custodians and occupants of Tasmania and their unique and lasting contribution to this State or words to similar effect.

- (b) A further more expansionary amendment could include the above in subsection (a) but also make reference to dispossession and its ongoing effects.

- 2.16 The Committee notes that the proposed wording of any amendment needs to be developed in consultation with Tasmania's Aboriginal people and the broader Tasmanian community.
- 2.17 The Committee considers that a concise and carefully worded amendment would be more likely to be embraced by the community than a more expansionary amendment.
- 2.18 The Committee notes the evidence before the Committee by former Premiers and lawyers that the inclusion of a non-justiciability clause will not give rise to any rights to Aboriginal people nor will it confer obligations on the Tasmanian Government or the Tasmanian public.
- 2.19 The Committee finds that the inclusion of such a non-justiciability clause may only serve to incorrectly portray the motives of the Parliament in making the amendment as insincere.
- 2.20 The Committee notes that positive engagement and meaningful dialogue must occur between the Tasmanian Government and Tasmanian Aboriginal people to ensure progress to constitutional reform. The Committee considers that without such an approach and meaningful dialogue with Tasmanian Aboriginal people any legislative reform maybe seen as tokenistic.
- 2.21 The Committee notes that Tasmania will celebrate 160 years of self-government in 2016 and that this milestone offers an opportunity for landmark legislation to be enacted.
- 2.22 The Committee further notes that cross-party support for any legislative reform is preferred and such an approach will help build understanding and trust in the community.

Recommendations

Recommendation 1: The Committee finds that on the evidence presented, that the Constitution of Tasmania should be amended to include recognition of Aboriginal people as Tasmania's First People.

Recommendation 2: The Committee finds that any amendment should not include a non-justiciability clause as this is considered by the Committee as unnecessary and could misrepresent the intentions of the Parliament.

Recommendation 3: The Committee finds that on the evidence presented, that ongoing meaningful dialogue between Tasmanian Aboriginal people, the Tasmanian Government, and the broader Tasmanian community about appropriate recognition is imperative to ensure that any reform is not seen as tokenistic.

3 THE CONSTITUTION OF TASMANIA

- 3.1 In Tasmania, the foundational constitutional document is the *Constitution Act 1934 (TAS)*.
- 3.2 The *Constitution Act 1934*, which came into force in 1935, was first drafted in 1850 and consummated with self-government in 1856.
- 3.3 Within this report unless otherwise noted, the *Constitution Act 1934* shall be referred to as “the Constitution”.
- 3.4 The Constitution does not currently contain any reference to Aboriginal people nor does it contain a reference to the occupation of the land prior to being established as a British colony.
- 3.5 Unlike the Commonwealth of Australia Constitution, the Constitution of Tasmania does not require for a referendum of the people to allow for changes to be made. The Constitution requires only a simple majority vote in both Houses and consent of the Governor to effect change.
- 3.6 Should the Parliament wish to amend the Constitution to provide recognition of Aboriginal people as Tasmania’s First People, then a simple majority vote in both Houses in favour of such an amendment is all that is required.
- 3.7 The Committee notes the submission by the Department of Premier and Cabinet which stated:
- However, this does not preclude a referendum or plebiscite from being held on the matter, which, along with this Inquiry, is another method that could assist in further building community understanding and support of constitutional change.²*
- 3.8 The Committee notes that should the Parliament amend the Constitution in 2016 to recognise Aboriginal people as Tasmania's First People, this would be the first time in 160 years of self-government that such recognition was legally acknowledged by Parliament.
- 3.9 The Committee considers that if any reform were to proceed, 2016 would be an appropriate time to enact such reform and notes that

² Submission 13, Department of Premier and Cabinet, p 1

this would be in advance of the federal referendum and any proposed change to the Australian Constitution.

4 OTHER JURISDICTIONS

- 4.1 In Australia during the past ten years, the parliaments of five Australian states (Victoria, Queensland, New South Wales, South Australia and Western Australia) have amended their constitutions to formally recognise the status of Aboriginal peoples as the original occupants.
- 4.2 At the national level, the Federal Government is working towards achieving widespread support for a referendum on amending the Commonwealth Constitution to recognise Aboriginal people as the original inhabitants of Australia. This has included an inquiry by the Federal Parliament’s Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples Committee. The Committee’s report recommended the Constitution of Australia be amended to recognise Aboriginal and Torres Strait Islanders as the original inhabitants of Australia, but recommended that wide-spread support be achieved prior to calling a referendum.³
- 4.3 Constitutional recognition has been driven by the view that it is an important step in working towards reconciliation between Aboriginal and non-Aboriginal Australians.

Table 1. Australian Jurisdictions

Jurisdiction	Constitutional Recognition	Wording
Commonwealth	In 2012, the Parliament agreed that a Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples be appointed to inquire into and report on steps that can be taken to progress towards a successful referendum on Indigenous constitutional recognition. The Committee tabled a final report in June 2015, which recommended that the constitution include	<i>Proposed wording:</i> 51A Recognition of Aboriginal and Torres Strait Islander Peoples Recognising that the continent and its islands now known as Australia were first occupied by Aboriginal and Torres Strait Islander peoples; Acknowledging the continuing relationship of Aboriginal and Torres Strait Islander peoples with their traditional lands and waters; Respecting the continuing cultures, languages and heritage of Aboriginal and Torres Strait Islander peoples; <i>The Parliament shall, subject to this Constitution, have power to make laws for the peace, order and</i>

³ Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples, *Final Report*, June 2015, pp xiii to xvi.

	recognition of Aboriginal people and Torres Strait Islanders.	<i>good government of the Commonwealth with respect to Aboriginal and Torres Strait Islander peoples.</i>
New South Wales	<p>Yes – section 2 of the <i>Constitution Act 1902</i>.</p> <p>Section (2) of the Act was substituted in 2010</p> <p>“The original proposal included constitutional recognition in section 2A of the State Constitution. Parliamentary Counsel suggested that we repeal section 2, because it was a preamble section that dealt with procedural items such as repealing certain Acts which the Constitution Act would replace, and substitute a provision dealing with constitutional recognition.” (Comments made by the Minister for Aboriginal Affairs, during the Second Reading Debate).</p>	<p>2 Recognition of Aboriginal people</p> <p>(1) Parliament, on behalf of the people of New South Wales, acknowledges and honours the Aboriginal people as the State’s First People and nations.</p> <p>(2) Parliament, on behalf of the people of New South Wales, recognises that Aboriginal people, as the traditional custodians and occupants of the land in New South Wales:</p> <p>(a) have a spiritual, social, cultural and economic relationship with their traditional lands and waters, and</p> <p>(b) have made and continue to make a unique and lasting contribution to the identity of the State.</p> <p>(3) Nothing in this section creates any legal right or liability, or gives rise to or affects any civil cause of action or right to review an administrative action, or affects the interpretation of any Act or law in force in New South Wales.</p>
Queensland	Preamble inserted into the <i>Constitution of Queensland 2001</i> in 2010.	<p>Preamble</p> <p>The people of Queensland, free and equal citizens of Australia—</p> <p>(a) intend through this Constitution to foster the peace, welfare and good government of Queensland; and</p> <p>(b) adopt the principle of the sovereignty of the people, under the rule of law, and the system of representative and responsible government, prescribed by this Constitution; and</p> <p>(c) honour the Aboriginal peoples and Torres Strait Islander peoples, the First Australians, whose lands, winds and waters we all now share; and pay tribute to their unique values, and their ancient and enduring cultures, which deepen and enrich the life of our community; and</p> <p>(d) determine to protect our unique environment; and</p> <p>(e) acknowledge the achievements of our forebears, coming from many backgrounds, who together faced and overcame adversity and injustice, and whose efforts bequeathed to us,</p>

		and future generations, a realistic opportunity to strive for social harmony; and (f) resolve, in this the 150th anniversary year of the establishment of Queensland, to nurture our inheritance, and build a society based on democracy, freedom and peace.
South Australia	<p>Section 2 inserted in 2013 – as with NSW section 2 was originally dealt with procedural items and was repealed in 2003.</p> <p>Government established an advisory panel which reported to the Government.</p>	<p>2—Recognition of Aboriginal peoples (1) The Parliament on behalf of the people of South Australia acknowledges that— (a) the Parliament of the United Kingdom in 1834 passed a Bill called <i>An Act to empower His Majesty to erect South Australia into a British Province or Provinces and to provide for the Colonisation and Government thereof</i> and that by Letters Patent dated 19 February 1836 His Majesty established the Province of South Australia; and (b) the making of the above instruments and subsequent constitutional instruments providing for the governance of South Australia and for the making of laws for peace, order and good government occurred without proper and effective recognition, consultation or authorisation of Aboriginal peoples of South Australia.</p> <p>Constitution Act 1934—28.3.2013 Part 1—Preliminary 4 This version is not published under the <i>Legislation Revision and Publication Act 2002</i> [28.3.2013] (2) Following the Apology given on 28 May 1997, the Parliament, on behalf of the people of South Australia— (a) acknowledges and respects Aboriginal peoples as the State's First Peoples and nations; and (b) recognises Aboriginal peoples as traditional owners and occupants of land and waters in South Australia and that— (i) their spiritual, social, cultural and economic practices come from their traditional lands and waters; and (ii) they maintain their cultural and heritage beliefs, languages and laws which are of ongoing importance; and (iii) they have made and continue to make a unique and irreplaceable contribution to the State; and (c) acknowledges that the Aboriginal peoples have endured past injustice and dispossession of their traditional lands and waters. (3) The Parliament does not intend this section to have any legal force or effect.</p>

Victoria	Section 1A inserted in the <i>Constitution Act 1975</i> in 2004.	<p>1A Recognition of Aboriginal people</p> <p>(1) The Parliament acknowledges that the events described in the preamble to this Act occurred without proper consultation, recognition or involvement of the Aboriginal people of Victoria.</p> <p>(2) The Parliament recognises that Victoria's Aboriginal people, as the original custodians of the land on which the Colony of Victoria was established—</p> <p>(a) have a unique status as the descendants of Australia's First People; and</p> <p>(b) have a spiritual, social, cultural and economic relationship with their traditional lands and waters within Victoria; and</p> <p>(c) have made a unique and irreplaceable contribution to the identity and well-being of Victoria.</p> <p>(3) The Parliament does not intend by this section—</p> <p>(a) to create in any person any legal right or give rise to any civil cause of action; or</p> <p>(b) to affect in any way the interpretation of this Act or of any other law in force in Victoria.</p>
Western Australia	<p>On 10 September 2015, the <i>Constitution Amendment (Recognition of Aboriginal People) Bill 2015</i> was passed through State Parliament.</p> <p>The Bill amended the Preamble of the Western Australian Constitution to officially recognise Western Australia's Aboriginal people as the First People of this land.</p>	<p>Preamble</p> <p>And whereas the Legislature of the Colony, as previously constituted, was replaced through this Act with a Parliament, to consist of the Queen, the Legislative Council and the Legislative Assembly with the members of both Houses chosen by the people, and, as constituted, continued as the Parliament of the Colony until Western Australia's accession as an Original State of the Commonwealth of Australia in 1901 and thereafter has been the Parliament of the State; And whereas the Parliament resolves to Acknowledge the Aboriginal people as the First People of Western Australia and traditional custodians of the land, the said Parliament seeks to effect a reconciliation with the Aboriginal people of Western Australia.</p>

New Zealand

- 4.4 The Committee heard from a number of persons of the apparent differences in relations between the Government and the indigenous people in Australia and New Zealand.
- 4.5 Mr Mark Brown, Australian Christian Lobby, noted that the difference between how indigenous communities in Australia and New Zealand “are viewed, treated and valued is like chalk and cheese”. In evidence before the Committee, Mr Brown commented:

Growing up in school, Maori is a language that is taught in school. You have to choose it and it is not compulsory. The way that the culture is part of the New Zealand culture is very much entwined in tourism and cultural appreciation. I think the All Blacks have something to do with that. There are a lot of Maori in there. They are a very strong and a very sport-oriented culture and race. That probably has a lot to do with it as well. Some of my best friends were Maori and I used to go to their homes. We interchange Maori with our English language very frequently. I am talking about 'we'; I should be saying, 'I am an Australian now' but you revert.

The whole New Zealand psyche is very much intertwined with the heritage that is there. There has been mistakes made in the past and there is tension and it is not all wonderful but its very different to what we experience here.⁴

...

I suppose in New Zealand they have had representation in parliament right from the beginning, in the late 1800s. That is a decision that they have made. I am not saying that would be good or not here, but all I am saying is that is one aspect.

Certainly, a lot of this has to do with the Australian psyche in terms of how we understand and appreciate the diversity and the cultural and heritage value of the First People. At the moment, I don't think it is anywhere comparable to what I see in New Zealand. There is a huge untapped resource there in terms of tourism particularly, which I know has only just been recently talked about in the media. In New Zealand, people come to see the Maoris do their haka. They come to see all the dancing. From a Christian point of view, it is a reflection of the Creator. He is creative, diverse and it is a reflection of Him.⁵

- 4.6 Mr Rodney Dillon, Weetapoon Aboriginal Corporation, noted the difference between Australian Aboriginal people and Maoris in evidence before the Committee:

⁴ Transcript of evidence, 12 August 2015, pp 38-39

⁵ Transcript of evidence, 12 August 2015, pp 40

New Zealand has that Waitangi Treaty for a start. The treaty didn't even get implemented that long ago. I always worry about treaties. What New Zealand has is that they are teaching Maori language in the schools. That is about that relationship. When they do the haka, the white people do the haka as well. They have all got ownership. That is what I was going back to before. We have an opportunity here. We have Aboriginal people here that lived on the edge of the World Heritage Area through two ice ages. We have people that have a very ancient culture. For me, for you, to own that, you would protect that a lot more if you felt part of it than if you didn't. I think it is making it to have the faith in one another to build that relationship so that we both look after it together. They are the things. Canadians and New Zealanders economically are not that much better off than us, but they have Sealord in New Zealand, which makes a profit, which they all fight over, the money that comes out of it. Those things are important steps, but they are steps.⁶

Committee Comment:

- 4.7 The Committee acknowledges the significant work undertaken in other Australian jurisdictions to recognise Aboriginal people and Torres Strait Islanders in their respective constitutions.
- 4.8 The Committee notes that much can be learnt from the legislative reforms in other States and the proposal for reform at the federal level.
- 4.9 The Committee believes that Tasmania can learn from the example shown by New Zealand in relation to relations with indigenous people and through the appreciation of the value of indigenous heritage not only to indigenous people but to the State as well.

⁶ Transcript of evidence, 14 August 2015, p 7

5 SUPPORT FOR CHANGE

- 5.1 The Committee received arguments for and against constitutional recognition but the weight of evidence was in favour.
- 5.2 The submissions and testimony that supported amending the Constitution to recognise Aboriginal people raised a number of issues including: the correction of the State's history; recognition and reconciliation; the value of heritage; and, that for some, their support is conditional on other measures being undertaken by the Government.
- 5.3 The Committee acknowledges the work of the Tasmanian Government towards reconciliation in Tasmania.
- 5.4 The Committee notes the Premier of Tasmania, the Hon. Will Hodgman MP has publicly stated his intention to reset the relationship with Tasmanian Aboriginal people as outlined in the Premier's March 2015 State of the State address and the Government's 2015 'Our Plan for the Next 365 Days.'⁷
- 5.5 The Committee notes the Premier's March 2015 State of the State address, in which the Premier of Tasmania, the Hon. Will Hodgman MP stated:

As Minister for Aboriginal Affairs I have committed to 're-setting' our relationship with the Tasmanian Aboriginal community.

I am committed to ongoing consultation with the community, to listen, and to work together to set a new direction, and to further progress reconciliation.

We will also take a leadership role on issues on the national agenda, including for example the campaign to amend the Commonwealth Constitution to recognise Aboriginal and Torres Strait Islander peoples as the First Peoples of this land.

And we will consider the merits of a similar amendment to the Tasmanian Constitution Act.

I will not pre-empt the outcomes of these discussions, and the Government has no pre-determined expectations, but I am committed to discussing a range of issues including land hand-backs, indigenous tourism opportunities, joint land management and constitutional recognition.

The Government has recently released a draft of the updated Tasmanian Wilderness World Heritage Area Management Plan, which is out for an extended period of consultation.

⁷ Submission 13, Department of Premier and Cabinet, p 1

The plan is to achieve balanced outcomes that are genuinely respectful of cultural and natural values, while at the same time recognising that the TWWHA is an area to be used, celebrated and shared with the world.

A new feature of the draft plan is an increased recognition of the cultural heritage and a greater emphasis on cooperation with Tasmanian Aboriginal people in the management of the TWWHA in order to properly recognise, preserve and celebrate its globally significant cultural heritage, including dual naming, exploring indigenous tourism opportunities, and the possibility of increased management responsibility.

This is a bold new approach, which represents a rare opportunity for fresh engagement with the Aboriginal community in relation to cultural heritage.

I personally look forward to engaging with the community on these opportunities.⁸

- 5.6 The Committee also notes that the Government is consulting with Aboriginal groups about issues important to them and is currently considering a broad range of short, medium and long-term actions across three outcome areas: connection to country and culture, recognition of Aboriginal people and closing the gap on disadvantage.⁹

Previous Tasmanian Government support

- 5.7 The Committee notes the considerable effort and range of initiatives of successive Tasmanian Governments as part of the continuing reconciliation process. The past effort has involved goodwill and cross-party support.
- 5.8 This initiative for constitutional reform is another step on the journey of reconciliation and it is hoped that the goodwill and cross-party support that has been extended to date will continue.

Recognition of Tasmania's history

- 5.9 The Committee notes that the vast majority of submissions made to Committee demonstrated wide spread support for the Tasmanian Constitution to recognise Aboriginal people.
- 5.10 The Committee heard a range of views in relation to the importance of recognition of Tasmania's history.

⁸ Hansard, House of Assembly, Tasmania, 3 March 2015

⁹ Submission 13, Department of Premier and Cabinet, p 1

- 5.11 The Hon. Ray Groom AO, former Premier, commented on his support for recognition to correct Tasmania's history, but also acknowledged the challenges involved:

I want to indicate that I strongly support an amendment to the Constitution Act of Tasmania to recognise the Aboriginal people of Tasmania as the First People who occupied the island, all the other islands and the waters surrounding the island for thousands of years before European settlement. When you look at our foundation document, the Constitution Act, it would be appropriate and a great thing to have that history properly recognised to tell the true story of Tasmania. If you look at the history of Tasmania, there was Aboriginal occupation here for thousands and thousands of years before European settlement occurred in the early 1800s, and it is unfortunate that that great history that precedes European settlement has been largely ignored, including in our legislation. To have something placed in that act in an appropriate form would be a good thing and would correct a wrong that has existed for a long time, in my opinion. Other states have done it and it would be wrong if we don't proceed as well.

I believe that we should as soon as possible include some words in our Constitution Act. The act goes back to 1855, from my research - there is some suggestion it might have been 1854 but that seems to precede when we became a self-governing colony, which I think was 1856. The Commonwealth Constitution was enacted in 1901 so there is a good argument that we should get in before the Commonwealth changes its Constitution. We should move quickly because there is a move to change the Commonwealth Constitution, although that is fraught with some difficulty, I think, and won't be an easy thing to achieve. This one is relatively simple because we simply need an act of parliament passed in both Houses. It is not fraught with all the difficulties of a referendum process.¹⁰

- 5.12 Professor Maggie Walter, University of Tasmania, commented on the importance and the significance for all Tasmanians in amending the Constitution :

Recognition of Tasmanian Aboriginal people within the Tasmanian Constitution is fundamentally about recognising that Tasmania is an island with a 40,000 plus deep human history and that it remains home to Aboriginal people alongside those who have come to be Tasmanian through settler and other migration. It is our shared, but not same identity, as Tasmanians, all which needs to be recognised.¹¹

Constitutional recognition is a first step down a new path of rewriting the Tasmanian narrative; one in which the events of the past of colonisation then and now are acknowledged but also one in which Tasmanian's tens of

¹⁰ Transcript of evidence, 14 August 2015, p 10

¹¹ Submission 6, Maggie Walter, p 1

*thousands of years old human history can be celebrated and shared by all. As Tasmanians, it belongs to us all. We have the right to know this history and be proud.*¹²

*It really is important for Tasmania more generally, not just the Aboriginal population, that this happens. It is really important for who we are as Tasmanians.*¹³

5.13 The Committee heard that amending the Constitution to recognise Aboriginal people would be an important step in correcting many of the misconceptions and untruths that continue to exist in Tasmania's historical narrative.

5.14 Professor Maggie Walter, University of Tasmania, commented that cultural homogeneity was the apparent norm in the history of Tasmania that was taught to school children:

"The region's British background was proudly displayed and local historical references began abruptly from the time of European settlement. The notion that Tasmanian history was about 150 years old went unchallenged and unremarked.

*...Despite the advances made since the 1970s, in the day-to-day life of Tasmania at the social cultural and political level that absence of Aboriginal presence continues. As I have argued elsewhere ...there seems to currently exist an either/or assumption when it comes to our Island's history. That somehow, it is presumed that recognising Tasmania's long Aboriginal past undermines or delegitimizes the Euro-colonial-settler-state-history. It doesn't and such thinking has been a key barrier for too long on both sides of the argument) for open conversations between Tasmanian Aboriginal and non-Aboriginal people: conversations we need to have to move forward.*¹⁴

5.15 Mr Michael Mansell, Aboriginal Provisional Government, commented:

*To make sense of the good intentions behind 'recognition' in the Tasmanian or any other constitution, recognition must be a reference to all that has happened to Aborigines. All our lands were taken at the point of a gun. We were openly hunted down. Whites who slaughtered Aboriginal men, women and children have bridges (Batman Bridge) or streets Goldie St, Patterson St) named in their honour. There are no monuments to honour the Aboriginal fallen in defence of their lands and people.*¹⁵

¹² Submission 6, Maggie Walter, p2

¹³ Transcript of evidence, 14 August 2015, p 19

¹⁴ Submission 6, Maggie Walter, p2

¹⁵ Submission 7, Michael Mansell, p 1

- 5.16 In an anonymous submission to the Inquiry, the author argued that recognition is the first step in the process of reconciliation commented:

Recognition in the Constitution is only part of the story, if we are to achieve real reconciliation we must be prepared to admit to the terrible deeds that were inflicted on the Aboriginal tribes either through war by individuals Government decreed or otherwise or incassation at Wybalenna. This along with the recognition that land was taken away go part way to assisting the process of reconciliation. As part of this process there is I believe a need incorporate the recognition into Tasmanian culture as we do for Anzac Day so that its not something that is forgotten by future generations.¹⁶

- 5.17 Professor Henry Reynolds, University of Tasmania, argued in defence of the importance of symbolism. In his appearance before the Committee he argued:

I can see there is a distinct benefit in having a statement, possibly in a preamble that recognises the long history of human occupation in Tasmania. That is important for us to put a recognition of that long human history in the central document of the state.

- 5.18 Mr Mansell, Aboriginal Provisional Government, commented:

I know some Aboriginal groups have recently stated that any such proposed recognition is merely symbolic, but I disagree emphatically with that perspective and commend the Tasmanian Government for the consideration of real words in the most significant document governing our State that we are entrusted by the people to have as the binding glue for our State structure and government. To me and many other Aboriginal persons with our heritage lines to this States First People, realise the importance of symbols and their power to inspire and to shape our State attitudes and actions.

I commend the Tasmanian Parliament for consideration of the heritage and turbulent past of the Aboriginal peoples of the State. The symbol of constitutional recognition is to me a symbol that matters dearly and one that has genuine meaning. It is not just symbolic and represents an acknowledgement that in the past we as a State have not had a good record in relation to treatment of our State's First People and that there have been numerous examples of treatment of Aboriginal persons that need to be set right.

Recognition of the State's First People, Tasmanian Aboriginals is both timely and significant and will have far-reaching consequences for Tasmania's

¹⁶ Submission 11, Anonymous, p 2

Aboriginals both in this state and on a national scale. This will be a true milestone for Tasmania and for Tasmania's Aboriginals.¹⁷

- 5.19 Professor Maggie Reynolds, University of Tasmania, remarked on the necessity of commemorating the events of Tasmania's history, particularly acknowledging the Black War:

Recognition as it's understood at the moment is clearly related to history - that is, you are recognising the historic occupation, ownership and sovereignty of the original inhabitants over the land. It is an historic recognition.

If you are going to recognise the prior ownership, it is equally appropriate to recognise the struggle to maintain that land in what is in Tasmania known as the Black War. This is particularly so at the moment because we are spending a great deal of time and money in recognising the importance of war in commemorating past wars.

Heritage

- 5.20 The Committee heard that Tasmania was missing out on the benefits of its heritage through not realising its value.
- 5.21 The Hon. Ray Groom AO, in his appearance before the Committee commented:

Mr GROOM - I believe our Aboriginal heritage is greatly underrated. The history is greatly underrated. It is a most significant history in terms of human existence. Over time, this will become more and more apparent. This was a most ancient people with a wonderful culture that few in the broader community fully appreciate. There is a lot of heritage. There is heritage overseas, in museums, in private collections. I would like to see a catalogue developed where someone - it might be an able young person who is a PhD student - takes on the task of. It is a wonderful job - maybe this is an Aboriginal person; hopefully it would be - going around and getting all the information. There would be information in the Netherlands, in France, in the United Kingdom. I know there are collections in United States that I have seen

It is Australian Aboriginal, but there might be elements of that that are Tasmanian. I would like to see a really good catalogue developed of all that is overseas.

The next step is to try to get some of it back. I hope that there could be a government-backed effort to return this material, much like where the Greek people have been trying to get the Elgin Marbles back for years. They have had one heck of a battle and it hasn't been easy. There have been efforts in the past in Tasmania - a lot of effort and some success - but there could be greater

¹⁷ Submission 9, Peter Rowe, p 2-3

effort made in respect to a catalogue, and an effort made to bring things back to Tasmania.

When I facilitated discussions with the Aboriginal community on behalf of the Labor-Greens government, I was amazed to find that the relevant department had a lot of information which it has not passed on to the community. There are some sensitivities here. You have to be a bit careful about information being provided to the broader community, especially about sites because it might endanger sites, and items and objects, et cetera. It seems to me quite clear that the Aboriginal community, at least as custodians on behalf of the community, should be provided with that information. When you think of the history, it seems absurd that they are not provided with the information. I do not know whether there has been, in recent times, some move to do that, but it would be greatly appreciated by the Aboriginal community if all that information could be provided to them, because it relates to them.

Ms O'CONNOR - Are you talking about access to the information or ownership?

Mr GROOM - I am talking initially about access to the information.

Ms O'CONNOR - There is a view among Aboriginal people that they own that material as well.

Mr GROOM - Yes. That is another question. The first step should be access, to know what is there.

Ms OGILVIE - To know what is yours.

Mr GROOM - Yes, that is right. The other one is legislating to rescind the Aboriginal Relics Act and put in place new legislation on Aboriginal heritage.

Ms O'CONNOR - Hear, hear.

Mr GROOM - I want to make a strong point to the committee. It seems incredible that the Relics Act as it presently stands mentions the date of 1876. Why 1876? That is a strange date specified in the act such that relics and items are not actually Aboriginal relics under the act unless they were created before 1876. That is a cut-off point. The year 1876 was when Truganini died. That is the reason. It is not 1880 or 1870. Truganini, then said to be the last full-blooded Aboriginal person, died in Hobart that year. This is the 1950s, the old approach, that we do not have any Aboriginal people or any further cultural developments by Aboriginal people, but people are still creating Aboriginal culture and have created a lot since 1876. I would hope the committee might give some consideration to that particular reference because it could be removed. The whole point of developing heritage is complex. I know there are a lot of aspects to that which are not simple but that date is an unfortunate inclusion and it's continuing to be there in that act of the Tasmanian Parliament is deeply offensive to a lot of people in the community.

Ms O'CONNOR - It's racist.

Mr GROOM - Well, it's seen to be. Indeed, the Relics Act itself is seen to be legislative racism because the people responsible for looking after this information through the 1930s, 1940s, 1950s and so on were public servants, not Aboriginal people. That is all I wish to say.¹⁸

5.22 The Hon. Ray Groom AO further commented:

*There is great heritage here and that has to be protected and we need good legislation. It does not have to be as complex as the bill I saw but you should have Aboriginal people playing a central role. That is absolutely necessary.*¹⁹

5.23 Professor Maggie Walter, University of Tasmania, commented on the importance of Tasmania not only recognising its history but celebrating its history:

I would argue there is a really big need in Tasmania to get over this silencing and the other things which have been our past and to celebrate, but there is a huge lack of knowledge about Aboriginal history and heritage and contemporary Aboriginal Tasmania everywhere in the community

...

We all know that Tasmania is a really unique and special part of the world and MONA and all those other things are really highlighting that to the rest of the world. Aboriginal heritage is an essential part of that and we should be celebrating it, but if you go out in the landscape today for a drive you won't see anything. If you're a Japanese or Chinese tourist who comes in without knowledge you could be forgiven for thinking there were never any Aboriginal people here and there are no Aboriginal people there now. There is nothing there.

When I go out in the landscape I see it very differently; I can see Aboriginal presence everywhere. I come from the north-west, up at Goat Island. On the non-Aboriginal side we've been there since the mid-1800s. There's the fish trap there and they've rebuilt that because they used to live just up on the hill, but it was already there and if you look when you step up to the car park from Goat Island there's a line of middens this thick running on the cutaway of the step. The country is talking to you everywhere.

...

*That needs to be celebrated and brought out in the open. We can't forget what happened in the past but it's a small part of this whole history.*²⁰

¹⁸ Transcript of evidence, 14 August 2015, pp 12-14

¹⁹ Transcript of evidence, 14 August 2015, p 15

²⁰ Transcript of evidence, 14 August 2015, p 19

5.24 Professor Walter also spoke of the importance of dual naming:

I have recently hosted a big group of Navajo students from Northern Arizona University and they were all the time asking, 'Where is the Aboriginal presence?' They are from the Navajo nation, right next door to Northern Arizona University. I was at a loss.

The other thing is of course Tebrakunna, which is vitally important. It is where the vast majority of us come from. We are all from that north-east nation because that is where the predation of the women by the sealers happened. The only people who survived were the offspring of some of those women and sealers who have stayed on the islands and didn't get shunted down here to the orphan school. My matriarch, Dalrymple Briggs, was with Mountgarret. John Briggs was with Munro out on one of the islands. If land hand-backs are going to happen - and I am not asking for millions of acres - they have to be places where the contemporary Aboriginal population have a real connection to. We do to that area.

...

When we say 'dual naming', a celebration of manalaganna, recognition of some of these important sites, even though some of them are sites of sorrow, that people say, 'Of course we should be recognising those things and of course we should be celebrating those things'.²¹

5.25 Professor Walter commented on the great benefit to the State through recognition:

Benefits of constitutional recognition will flow to non-Indigenous Tasmanians and the State itself. Recognition will have cultural benefits. Recognition will improve Tasmania's national and international reputation and it will support the building of a more convincing narrative... of who we are as Tasmanian... It will allow our Island's history and its many, many stories and our Aboriginal culture heritage to become assets, to be celebrated rather than silenced.

Recognition will have economic benefits... apart from a display at TMAG, there is very little acknowledgement of these in our tourism ventures or even within our landscapes... Why they ask - are we hiding our uniqueness and history, almost pretending Aboriginal Tasmania never was - when such recognition would be immeasurable to the existing national and international view of Tasmania as a must visit, must see part of the globe.²²

²¹ Transcript of evidence, 14 August 2015, p 22

²² Submission 6, Maggie Walter, p 3

Absence in Constitution

5.26 The Committee heard from a number of persons that the Constitution absence of mention of Aboriginal people says more than just an absence of history.

5.27 Professor Maggie Walter commented:

The Constitution Act 1934 as it currently stands does not mention Aboriginal people at all within its five parts and 46 clauses, The Act, however, does refer to the State's previously being a colony (and therefore, by definition, coming into being through the acts of colonisation). There is therefore a significant gap in the narrative of our State's origins within this document. The result of this long-term absences of the Tasmanian Aborigines from our State's central piece of legislation constitutes, I argue, a form of legislative terra nullius.²³

5.28 Mr Peter Rowe commented:

The Constitution of Tasmania is incomplete because it fails to recognise or acknowledge the First People inhabiting our State and yet the Constitution is often thought of as the Birth Certificate of the State and needs to recognise the original inhabitants of this land. The State Constitution is silent on our essential heritage and history and merely acknowledges the presence and influence of the European settlers.²⁴

5.29 Mr Rowe further commented in his appearance before the Committee at a public hearing:

I think we are at the point where most people accept there should be some form of recognition and a preamble is a good way to do it because it doesn't create significant change in terms of legal structure. But it is an acknowledgement of where we, as a state, have come from and where we look towards the future and how the different role of the First People of Tasmania is incorporated into that. I don't see it as having any major change except in the spiritual and social sense - certainly not in a legal sense.²⁵

Reconciliation / First step

5.30 The Committee heard a range of views in relation to the importance of reconciliation between Aboriginal Tasmanians and non-Aboriginal Tasmanians.

5.31 Mr Rodney Dillon, Weetapoona Aboriginal Corporation, commented:

²³ Submission 6, Maggie Walter, p 1

²⁴ Submission 9, Peter Rowe, p13

²⁵ Transcript of evidence, 12 August 2015, p13

*We do need to be in the Constitution. It needs to be right at the front of the Constitution so people recognise that Aboriginal people were the first nation of people of this state. That is very important upfront but there needs to be steps after it and that is what those steps were.*²⁶

5.32 Professor Maggie Walter, University of Tasmania, commented:

Recognition is an active, not a passive concept and cannot be 'given' by one group to another. It is a partnership concept with multiple dimensions. These include (but are not restricted to):

- *Recognition that Aboriginal people are Tasmania's First People;*
- *Recognition of equality between Aboriginal settler peoples in Tasmania; and,*
- *Recognition of the rights to, and interdependence of, both groups on the land we call Tasmania.*²⁷

5.33 Mr Peter Rowe commented :

For me personally, it is a significant step forward to have some sort of constitutional recognition in the preamble.

...

*As an individual I see this as being a really significant step to appease some of society's wrongs, if you could put it that way, for the past. I am not saying you could ever change it. I am not saying I am overly worried by it, but I see it as a great step forward. It would make me feel great to see that.*²⁸

5.34 The Committee heard from many person and organisations who argued that recognition must be a step in the process of addressing the issues that currently affect Aboriginal people in Tasmania.

5.35 Mr Michael Mansell, Aboriginal Provisional Government, commented:

The recognition of Aboriginal People will also be a significant step to redress the injustice and neglect of Aboriginal needs. These needs include the recognition of the spiritual, social, cultural and economic significance of land to the Aboriginal people of Tasmania. My definition of the Aboriginal People of Tasmania is not a narrow interpretation as reflected by recent interpretations in this State, but along the lines of the nationally recognised definitions used throughout Australia.

We now understand that this recognition should extend further and that it should not be bound to a single issue or Act as the Tasmanian Parliament has

²⁶ Transcript of evidence, 14 August 2015, p 8

²⁷ Submission 6, Maggie Walter, p 4

²⁸ Transcript of evidence, 12 August 2015, pp 17-18

*done in the past where in some cases we have led Australia in terms of some aspects of recognition. Today we have the unique opportunity of enshrining fundamental truths: the truth that our Aboriginal people are the first inhabitants of Tasmania; the truth of the spiritual, cultural and economic ties that bind our Aboriginal people to their traditional lands and waters; and the truth in the diverse and unique contributions that our many Aboriginal nations, cultures and communities make to the life, the economy and the character of our State.*²⁹

5.36 Mr Michael Mansell, Aboriginal Provisional Government, commented:

*The Tasmanian Constitution does not alter this situation. Nor will symbolic words that merely acknowledge well-known facts such as 'Aborigines were here first'. The Tasmanian Constitution could nevertheless be one vehicle for meaningfully addressing the historical imbalance of white/Aboriginal relations in Tasmania.*³⁰

5.37 Mr Mark Brown, Australian Christian Lobby, commented:

*This is not only a powerful symbolic step toward reconciliation but also remedies the real oversight in not honouring the state's First People in its foundational document but also sends a strong message of affirmation for seeing similar amendments made to the Federal Constitution. That is the context of what we are seeing.*³¹

Inclusion

5.38 Many submissions told the Committee that recognition of Aboriginal people in the Constitution would not just correct past injustices but would create many untold benefits for current Aboriginal people.

5.39 The Committee heard from a number of Aboriginal persons that they felt excluded from Tasmanian society.

5.40 Mr Michael Mansell, Aboriginal Provisional Government, who said when appearing before the Committee:

Mr JAENSCH - *Do you think that Aboriginal Tasmanians see themselves in the Constitution as it stands?*

Mr MANSELL - *The Tasmanian Constitution?*

Mr JAENSCH - *Yes. I want to just test the premise. You have supported the intention of the committee and this inquiry. I read and I hear you questioning what the nature of recognition is, and that words in a document do not*

²⁹ Submission 9, Peter Rowe, p 2-3

³⁰ Submission 7, Michael Mansell, p 3- 4

³¹ Transcript of evidence, 12 August 2015, p 38

necessarily directly confer benefit. Do Tasmanian Aboriginal people see themselves in the Constitution as it is now? Does it include them?

Mr MANSELL - Not in the Constitution. I think most Aboriginal people would not be aware there is a Constitution. That is probably like the general public. Secondly, I think that half the Aboriginal population - I might be underestimating that vote, but a lot of Aboriginal people - does not participate in the electoral process. For those who do participate, they would probably say, 'Well, look, if there is a Constitution, we are participating in that constitutional framework.' But to look at the Constitution now, there is absolutely no reference whatsoever to Aboriginal people. To be crude, it is a white people's constitution designed for a white society way back in the nineteenth century and until now it hasn't seen a reason as to why it should be changed. Suddenly people are starting to say, 'Aborigines have been here and we've treated them badly. Maybe we need to have a look at the constitutional foundation and maybe we need to change from what the Constitution originated as to be something that's more inclusive and embracing of more people'.³²

- 5.41 Mr Rodney Dillon, Weetapoon Aboriginal Corporation, commented in his appearance before the Committee that it is essential that for the two groups to move forward a friendship needs to be formed and dialogue and understanding of each other needs to occur:

Talking about constitutional change and things like that and the importance of doing that, we have had 200 years and a bit together and we have not been that good as friends. The first thing we need to do is build the friendship between the two groups. I would be concerned if we change this document without building that friendship between the two groups. I am in two minds whether you can build the friendship and do this all at the same time or whether you build the friendship first and then change the document. There has to be an order of how this is done and the importance of doing it in this order, building that relationship with the Aboriginal families that are community groups in the areas. I do not think that is being done. The areas where we have come from we have had very little to no contact with government.

With the hierarchical system of government, I think our government in Tasmania has been lazy; they have only dealt with one group. If we want to build that relationship and friendship between us all we have to build that with all the groups and all the government. That is local government, state government and Commonwealth government. It is three very important steps that we work in these areas together.

There are things in the Constitution that do need changing and to be recognised as Aboriginals would be very important to us as families. It is very

³² Transcript of evidence, 12 August 2015, p 5

strange that years ago we were actually condemned for being Aboriginals; now people want to talk about us and put us in the Constitution. I do not know whether it was condemned for being Aboriginal but we were in that group of poor people as well as being Aboriginal, so there was a fair bit of discrimination and hackle about that over our lifetime. Anything like this makes change for our kids and our grandchildren that can go ahead and be proud of who they are in the schools. Those changes are very important to me as an Aboriginal person. It would be important to all our families.

Within our history of this place, we as Aboriginal people, there has never been recognition that there was a war in Tasmania; our history is very poor. Our teaching at the university is very poor. All these things are part of that friendship to build that relationship for us to come together. I went to the university here a while back and we had a New Zealander and a Canadian teaching Aboriginal studies. I find that very difficult as an Aboriginal person that our people have another person teaching who we are. The very principles of the universities and things like that are the things we have to get right first.

I have been on reconciliation but I didn't like reconciliation as a young man. I thought it was a stupid thing, but I believe reconciliation has played a major role in bringing us that little bit closer together. I would like nothing better if we had national carnivals, or carnivals where Aboriginal people from Tasmania, the First Peoples of this state, are recognised and how we come together as one. We put the 220 years or thereabouts of occupation in this country and our history together, and the two together can make us a very powerful state. We don't have that. As an Aboriginal person, I don't like standing up for some of these things about the Queen and who we are. Our national anthem seems fairly ugly to me; we're talking about us coming together as a group and it says 'Advance Australia Fair'. All these are common things that really tear at my heart as an Aboriginal person.

In the meantime, I want us to be inclusive. Someday my grandkids are going to marry one of your grandkids. I learnt this a bit off the Indians, that unless we are all healthy we can all be very unhealthy through our own makings. Coming together and having things together are important to me. I might have mellowed and got older but I have come to understand we need to work together to go ahead as one group. We can keep our identity of who we are but we certainly have things in common. I have Irish and Aboriginal ancestry and I am very proud of both of them but I want to go ahead here as well. We all have different nationalities but we all have a common theme where we want to go and what we want this state to be. They are all important steps for me. I would love to see Aboriginal studies for kids in the schools, not unlike what they have in New Zealand, and that's not hard to do. It is just breaking that barrier in the first place.

Recognition within this in the first place is one of those steps. It is a step within a society; I think it's a country that is maturing as a society and they are steps we need to take. I am like other Aboriginal people in that I believe we need

Aboriginal people in our Parliament here but we need each of the parties to take that on. I believe it is the responsibility of the three parties to do that and have people in those areas. If you have just one Aboriginal group and I think that can be a problem. If we had Liberal Party, Labor Party and the Greens and have it so our people have an avenue into those parties, because at the moment I don't think it is that easy for our people to join those parties or even be a part of it. It's not because the parties have excluded us; it is just the way we have been as groups. I don't think it is looking down on anyone or a grey spot anywhere; it's just how it has been. We should be putting an emphasis on these areas.

We have a very important history in this country of Aboriginal people and white people. We are here together now and we have this culture in our hands that is very ancient and we have been very arrogant about it as a country. We have seen forestry destroy a lot of it without too much care. We have seen roads destroy a lot of it. If I can get you to be as proud of my heritage and my culture as I am, that is a big step for us to go ahead together as people. You are halfway there, you've got a tie - and that's a start. Twenty years ago, I don't reckon there would have been a politician game to wear a tie like that, so I think they are steps we are taking and we are stepping in the right direction. This might not happen quickly but it should happen and we should be heading in that direction.³³

5.42 Mr Rodney Dillon further commented:

Mr DILLON - We started many years ago by negotiating with the government to get the flags put in Parliament. It is about starting to recognise that we have Aboriginal people. It is not easy dealing with Aboriginal groups, because some of us are pretty angry to deal with sometimes. I can understand that people wouldn't want to deal with that. It is about having that patience. It is about working relationships and working together on government policies. I don't think any Aboriginal group, and about nine groups were at that meeting at Campbell Town, has had any relationship with any government organisation.

...

Mr DILLON - I probably shouldn't have said what I said, but up until the last few years we have not had any input; we have started dealing with you two. You are the only two from Parliament that have met with us. We know that politicians meet with groups of people and they have met with some groups of Aboriginals, but none of us to build that relationship with all groups of Aboriginals. NAIDOC events, where politicians come along to our events, and Labor and Liberal parties and the Greens to come to our properties and have a look at what we are doing as groups, would be the first step in the direction of building that friendship. It is not about us supporting Liberals or Labor or Greens. It is about us having that relationship with those three parties and

³³ Transcript of evidence, 14 August 2015, pp 1-2

friendship with them. This is not about a government. We want to speak to all the groups. We don't want to be just friends with the Labor Party or the Liberal Party. We've seen that that can be damaging, and it is not about that. It is about bringing those three groups in and saying, 'This is who we are,' and then coming to the Parliament. I sit in Parliament occasionally and listen to what's going on. It gives us an idea how you're thinking because we honestly, as Aboriginal groups, don't know how you think.

Ms O'CONNOR - And the same for us, the reverse is true probably.

Mr DILLON - Yes. They are the friendships we need to start building and building that relationship together as two different groups of people. It is strange. This is how it is at the moment: there's a line in the middle and you are all on that side and we see you all as the one group, and there is a line on this side and you see us all as the one group. We know there is the Liberal Party, the Labor Party and the Greens but we only see you as one group and you only see us as one group. It is breaking that down, dealing with this group, this group and that group - and they are the very steps that need to be taken in this.

My niece is going to school now and doing Aboriginal projects. I can remember going to school and doing Aboriginal projects. The Aboriginal people didn't even get a say in it because they didn't recognise us. It's about recognition. You know how you are identified as a Liberal or a Labor and that is the tag you carry as a person, these are your values - that's how we have to be able to find out what the values are in that party and that party and for you to be able to find that in ours as well. They are the things that break down those friendships.

5.43 Mr Lee Prouse, Weetapoonna Aboriginal Corporation, also spoke of the need for a friendship to be formed and for dialogue to occur:

This is a great opportunity to start to remove the unconscious bias within government and I do not mean that disrespectfully, because it is an unconscious thing. There are lots of times people do not understand. It comes back to understanding or removing against certain sides of communities, and things like that. I think we can be friends, and we can work together, as long as we all listen before we jump. I might add here too every Tasmanian Aboriginal person should have an opportunity to have a say and be heard regardless of who they are aligned to, what group they are aligned to, what community they are aligned to. They should have that opportunity.³⁴

³⁴ Transcript of evidence, 14 August 2015, p 4

Benefits to be part of the amendment

- 5.44 The Committee heard from many persons who argued that amending the Constitution is nothing more than mere symbolism unless it provides real benefits or rights to Aboriginal people.
- 5.45 The Committee notes that the Tasmanian Government considers amending the Constitution to recognise Aboriginal people as Tasmania's First People is part of a range of measures to promote reconciliation and to address the financial disadvantage experienced in Aboriginal communities.³⁵
- 5.46 The Hon. Ray Groom AO, Former Premier, commented:

I feel there should be some associated initiatives produced by government. The words are great - they are not symbolic; they are much more than symbolism. This word 'symbolic', I think it understates the importance. Words can be important. Recognising the Aboriginal community of Tasmania in our constitution act is not just symbolic, it is fundamentally important. It's not just symbolism. I feel a lot of people in the Aboriginal community would wish to have some sort of tangible steps as well as the words.

Not underrating the words, but I have a couple of ideas here I would like to put forward. Land is fundamental to Aboriginal people. It is part of the culture. The connection with land is essential. There is a spiritual aspect to this that not many people fully understand. Past governments have transferred some land, and it has been deeply appreciated. There is scope for some further, maybe limited, transfers of small parcels of land, which I think would help in the process. I said to Michael Mansell, and others I was negotiating with years ago, that there is a limit - and there has to be a limit for the broader community. Eddystone Point in the north-east is a possibility, and there might well be a couple of other areas in the south-west where there was a good deal of Aboriginal activity. There was a band in the south-west and so on. There are a couple of caves in the south-west area that is Aboriginal land now, surrounding the caves. There could well be other prospects of a limited kind. That would be deeply appreciated.³⁶

- 5.47 Father Frank Brennan SJ AO, Australian Catholic University, commented:

It is the old debate. It is never a matter of 'either/or', it is always 'both and'. Even though I am a lawyer I don't see any magic in constitutional recognition, but if that constitutional recognition is accompanied on the side by other

³⁵ Submission 13, Department of Premier and Cabinet, p 1

³⁶ Transcript of evidence, 14 August 2015, pp 11-12

undertakings, which are made in means of negotiation and partnership, setting policies and service delivery, then the whole package can be something, which redounds for the wellbeing of Aboriginal people generally. I am cautious about the idea of trying to write some responsibilities into a Constitution as such, whether it be the Federal Constitution or a state constitution. I suppose, having chaired the national human rights consultation for the Rudd government, I became very aware of just how cautious our politicians generally are in our major parties about trying to write too many rights into a constitutional document, thereby transferring power from elected politicians to unelected judges. We are very different from what you might call the American context.

The other observation is that the more particular you start to get with rights and responsibilities then the more acute becomes the question as to who is eligible for the exercise of those rights and to whom are those responsibilities to be owed? I could give perhaps a contemporary controversial Tasmanian example. Senator Jacqui Lambie in her maiden speech claimed she was an Aboriginal person or a person of Aboriginal descent, and that caused some agitation among some Aboriginal groups in Tasmania. Those sorts of disputes you want to quarantine from your constitutional provisions, and have those dealt with in other more administrative-type procedures.³⁷

5.48 Mr Greg Lehman commented:

Despite the death of the last of our tribally-born ancestors over four generations ago, despite the limited number of remote communities with a history of reserve or mission status, and despite the relative integration of Aboriginal people into rural and urban life, it is clear that attempts to assimilate Aboriginal culture into the mainstream of Tasmanian life have failed to create equality of outcomes for Aboriginal families.

It is generally agreed, and reflected in all statistical measures, that decades of welfare-based policy approaches might have dulled some of the sharper edges of disadvantage, but continue to permit disproportionate deficit to continue unabated. It is also clear that innate racism, considered appropriate during several preceding centuries, still pervades contemporary society. This not only interrupts media discourse and sporting culture, as we have witnessed in recent months, but impacts on the lives of Aboriginal people every day.³⁸

5.49 Mr Michael Mansell, Aboriginal Provisional Government, believed that the Committee should recommend that the amendment must include a benefit or impose an obligation on the Government:

³⁷ Transcript of evidence, 14 August 2015, p 39

³⁸ Submission 12, Greg Lehman, p 2

*If it is in the Constitution, it must create a right and must impose an obligation. If it doesn't, then not interested.*³⁹

*If the committee could recommend something that conferred a benefit or imposed an obligation in some form or another, that is progress. That is a powerful political statement by the committee and we would support it.*⁴⁰

...

Recognition is achieved through the conferring of a benefit desired by Aboriginal people. The Constitution may be the mechanism or it might be legislation or administrative measures.

*The steps outlined above dealing with dispossession, disempowerment, poverty and self-determination are much more likely to be welcomed by Aborigines than incidental words in the Tasmanian Constitution. A treaty honouring the pledge made by Robinson as agent of the colonial authority would also be welcome.*⁴¹

5.50 Ms Emma Lee, melythina tiakanna warrana Aboriginal Corporation, commented:

It is a historical moment here and now. I am very grateful to be part of this process. This will go a long way towards healing our trauma within our own communities as much as the intercommunity trauma. I want to take away the guilt aspect of this and say, 'Let's just do it together. Let's work together for our regions and our country, to manage that public estate - let us put greater social capital in it.'

...

*That is what I love about this. This is setting up - you have to dig deep foundations to build skyscrapers. I think we will have the strongest form of working together out of any state and territory if we take away this wafty preamble and put in some hard, solid recognition and cultural positioning.*⁴²

5.51 Mr Greg Lehman commented:

Recognition in the Tasmanian Constitution may well offer an important symbolic step toward achieving this. However, tangible and lasting effects are unlikely to result unless a foundation of understanding and informed

³⁹ Transcript of evidence, 12 August 2015, pp 1-2

⁴⁰ Transcript of evidence, 12 August 2015, p 9

⁴¹ Submission 7, Michael Mansell, p 4

⁴² Transcript of evidence, 12 August 2015, p 36

determination to address the multiplicity of past and present influences is established as the basis for action.⁴³

5.52 Mr Lehman further commented:

Parallel processes of constitutional recognition currently occurring at the nation level have made it clear there is a concerted view on the part of both Aboriginal and Torres Strait Islander people and most other groups in Australia, that for such process to be worthwhile, they must create meaningful change. To do this, change must address the current situation of Aboriginal people, our need for improvement across the full range of social and economic indicators, as well as enabling full access for us to the complete spectrum of Australian life. Neither of these objectives can be said, even by the most optimistic of observers, to currently be at acceptable levels of achievement for a country that prides itself as a first world economy.⁴⁴

5.53 Mr Rodney Dillon, Weetapoon Aboriginal Corporation, commented:

Having a right to the land is very important, but the thing that is the most important is sharing the resources. Unless we have part of the resources - and this is what we spoke about in Campbell Town the other day - within the next 15 years we want our organisations to be part of being self-sufficient. We are not going to be able to survive - and the Commonwealth Government funds are being cut more and more every year.

Our group has the farm at Murrayfield and we don't make any money. We always thought you made money out of farms, but we have found that you don't make that much money and there is a lot of work in running a farm. We have been running that farm for 12 years and we have been having numerous meetings just to keep this going. If we hadn't had the ILC working with us, we would have been bankrupt by now. Land is important but the resources that make the money are the most important thing. Sometimes it is about having people working in these resources more so than owning the resources. It's about having employment opportunities that we haven't had in the past and having some of those resources that can make us self-sufficient.

If you give us back the whole of the south-west of Tasmania, I dare say 50 of us wouldn't make a dollar each a year out of it, but if we take it back and have a joint management and an arrangement where we can work together and work with other tourist operators who can make a quid out of it and we employ people and work together, we can all make a little bit out of it. I see that as a more important step.

I am not against getting land back, don't get me wrong, but I say if we are getting land back we need things to make it run. We are just building a

⁴³ Submission 12, Greg Lehman, p 2

⁴⁴ Submission 12, Greg Lehman, p 1

relationship with one of the shipping companies here taking people to Bruny. We are going to employ three young people doing that. They are the things that make an economical future for those three boys. Instead of starting out in an area like a housing department area and living off that, they can now make a living and look at buying their own houses and things like that. If we hadn't got Bruny back, we probably wouldn't be here today talking to you. Having land back is very important, but you need other things to go with it. It is getting that.⁴⁵

5.54 Professor Henry Reynolds, University of Tasmania, also spoke of land rights being essential to be the process:

In respect to land rights, I have often expressed the view that it would have been possible to mount a land rights case in Tasmania in the north-east, where we know definitely they are direct descendants of mannalargenna. As you probably know, land rights cases are time consuming. Many of them take more than 10 years and you may not, of course, get a favourable judgment in a lands rights case.

What could be done in Tasmania - and let me say it is very much the traditional territory of the north-eastern people and not elsewhere - is what you might consider is a land rights agreement. I am not quite sure whether you are aware how important these have become but over 600 land rights agreements have been negotiated. Many of them are in Queensland and often with Aboriginal groups who either do not feel confident they can establish the level of proof to get native title, or because they know this is a much quicker process than going through the courts. This is all conducted by the Land Rights Tribunal, which provides negotiators and sets up the necessary meetings. Once the land use agreement has been signed, it has the force of law under the Aboriginal Lands Rights Act.

The north-eastern area would be a very good area for that to be done, in which case it may be that - particularly given the TAC is overwhelmingly made up of people descended from the north-eastern tribe - they would probably gain greater access, greater legitimacy, greater authority in that area of their ancestors' tribal territory.

On the other hand, I do not consider they have the same sort of claim anywhere else in Tasmania. I think they can certainly claim an interest, but certainly not an interest in the legal sense of any form of ownership, because such claims would be asserting rights over the land of their traditional enemies, in particular.

In terms of land, it is important to come to some agreement with, if you like, the north-eastern people. There is now very interesting work being done, particularly by Patsy Cameron, in a sense re-learning the country. As I say, outside that area, it is a different story, where the TAC should certainly have an

⁴⁵ Transcript of evidence, 14 August 2015, p 6

interest and so should other Aboriginal groups. That interest may involve their participation in management and things like this.

In a way that is a two-pronged attack to the question of return of land and land ownership, where there is a serious claim for the people in the north-east, because we know that George Augustus Robinson as an agent of the government made an agreement with Mannalargenna, who was the recognised leader of the north-eastern people. That is documented. Therefore there is a stronger legal basis for those people than is usually seen. That is my first one, the question of land rights.⁴⁶

5.55 Mr Andry Sculthorpe, Tasmanian Aboriginal Centre, commented:

To reiterate what Sara has mentioned, recognition can recognise a lot of things but it really has to deeply recognise the past of Tasmania and the situation of where we are. More importantly, it has to recognise how it is going to improve the situation for Aboriginal people. Tangible benefit is essential from our point of view in a campaign like this. We don't want it just to be statements that continue to repeat things that are obvious, like we were here first. It needs to be more than that.

The things Sara mentioned are very important, like economic self-sufficiency. An economic base to develop from would be essential. Some ways that could be done is through a land tax system similar to other states. Clearly land return has been on our agenda for a long time and it is important that our agendas that have been going for a long time are recognised and acted upon. That is the foundation for what we see as something that is going to improve the situation.⁴⁷

5.56 Ms Sarah Maynard and Mr Andry Sculthorpe, Tasmanian Aboriginal Centre, commented:

Ms MAYNARD - On your first question, I think there are significant places all throughout lutruwita/Tasmania that are significant to the Aboriginal community. I don't just think the north-east is wholly and solely. There are so many significant places within Tasmania that are equal. I don't think you can say one place is more special than another place. The Tasmanian Aboriginal community has wanted particular areas of land returned for some time now, and Wukalina is one.

Ms O'CONNOR - It is one that was promised.

Mr SCULTHORPE - Yes, and it does have significance and that is why we've been wanting it back.

Ms MAYNARD - But there are lots of other places that we want returned to the Aboriginal community, such as Rocky Cape, the lease at Irapuna - it'd be good

⁴⁶ Transcript of evidence, 14 August 2015, pp 23-24

⁴⁷ Transcript of evidence, 14 August 2015, pp 41-42

to have that land returned rather than just a lease - the west coast Aboriginal landscape and the World Heritage Area. The Aboriginal community discusses this on a regular basis about areas of land but it is the government of the day we have to negotiate with. We compromise quite a lot but wukalina is one.⁴⁸

5.57 Ms Sarah Maynard and Mr Andry Sculthorpe argued that they believed they would require an agreement of actions to be undertaken by the Government prior to their organisation providing their support for the amendments. In their appearance before the Committee they stated:

Ms MAYNARD - Andry might want to have some input on this also but I think that if the Tasmanian Aboriginal community were going to support this we would want agreement of some actions prior to supporting it, whether that is agreement with the Tasmanian Government about the things like land return or like receiving some money in regards to land tax and getting secured seats in Parliament, then we agree to including us in the Tasmanian Constitution then that might be one solution.

We could try to talk and work out what the best practical solution for all of us, for both parties, is.

Mr JAENSCH - Could you imagine a situation where the TAC would publicly withhold support for constitutional recognition until you had parliamentary representation, hypothecated land tax and land returns committed legally?

Mr SCULTHORPE - It would need to start showing some signs of being of benefit. These are the things we have said we want to aim for, for benefit. How you are going to write that up is probably the job ahead for you but that is the sort of thing we want to see out of it. We could make an assumption that we may not support whatever it develops into next but we would like to be able to see something we are happy with.

Ms OGILVIE - We are very much hearing that we would like to support it. The idea for me is that the conversation needs to happen in parallel around what you need and what we need, it is a negotiation. It may be that we look at what that framework looks like, with tacit approval that we move down towards the path together in the hope that we arrive at a place where you support the constitutional recognition and we say, 'Here's the pathway to the things you need'. For me, that has to be dialogue. Is that a process you think you could participate in?

Mr SCULTHORPE - Yes, that sounds reasonable.

Ms OGILVIE - That assurances are given, there might be a memorandum of understanding about what is in the conversation that goes beyond November, that there is a standing conversation that continues. For me, that seems to be a way we could move forward together. I put that to you.

⁴⁸ Transcript of evidence, 14 August 2015, pp 46-47

Ms MAYNARD - Yes, I think this is just a start. The Aboriginal community wants to head in a particular direction but at the same time we don't want tokenistic words, and I am sure you guys would agree and understand that. Our current Premier has made a commitment on wanting to work better with the Aboriginal community, and that is why we are here today. We have multiple things going on at the moment because we want to work on achieving the things I have outlined. I am sure, Cassy, you support land return, and so do you, Madeleine.

Ms O'CONNOR - Absolutely - we tried.

Ms OGILVIE - Yes.

Ms MAYNARD - Hopefully we are going to work on you guys soon and we can go from there.

Mr JAENSCH - I am going to leave here thinking about how we have an arrangement, accepting that some of the aspects you have laid out - land reform, economic base, representation in Parliament - there is a long journey to get to some of those. You can't agree to agree on something which may be somewhere down the track. Does that mean constitutional recognition is something we need to defer the hope of until we have satisfied those other areas? Is that the reality, or is it a starting point from which to go on the journey towards those other things?

Mr SCULTHORPE - Let's hope it is something that can spark a change that can cause those things to happen. We're repeating ourselves a little bit but we really want to see some benefit. An incremental benefit is hard to perceive in the short term and so we want to see something that provides a pathway.⁴⁹

Committee Comment:

- 5.58 The Committee recognises that reconciliation is a long process and that Tasmania still has a considerable distance to travel, but the Committee finds that recognition of Aboriginal people as Tasmania's First People in the Constitution will be a considerable step in achieving reconciliation.
- 5.59 The Committee notes the recommendations in certain submissions that amending the Constitution should occur along with other meaningful initiatives to recognise and place value in Aboriginal communities.
- 5.60 Notwithstanding the above, the Committee considers that there is considerable inherent value in the symbolism of recognising Aboriginal people in the Constitution but for long term meaningful reform, positive and proactive engagement between Tasmanian

⁴⁹ Transcript of evidence, 14 August 2015, pp 45-46

Aboriginal people, the Tasmanian Government and the broader Tasmanian community will be necessary.

Recommendation 1: The Committee finds that on the evidence presented, that the Constitution of Tasmania should be amended to include recognition of Aboriginal people as Tasmania's First People.

6 PROPOSED WORDING OF RECOGNITION

Terminology

- 6.1 The Committee considered that the words and terminology used in any legislative reform to recognise Aboriginal people will be of great importance.
- 6.2 Mr Lee Prouse, Weetapoonna Aboriginal Corporation, recommended that the recognition uses the term ‘Aboriginal people’ instead of ‘Aboriginal communities’ as it is more inclusive during his appearance before the Committee:

The terminology too; how you determine what you put into that. Whether it's 'Tasmania's First Peoples' or 'Tasmanian Aboriginal people' or 'community or communities'. From my point of view I'd like the last two to be way down the priority list. You need to use the word 'people', whether it's First Peoples or Tasmanian Aboriginal people, because that takes away the conflict of the terminology that's probably happening within our people today. I think the term 'First Peoples'

...it includes everybody. That's going to be key because it can quite easily become a stalling point in the process.

- 6.3 The Hon. Ray Groom AO, Former Premier, during his appearance before the Committee made a number of suggestions in relation to terminology. He recommended the use of ‘appreciate’ instead of ‘recognise’:

Yes, you recognise someone, but going further. In that document I have just tabled, it talks about recognition and appreciation. We could go beyond recognition but appreciate or honour, whatever the right words are. I like the word 'appreciation' because it goes further.

Proposals submitted to the Committee

- 6.4 The Committee has considered a number of proposals for constitutional recognition. A number of these were received as submissions and in evidence at public hearings.
- 6.5 The committee notes the support for amending the Constitution.
- 6.6 A number of these examples provided a replacement or amendment of the existing Preamble in the Constitution of Tasmania.

- 6.7 Father Frank Brennan SJ AO, Australian Catholic University, in his appearance before the Committee made a number of recommendations to recognise Aboriginal people. His first suggestion was an acknowledgement:

On behalf of the people of Tasmania, the Parliament acknowledges that Tasmania was first occupied by Aboriginal people, many of whose descendants maintain continuing relationships with their traditional land and waters and respects the continuing cultures, languages and heritage of Aboriginal people.⁵⁰

- 6.8 Father Brennan SJ AO argued that such an acknowledgment would:

A very modest acknowledgement of that sort would simply be acknowledging the historical fact that Aborigines were the first occupiers of the land. It would not contain an acknowledgment of the historical fact of dispossession and its ongoing effects but it would acknowledge respect for continuing cultures, languages and heritage of Aboriginal people. It seems to me that a modest acknowledgement of that sort would be the very least you would expect most citizens to embrace, and therefore welcome it if it were contemplated by the Parliament as a change to the Constitution. ⁵¹

- 6.9 The Committee notes Father Brennan SJ AO's advice that an acknowledgement independent of the Preamble would be more suitable as he stated in his appearance before the Committee:

If you were going to go down the path of revising or modernising the preamble of your own Constitution, then of course you would speak of things other than simply Aboriginal peoples and their relationship to the polity of Tasmania. If you were to simply have an acknowledgement, as I have suggested, then I think you can limit it to Aboriginal peoples and their relationship to the polity.⁵²

...an acknowledgement, particularly a full-blooded acknowledgement such as the one I propose, could be of assistance in setting better parameters for the negotiation of future programs, policies and legislation for the wellbeing of Aboriginals in Tasmania. As presently advised, I would not see there would be a place in your own State Constitution for trying to set up a separate indigenous body, or perhaps to put it more efficaciously, to propose such a suggestion I would think at the moment in Tasmania is something which is not likely to win overwhelming cross-party support.

I would suggest the way forward in this welcome development in Tasmania is that there be an acknowledgment rather than a preamble put into your Constitution and that the changes be restricted to the inclusion of an

⁵⁰ Transcript of evidence, 14 August 2015, pp 35-36

⁵¹ Transcript of evidence, 14 August 2015, pp 35-36

⁵² Transcript of evidence, 14 August 2015, pp 38-39

*acknowledgement. The real debate will relate to whether that acknowledgment should simply be an acknowledgment of first occupation and ongoing respect for culture, language and heritage, or whether in addition it would include an acknowledgement of past dispossession and the deprivation of peace, welfare and good government and the need to acknowledge there are ongoing adverse effects from that dispossession.*⁵³

- 6.10 Father Brennan SJ AO arguing that the changes be restricted to the inclusion of such an acknowledgement, said that the ‘real debate’ will relate to:

*Whether that acknowledgment should simply be an acknowledgment of first occupation and ongoing respect for culture, language and heritage, or whether in addition it would include an acknowledgement of past dispossession and the deprivation of peace, welfare and good government and the need to acknowledge there are ongoing adverse effects from that dispossession.*⁵⁴

- 6.11 Father Brennan SJ SO also put forward a more significant acknowledgement that extended beyond his first suggestion and drew upon the language of the existing Preamble, which he believed would be the most appropriate:

On behalf of the people of Tasmania, the Parliament:

- a) *acknowledges that Tasmania was first occupied by Aboriginal people, many of whose descendants maintain continuing relationships with their traditional lands and waters;*
- b) *acknowledges that Aboriginal people were dispossessed of their lands and waters when the Parliament of the colony of Van Diemen's Land was first established, and were long deprived the benefits of peace, welfare and good government of the said colony;*
- c) *acknowledges that Aboriginal people have continued to suffer the effects of their dispossession and past deprivations; and*
- d) *respects the continuing cultures, languages and heritage of Aboriginal people.*⁵⁵

- 6.12 Father Brennan SJ AO, outlined his reasoning for why an acknowledgement would be preferential to a preamble in his appearance before the Committee:

A lot of the talk about recognition in constitutions is premised on the notion of whether or not there should be mention in the preamble of the Constitution of

⁵³ Transcript of evidence, 14 August 2015, pp 35-36

⁵⁴ Transcript of evidence, 14 August 2015, pp 35-36

⁵⁵ Transcript of evidence, 14 August 2015, pp 35-36

the situation of Aboriginal peoples. I am strongly of the view that we should draw a distinction between a preamble and what I would call an acknowledgement. A preamble strictly so-called will set out a various list of reasons why one is legislating or constituting, and obviously in the Australian context that would not only include the situation of Aboriginal Australians, but all sorts of historical factors and references to other Australian citizens. Now, it may be that you are seeking to modify or modernise the preamble of your Constitution, in which case there may be some place for the mention of Aboriginals in that preamble, but even if there is a mention of Aborigines in a preamble, it would seem to me that there is still a case for going further with what I would term an acknowledgement which would be a separate provision of the Constitution that would come immediately after a preamble. That acknowledgement would relate solely to the situation of Aboriginal peoples

Secondly, I make the observation that the legal difficulties which are thought to be attendant upon a preamble - whether or not a preamble might have any ongoing legal effect - I do not think that doubt, small though it be in relation to a preamble, is in the least relevant to an acknowledgement. That might be a way forward in terms of avoiding the unfortunate prevalence in a Constitution of stating gracious words in favour of Aborigines but then stating in the next breath that of course they are to have no legal effect. An acknowledgment freestanding from the preamble and which is not said to be free of legal effect is something which can be safely put into a state Constitution.⁵⁶

6.13 Mr Peter Rowe, in his appearance before the Committee, also demonstrated support for the an acknowledgement rather than a preamble:

Mr JAENSCH - Thank you for the work you have put into not only discussing issues, but trying to advance some directions and options. There seems to be two sorts of ways of addressing the preamble you have given us. The one that you have just tabled is a standalone preamble addressing the First People, Aboriginals. The one in the opening of your submission, which you have adapted from Queensland, to me, is an overarching preamble to the Constitution which has as one of its three substantial points the recognition of First Peoples.

Mr ROWE - Yes.

Mr JAENSCH - Do you think that we have both? Do they sort of nest together? There is a heading preamble that makes specific reference and then a subsequent treatment of the issue of recognition of First Peoples.

Mr ROWE - At first I was probably favouring that approach. As I read more about it and more of the papers that were done in New South Wales and the Commonwealth papers, I started to move more towards just that separate acknowledgement.

⁵⁶ Transcript of evidence, 14 August 2015, p 34

Ms OGILVIE - *The paragraph.*

Mr ROWE - *Separate paragraph, yes.*

Ms OGILVIE - *There is a space there for it, too.*

Mr JAENSCH - *I am interested in it. Your opening and the adaptation of the Queensland one struck me because it looked to me that rather than pasting in a section, a paragraph or a clause to address the silence on First Peoples, you are actually weaving it into the fabric of what the -*

Ms OGILVIE - *It becomes more integrated.*

Mr ROWE - *It is more a vision for the whole of Tasmania, and where we have come from and what we as a parliament are there for.*

Mr JAENSCH - *That is a useful thing to exercise and we are at the beginning of our discussion on this. But I want to mark that place. Rather than just adding in a section, I think there is some merit in -*

Ms OGILVIE - *Sort of retelling the story in a more integrated way?*

Mr JAENSCH - *Maybe going back and looking at how we open this, the way it ought to have been from the beginning, and then unpacking it further in the document.⁵⁷*

Committee Comment:

- 6.14 The Committee notes there are some concerns within the community that recognising Aboriginal people in the Preamble of the Constitution will inhibit future governments' and courts' abilities to exercise their will (this issue is addressed in Chapter 7).
- 6.15 The Committee finds that if the recognition appears in the form of an Acknowledgement inserted as a clause in the Constitution, separate from the Preamble, and is correctly worded, this will allay the concerns of sections of the community, as it is simply an acknowledgment of fact.

Consideration of other States

- 6.16 The Committee heard from a number of persons and organisations the suggestion that Tasmania should adopt the wording utilised in other Australian state constitutions.

⁵⁷ Transcript of evidence, 12 August 2015, p 15

- 6.17 The Department of Premier and Cabinet, noted in its submission that examples in other Australian jurisdictions may be useful to the Committee but noted:

Careful consideration would need to be given to using one of these models to ensure it is appropriate for the Tasmanian context.

For example, to adopt the Queensland model in Tasmania, the preamble of the Constitution Act would have to be significantly reorganised. This is opposed to the model that has been adopted in New South Wales, Victoria and South Australia, which involve the insertion of a specific section in the Act.⁵⁸

- 6.18 The Department of Premier and Cabinet, further noted the utilisation of the wording of other states' constitutions may not be always relevant to Tasmania:

The wording of the provision used in other jurisdictions would also require consideration for their applicability in Tasmania. For example, the South Australian Constitution makes reference to maintaining 'languages and laws, which are of ongoing importance'. In the Tasmanian context the terminology of recognising and maintaining 'languages' may not have the same application, as the retrieval of the many known traditional languages into one language – palawa kani – is ongoing.⁵⁹

- 6.19 Mr Peter Rowe found the recognition of Aboriginal persons in the Queensland's Constitutional preamble to be 'quite inspiring', put forward his suggested wording of a Preamble:

The people of Tasmania, free and equal citizens of Australia—

- 1. intend through this Constitution to foster the peace, welfare and good government of Tasmania; and*
- 2. adopt the principle of the sovereignty of the people, under the rule of law, and the system of representative and responsible government, prescribed by this Constitution; and*
- 3. honour the Aboriginal people, the First People of Tasmania, whose lands, winds and waters we all now share; and pay tribute to their unique values, and their ancient and enduring cultures, which deepen and enrich the life of our community⁶⁰*

- 6.20 Mr Rowe also made mention of the wordings in New South Wales and Victorian Constitutions, in his appearance before the Committee:

⁵⁸ Submission 13, Department of Premier and Cabinet, p 5

⁵⁹ Submission 13, Department of Premier and Cabinet, p 5

⁶⁰ Submission 9, Peter Rowe, p 1

In New South Wales, the Constitution provides specific recognition of Aboriginal people... In Victoria they also have an effective recognition of Aboriginal people, acknowledging that they are the original custodians of the land, that there is a unique status as the descendants of the Victoria's First People and the spiritual, social cultural relationship with the traditional lands and waters.

6.21 The Hon. Ray Groom AO recommended that Tasmania adopts wording similar to that used in the New South Wales Constitution, which states:

(2) Parliament, on behalf of the people of New South Wales, recognises that Aboriginal people, as the traditional custodians and occupants of the land in New South Wales:

(b) have made and continue to make a unique and lasting contribution to the identity of the State.

6.22 The Hon. Ray Groom AO said:

The words in 2(b) of this New South Wales amendment have made, and continue to make, a unique and lasting contribution. This is a big issue for Aboriginal people. When I was in primary school we were taught Truganini was the last Aboriginal person, and it was said that Aboriginal people had disappeared. The reality is they have not disappeared. There are many Aboriginal people in Tasmania, living a life as Aboriginal people and recognising they are Aboriginal, recognised by the community as Aboriginal, and with descent. That 'continuing to make', or similar words, is important.⁶¹

6.23 Reverend Jeff Gray, Tasmanian Council of Churches, in his appearance before the Committee, commented on his affection for the wording used in the Victorian Constitution:

As to wording, I particularly warm to the Victorian one. It reflects a bit about my own personal church background. That first phrase at 1A is, 'The Parliament acknowledges that the events described in the preamble to the statement could, without proper consultation, recognition or involvement of the Aboriginal people'. I think that is an important statement to be made. The last section at 2C says, 'They have made a unique and irreplaceable contribution to the identity and wellbeing of Victoria'. I personally like those two additional phrases.⁶²

⁶¹ Transcript of evidence, 12 August 2015, p 12

⁶² Transcript of evidence, 14 August 2015, pp 32-33

7 LEGAL ISSUES

- 7.1 The Committee seeks to provide the Parliament with recommendations for constitutional recognition, which will assist Tasmania in achieving reconciliation.
- 7.2 In order for such an amendment to pass through both Houses of Parliament, the Members must be sure that there are no unintended legal consequences of such an amendment occurring.
- 7.3 A number of submissions to the Inquiry argued that any such recognition might have legal affects.

Justiciability

- 7.4 Ms Linda Luther argued that recognition would lead to differential treatment for Aboriginal people. In her submission she commented:

The present proposal does not indicate that there will be any differential treatment for Aboriginal people compared to others. However, it is likely that once such a set of words is in the Constitution then reasons will be found for differential treatment. This would be divisive.

It is important that the people of Tasmania be governed as One People, not as disparate groups depending on their heritage or origin. Various groups in the community may be disadvantage; others can manage their affairs independently and require little government assistance. Support for individuals must be judged on the basis of need, not on the basis of race or heritage.

I support that the Tasmanian Constitution should not be changed to recognise Aboriginal people.⁶³

- 7.5 Mr David Houghton argued that the insertion of recognition in the preamble may “open a Pandora’s box of litigation”, hinder the courts’ freedom to interpret legislation and could even affect Ministers and other executive officers ability to exercise their discretionary powers:

The Courts have held that a preamble may have wider effects than as an aid to interpretation. A reference in a preamble to a matter has been held to make evidence of that matter to be admissible. Recitals in a preamble are prima facie evidence of the facts recited.” and further, “It would be arguable that these rules are not excluded by a provision that the preamble has no force.....”

⁶³ Submission 4, Linda Luther, p 1

... it is apparent that a preamble recognising prior occupation of Tasmania by Aborigines may well open a Pandora's Box of litigation and division. It could well expose Tasmania to the entrenchment, potentially forever, of a form of legal, social and economic preferment applying to one identified group of citizens that will distinguish them from the remainder of unidentified citizens. We would no longer have a Constitution whose terms assumed a common civic and legal status for all Tasmanian citizens of any race, religion or former nationality but, rather, two kinds of Tasmanians – one group identified racially and/or culturally and then the rest.⁶⁴

7.6 Mr Houghton continued:

[Sir] Harry Gibbs says: 'The nature and functions of a preamble are well understood for legal purposes.' The Privy Council describes a preamble as 'an introduction to, and in a sense, a preparatory or explanatory note in regard to the sections which are to follow'. According to Quick and Garran, its proper function is to explain and recite certain facts. The idea that Professor Williams puts forward in his submission is not necessarily agreed to by other legal experts - and I think you would call Sir Harry Gibbs a fairly major player in that game. Indigenous recognition, according to Professor Williams, can be included without giving rise to fears about interpretation and application of such words. I think the previous speaker said the same. Again, this non-justiciability clause - an awful word to a non-lawyer - Professor Williams maintains, is not necessary. Sir Harry Gibbs writes that the courts may have or have held that a preamble may have wider effects than as an aide to interpretation, and a reference in a preamble to a matter will make evidence of that matter admissible. Recitals in a preamble are prima facie evidence of the facts recited. He also goes on, and this is in my submission, but it would be arguable that these rules were not excluded by a provision that the preamble has no legal force.

Ian Callinan, another High Court justice, wrote in 2011 on proposals he was writing with respect to Aboriginal preference clauses within the body of the Australian Constitution that such aspirational statements are not appropriate for a body of a document, which has to be construed.

For people who are actually dealing with and interpreting our laws, I would say they carry significant weight, particularly over academic or theoretical viewpoints.⁶⁵

7.7 Mr Mark Brown, Australian Christian Lobby, provided support for recognition to be made in the Constitution but did not support any such amendment which provided additional rights:

⁶⁴ Submission5, David Houghton, p 1- 2

⁶⁵ Transcript of evidence, 12 August 2015, pp 19-20

“The text should be simple, straightforward, and clear. It should achieve the single aim of recognising Aboriginal people without inserting rights-type provisions.”⁶⁶

- 7.8 Mr Lindsay Dawe expressed concerns that recognising Aboriginal people could result in the Government being required to amend the Constitution if requested by other groups of people:

Once the Constitution has been altered by a Government on the recommendation of any self-interest group even if it seems reasonable and justifiable and has Government sympathy, a precedent has then been set, and this could unnecessarily place the current or future Governments in the unenviable position of having to deal with other proposed alterations to our Constitution from various high profile groups based on such things as, religious beliefs, ethnicity, sexuality, etc.

In my opinion our Constitution should treat all Tasmanian citizens as equal and not differentiate between any of them, it should also be free of any political or social interference and should not be altered or compromised by any social group which has the sympathy of the Government of the day no matter how socially acceptable it may seem.⁶⁷

- 7.9 The Committee notes the concerns it received. However, the Committee also notes the arguments it received from a wide range of witnesses and submissions that the inclusion in the Constitution of a statement of recognition, which was similar to the clauses in constitutions of Australian states, would not create any rights or legal claims for any persons.

- 7.10 Mr Peter Rowe argued that a preamble would not create any such rights or duties:

There often a bit of discussion about the preamble and some of you are probably a little more familiar than me with what a preamble means and what impact it has. I know some people worry, looking at some of the submissions, that it means there is some major change in rights and also duties that are going to be applicable to whoever is the subject of that preamble. The general constitutional lawyer who looked at it would say that it doesn't mean anything in that sense. It is probably more an expression of the Parliament's thoughts and perhaps a reflection on the progress that has been made over many years in terms of recognition of Aboriginal people, especially recent ones.⁶⁸

⁶⁶ Submission 8, Australian Christian Lobby, p 1

⁶⁷ Submission 10, Lindsay Dawe, p 2

⁶⁸ Transcript of evidence, 12 August 2015, p 11

7.11 Father Frank Brennan SJ AO, Australian Catholic University, also argued that recognition would cause no legal issues, such as the creation of rights or hindrance of the courts ability to interpret legislation. When appearing before the Committee Father Brennan stated:

I suggest further that most of the fears which are expressed about the unintended legal consequences of preambles are overstated in that there has not been any proven case where a preamble has resulted in unintended consequences which people think horrific. As to the national debate, the usual fear is expressed in some of the thinking that was developed by Justices Deane and Toohey, particularly in Leeth's case, but they were only two of the seven High Court judges and their views never developed any traction. In an ultimate court of appeal you will often have one or two judges who float ideas, but regarding the idea that somehow a preamble of a constitution or an act has had devastating legal consequences, I am not aware of any in contemporary Australian history.⁶⁹

7.12 Father Brennan SJ AO continued:

I am not aware of any court authority that has ever had to deal with the question of the legal effect of an acknowledgement, but if one looks particularly at the remarks that have been made in the past by Sir Harry Gibbs in relation to preambles, and some of the recent commentary, the most that can be said is that in cases such as Leeth in the High Court of Australia where Justices Deane and Toohey expressed what can only be said to be a minority view, namely that one might draw some sustenance and some legal significance from the words of the Commonwealth Constitution's preamble, I do not think you can realistically suggest that that mode of argument transposes to that of acknowledgement.

I would readily concede that if you were to put in an acknowledgement without putting in words of legal exculpation, then of course you would want to get the opinion of Senior Counsel to that effect, but in giving instructions to Senior Counsel, I think you would want to draw a clear distinction between what might be the legal effect of a preamble over that of an acknowledgement. After all, where it says that there is legal ambiguity about the legal effect of a preamble, it has always been premised on the notion that a preamble sets out the reasons why you are legislating within the contours that you are. That is why courts have said if there is ambiguity about the language, you might be able to get some sustenance on what has been said out there in the preamble. An acknowledgement is simply a freestanding acknowledgment,

⁶⁹ Transcript of evidence, 14 August 2015, p 40

which in no way enjoys the same relationships to other provisions as with a preamble.⁷⁰

Non-justiciability clause

7.13 A number of States have addressed concerns of rights being conferred on Aboriginal people or obligations on the Tasmanian Government or public by inserting a non-justiciability clause in the amendment.

7.14 The Hon. Ray Groom AO also argued against the inclusion of a non-justiciability clause during his appearance before the Committee:

I don't like subsection (3) - and this may have been mentioned before in one of the submissions made to the committee - which is the non-justiciable clause. That is the qualification that this does not give rise to any potential legal action, civil action, administrative action, and so on in the courts. That detracts from this sort of spirit of understanding and recognition. It is too formal, too legalistic, and I don't believe it is necessary

We have the Acts Interpretation Act, section 8B, and this guides how the courts interpret legislation. There is a provision in that section of the act where the courts are required to give regard to any speech made by the minister in making a second reading speech in explanatory memorandum that might be produced for the bill. In the process you could explain the reason for this - the recognition factor and so on - and make it quite clear in that statement that it is not intended to give rise to special rights and so on, if that is necessary. That is a way to safeguard against any risk. I think the risk is minimal. I don't think courts are going to look at this, knowing the history - they are always bound by the evidence that is produced in a court of law. The courts would be very loathe to use in any way that would undermine its general value for the community by creating all sorts of rights and problems, so I don't think that will occur.⁷¹

7.15 Professor George Williams AO, University of New South Wales, in his submission to the Inquiry, highlighted that such clauses were unnecessary as the recognition provided in the amendments to the other Australian States' Constitutions had not provided any such legal rights to Aboriginal people. Professor Williams warned that the only real effect the inclusion of such a non-justiciability clause has is making the act of recognition appear insincere:

One aspect of the recognition achieved in the four States is that each has been accompanied by what is known as a non-justiciability clause. This is set out in

⁷⁰ Transcript of evidence, 14 August 2015, pp 37-38

⁷¹ Transcript of evidence, 12 August 2015, p 12

subsection (3) of the Victorian words set out above. Similarly, words recognising Aboriginal people in the South Australian Constitution are accompanied by a clause providing that 'the Parliament does not intend this section to have any legal force or effect'. The effect of these words has been to undermine Indigenous support, in part because of a perception that this constrained form of recognition is insincere.

In any event, such a clause is not needed, and misunderstands the role of a preamble or other forms of recognition in a constitution. Words of recognition are not expressed to have a substantive effect. They do not contain operative causes, and so do not confer new rights or obligations. This is recognised in the recent report of the Select Committee on Aboriginal Constitutional Recognition of the Western Australian Parliament. It makes clear, even in the absence of non-justiciability clause, Indigenous recognition can be included in a state constitution without giving rise to fears about the interpretation and application of such words.

The conclusion of the Western Australian committee is reflected in the use made of such clauses by Australian courts. Judges have referred to preambular statements, but only on rare occasions, and even then not in a way that has given rise to new legal obligations. Hence, it has been stated that the High Court has historically treated the existing preamble in the Australian Constitution 'with a mix of indifference and reticence'.⁵

Words of recognition may be safely inserted into the Constitution of Tasmania without the need to add a non-justiciability clause. If nothing else, this avoids the odd, contradictory, situation of inserting words into a law, only to simultaneously indicate that they are not to have any legal effect.⁷²

- 7.16 Mr Michael Mansell, Aboriginal Provisional Government, stated that the insertion of recognition would not insert any rights for Aboriginal people. In his appearance before the Committee he agreed with Professor George Williams' argument before the Committee:

I see that George Williams has said that this thing about justiciability does not arise because if it is in the preamble, it does not create any rights, so the High Court has said from time to time again, 'Look, we don't use these words as a basis for a legal case.' I defer to George Williams on that. As a constitutional expert, he does not think it is an issue.⁷³

Committee Comment:

- 7.17 The Committee considers that the inclusion of non-justiciability clause should not be included in the Constitution.

⁷² Submission 2, George Williams, pp 2 to 3

⁷³ Transcript of evidence, 12 August 2015, p 3

- 7.18 The Committee considers that the inclusion of such a clause would be likely to undermine the intention of the Parliament in recognising the historical fact that Aboriginal people were the original inhabitants of the land now known as Tasmania.
- 7.19 The Committee notes the considered opinions expressed in submissions and in evidence before the Committee by a former Premier and lawyers that the inclusion of such a clause is unnecessary for recognising Aboriginal people as the original inhabitants of the State. This will not give rise to any rights provisions nor will it confer obligations on the Tasmanian Government and the public.
- 7.20 The Committee finds that the inclusion of such a non-justiciability clause may only serve to incorrectly portray the motives of the Parliament in making the amendment as insincere.

Recommendation 2: The Committee finds that any amendment should not include a non-justiciability clause as this is considered by the Committee as unnecessary and could be counter-productive to the intentions of the Parliament.

8 COMMUNITY CONSULTATION

- 8.1 The Committee has considered the importance of legislative change being successful in playing a meaningful part in the process of reconciliation.
- 8.2 The Committee notes that the proposed wording of any amendment needs to be developed in consultation with Tasmania's Aboriginal people and the broader Tasmanian community.
- 8.3 The Committee notes submitters to the inquiry also voiced their support for further consultation.
- 8.4 Professor George Williams AO, University of New South Wales, commented:

It is important that the wording of any change be developed in consultation with Aboriginal people. It would be tokenistic and inappropriate to recognise them without ensuring that they are satisfied with the words of recognition. A starting point for such discussions would no doubt be the wordings agreed to by the other States.⁷⁴

- 8.5 The Hon. Ray Groom AO, former Premier, commented:

I want to emphasise that obviously, and you know this, that we need full and proper consultation. This is essential when you are dealing with any Aboriginal issue. Aboriginal people are very good at consulting; they do rely on good consultation. I learnt this right back when I was a federal minister for the environment back in the 1970s, almost 40 years ago. I negotiated with the Northern Land Council in the Northern Territory concerning the development of stage 2 of the Kakadu National Park and was meeting with the elders of the Northern Land Council - Galarrwuy Yunupingu and other elders. A number of meetings happened over a period of time. I realised how important it is to consult properly, especially on Aboriginal issues, with the community. You will not always get agreement, often you will not achieve a consensus, but talking through of the issues is absolutely vital. I would strongly recommend that, even beyond this committee process, taking it forward - government or others or the Parliament - there be a further process of talking to the community in a less formal way before it all happens.⁷⁵

⁷⁴ Submission 2, George Williams, p2

⁷⁵ Transcript of evidence, 14 August 2015, p 10

8.6 Mr Mark Brown, Australian Christian Lobby, commented:

The Tasmanian Aboriginal community must be thoroughly consulted in this process.⁷⁶

8.7 Professor Maggie Walter, University of Tasmania, commented:

With consultation, it needs to be understood that Aboriginal families, even though most of us live in nuclear-type environments, still have a much broader understanding of family than perhaps is the norm from the western model. Those large groups still communicate and still see each other as family. Everything we do has to be relational rather than instrumental. That is where the consultation comes in. Nothing moves until the relationality has been established and people are comfortable with it and about who people are - who and how they would be, before you move things forward. It is quite a different way of doing things, rather than just the instrumental 'Here is the idea, give us your comments, and then we will do this'. It needs to have a bit of a mind shift over to the relational rather than the instrumental.⁷⁷

8.8 Ms Emma Lee, melythina tiakanna warrana Aboriginal Corporation, highlighted that importance of consultation with all Aboriginal people is required to ensure that the recommendations of the Committee form part of the progression towards reconciliation:

We have started today and we will continue that on Friday. It is up to this parliamentary committee then to undertake that recommendation as to how they may forward the consultation proposal. I know that today has a weighty symbolism for our people that some of us are here today to present evidence as witnesses to this hearing. Others are meeting in Campbell Town to discuss their leadership on their regional areas. We have been boxed in by a very narrow view of state representation. These things take time to filter and sift out that there will be changes. There are always changes in Aboriginal communities. We marry each other; we move from one region to another. We are not a fixed people and that is why I suggest that a flexible mode of engagement is necessary. There will be rules surrounding that elders' council. There will always be people who have different opinions about that. I also believe in the strength of our people to come together on an issue of such magnitude and importance to put aside smaller issues in favour of us working and moving together as First Peoples and other Tasmanians.

It is not for me to predicate what our elders might suggest. That is a very important issue as well. Campbell Town may have a whole different view on this because we have never had that right to meet as regional bodies previously. In the work that we have done with the Wilderness World Heritage

⁷⁶ Submission 8, Australian Christian Lobby, p1

⁷⁷ Transcript of evidence, 14 August 2015, p 10

area, the Aboriginal Liaison Officer has created culturally safe conditions for our smaller regional voices to stand up and be proud of our cultural contribution to this state. We see today as part of that progression. This is an ongoing issue. There is no easy solution. I do not want an easy solution where I think that we might all stand up and agree.⁷⁸

8.9 Ms Sarah Maynard and Mr Andry Sculthorpe, Tasmanian Aboriginal Centre, when appearing before the Committee addressed the importance of the Government to engage with the Aboriginal people not just in relation to the constitutional recognition, but also in the future:

Ms O'CONNOR - how do we make sure that governments and parliaments are talking to as much of the community as they possibly can?

Ms MAYNARD - Come and talk to the TAC. The Tasmanian Aboriginal Centre represents the whole community. We have open community forums. There is only one community.

Mr SCULTHORPE - The Parliament can talk to whoever it wants. We would never say don't talk to anybody.

Ms O'CONNOR - No, I guess we'd want to be assured that we're hearing the voices we need to hear.

Ms MAYNARD - Will Hodgman came and caught up with the community. He has visited the TAC, both offices. We have had ongoing discussion with him about various kinds of things and we have done that with the Labor government and Greens over the years. Sometimes we all don't agree with each other, of course, but we try to work towards a resolution.

We do a lot of community consultation. The community can come into any branch meeting. We have branch meetings regularly in our areas; every four to eight weeks our community can come in and talk about any issue that they want to.

Ms O'CONNOR - Is that how you do the consultation, at the branch meetings, a bit like a party branch meeting where community members can feed into positions and issues?

Mr SCULTHORPE - That is one mechanism. They are open so all Aboriginal people can attend those but that is only one activity of many. Other times there will be specific meetings called and that sort of thing, annual general meetings.

Ms MAYNARD - Also we do general consultation all the time within the community. I go out and visit families in their homes and I talk about all sorts of issues and see what people's thoughts are in particular issues, whether it is land return, whether it is a tourism venture, whatever it may be at the time.

⁷⁸ Transcript of evidence, 12 August 2015, pp 31-32

I visit Aboriginal people in Risdon Prison and we talk about all sorts of things all the time, and that is community consultation.

Ms O'CONNOR - *That is what Maggie Walter was saying this morning. It is quite a unique and deep consultation philosophy within the community here.*

Ms MAYNARD - *It is very embedded within the TAC. For example, I popped over to the elders group last week and I spoke to 20 elders at Risdon Cove about lots of different issues. It was fantastic and it has always been that way. People can always pop into the TAC and catch up with us and talk about a particular issue. You can always pick up the phone and call the CEO, unlike, I am sure, in other organisations. It is pretty casual and relaxed. You have to be when you are a part of a community-based organisation and you are representing people you care about.⁷⁹*

Committee Comment:

- 8.10 The Committee welcomed representatives of the Tasmanian Aboriginal Centre appearance as witnesses before the Committee at a public hearing, however, the Committee was disappointed that the State's peak body for Aboriginal Tasmanians did not make a written submission to this inquiry.
- 8.11 Nevertheless, the Committee notes the strong support by both Aboriginal people and organisations as well as by other submissions for further consultation to occur prior to an amendment being proposed to the Parliament.
- 8.12 The Committee considers that further consultation is imperative in ensuring legislative reform for recognition has strong community support behind it.
- 8.13 The Committee considers that the Government and representatives of Aboriginal organisations enter into meaningful discussions regarding any proposed legislative amendment.

Recommendation 3: The Committee finds that on the evidence presented, that ongoing meaningful dialogue between Tasmanian Aboriginal people, the Tasmanian Government, and the broader Tasmanian community about appropriate recognition is imperative to ensure that any reform is not seen as tokenistic.

⁷⁹ Transcript of evidence, 14 August 2015, pp 43-44

9 ASPIRATIONS FOR SOVEREIGNTY AND TREATY

9.1 The Committee heard of aspirations of submitters and witnesses for sovereignty for Aboriginal people and for a treaty to be made between the Government and Aboriginal people.

9.2 A number of submissions and witnesses proposed the establishment of a mechanism that ensured that Aboriginal people would be heard by the Government either through the Legislature or Executive.

9.3 Professor Maggie Walter, University of Tasmania, in her submission argued that:

To make genuine change Constitutional Recognition must be accompanied by a mechanism that establishes an Aboriginal voice with influence in the political realm.⁸⁰

9.4 Professor Walter who proposed the establishment of a Parliamentary Aboriginal Council, commented:

The Tasmanian Aboriginal voice could be achieved through the establishment of a Parliamentary Aboriginal Council. The Council should be established by an act of Parliament, perhaps within the Constitution itself... The purpose and role of this council is open to further development and negotiation but would need to be framed around the concept of partnership between the polity and Aboriginal people in Tasmania on matters and issues of relevance.

The Council would be made up of eminent Tasmanian Aboriginal people who can bring a range of experience and knowledge to their role. It must be representative of all Tasmanian Aboriginal people, inclusive of Tasmania's three known Aboriginal families; the descendants of Aboriginal women who resided on the Bass Strait Islands, including Flinders Island and Cape Barren Island; the descendants of Dalrymple Biggs from North West Tasmania; and the descendants of Fanny Cochrane Smith from the state's South East.⁸¹

9.5 Professor Walter argued that such a mechanism was necessary as Aboriginal people only comprise four per cent of the population and therefore it was “not possible for Aboriginal people to achieve political representation through the ballot box”. She also argued that Aboriginal people would not be in favour of voting along racial lines

⁸⁰ Submission 6, Maggie Walter, p 4

⁸¹ Submission 6, Maggie Walter, p 4

as their political views “as Tasmanians are as varied as those of the non-Aboriginal population.”⁸²

- 9.6 Professor Walter, during her appearance before the Committee discussed the concept of dedicated parliamentary seats for Aboriginal people as well as the establishment of an advisory council and the benefits of such a council:

Prof. WALTER - I love the idea of parliamentary seats but I'm also a pragmatist and it's got Buckley's, it's not going to happen. I would support it but I don't expect to see it in the recommendations. The advisory committee, however, is a much more robust idea. An advisory council can provide advice and guidance to Parliament on issues that Parliament refers it to but can also bring issues to Parliament that are important for the Aboriginal community that may not be seen within Parliament looking at various acts and other things. I would see that it would be made up of people appointed for their particular skills and abilities. It would have to be representative of the three main Aboriginal families in Tasmania to make sure it is fully representative. I'm not the identity police and I don't go there, but the three families are well documented and have been for a very long time. It would meet on a regular basis, not too often, to consider issues of importance to Aboriginal people and to Parliament's consideration.

There would be the two avenues and ways people could feed in, Parliament could feed in and vice versa. It would also be a fairly strong committee that could help make sense and be that link between the Aboriginal community - not that we're going to do all the work for you - and the Parliament so we can translate things in a way that people will understand.

Ms O'CONNOR - What are we missing out on as parliamentarians at the moment in terms of hearing the voice and understanding that story and connection to country? What do you think might be able to be achieved in a tangible sense through that council?

Prof. WALTER - What you're missing out on is huge. The level of non-knowledge - it's not ignorance, it's non-knowledge.

Ms OGILVIE - You don't know what you don't know.

Prof. WALTER - Yes. Even if you're just considering non-Aboriginal Tasmania, imagine the depth of knowledge and belonging you would feel if all this knowledge was available to you and you could be proud of it as a Tasmanian, as part of your own heritage? It doesn't mean you're Aboriginal and we have this bit and you have that bit; it belongs to all of us as Tasmanians. We're all part of this place.

Ms O'CONNOR - And what do you think we might be able to achieve as a community through this council?

⁸² Submission 6, Maggie Walter, p 4

Prof. WALTER - We would have an important Aboriginal voice that could contribute and we would completely change the narrative of Tasmania. That is important for us locally, nationally and globally. I took Ray Groom's point about not being ho-hum, so it would be a great lost opportunity if the words that came out were some of the almost weasel words that are in some of the other documents. It's all a bit mean-spirited, a bit like, 'yes, we'll give it to you but what's the least possible thing we can give to you?' To open up that narrative of Tasmania would really create a whole new space of how we are.⁸³

- 9.7 Mr Michael Mansell, Aboriginal Provisional Government, also acknowledged the problematic nature of establishing Aboriginal representation in Parliament:

*It is true that the makeup of parliaments should reflect the people they govern. There has never been an Aboriginal representative in the Tasmanian Parliament in the sense of being put there by their own people. Under the weight of numbers, it is impossible for Aborigines to elect one of their own while white Tasmanians easily elect their own, and expect to do so at every election.*⁸⁴

- 9.8 Mr Mansell, proposed that the Constitution be amended to provide for direct representation of Aboriginal persons:

*One direct way to provide for representative democracy in Tasmania is to amend section 22 of the Tasmanian Constitution. A new subsection 3A could provide for a 6th electorate made up of Aboriginal people able to elect 3 members to the Parliament.*⁸⁵

- 9.9 Mr Mansell, also proposed amending the Constitution to preserve certain powers to an Aboriginal body:

*Another possibility is to amend section 45 of the Constitution which provides for equal powers between the two House of Parliament. A new subsection could be added that preserved certain powers exclusively in an Aboriginal body. Areas could include Aboriginal heritage and culture generally, and for local planning and revenue raising to apply to lands returned to Aboriginal people.*⁸⁶

- 9.10 Mr Mansell, discussed these issues with the Committee during his appearance:

Mr MANSELL - What could happen in Tasmanian? I would love to see a formalised way of Aboriginal representation in the Parliament. There is no

⁸³ Transcript of evidence, 14 August 2015, pp 20-21

⁸⁴ Submission 7, Michael Mansell, p 3- 4

⁸⁵ Submission 7, Michael Mansell, p 3- 4

⁸⁶ Submission 7, Michael Mansell, p 3- 4

reason why this committee could not recommend an extra three seats be added to the 25 that you have now. Three Aborigines to be elected in Tasmania and to be part of –

CHAIR - By whom?

Mr MANSELL - By Aboriginal people... If there is a benefit available from the Parliament or the public there will be contest about who is entitled to have access to it. That debate should not override the key issue of how you give Aboriginal people in Tasmania formal access to empowerment. Laws and policies that directly affect Aboriginal people are made in the parliaments. It is true, there have been Aboriginal people in parliaments, but they have never been put there by Aboriginal people. They are compromised because they are put there by the political parties they represent, and then they have divided loyalty. If you are put there by Labor or Liberal or the Greens, who do you represent? Is it Aborigines or the political party that put you there? It is a compromise.

Why three? One Aboriginal person in the parliament would be such a token gesture, it would be ineffective and would be seen as diminishing the idea. Two would be better, but how could two get around the whole of the state and all of their electorate, which is a state-wide electorate, instead of having Bass, Braddon and Denison or whatever. Three, I think, could work very effectively and, given the history of Aboriginal people and the setbacks, it would be seen as a positive form of discrimination in favour of Aborigines and therefore be legally valid. There may be some issues about the legality of it, but they could be resolved; a chairman could sort that out.

The idea of Aboriginal representation in the parliament is important. Also, if Aboriginal people are to be given a land base, which we do not really have, but if different governments of different political colours and the parliament as a whole did return land to Aboriginal people in the spirit of generosity and it was within that spirit of generosity that we accepted it. There are a lot of limitations attached to it, but we accepted that was the best that parliament could do. What about an economic base?⁸⁷

- 9.11 Mr Peter Rowe whilst supportive of the establishment of an advisory council or the creation of dedicated seats, was not optimistic of these ideas being achieved:

*I can't see it being a reality and I am a political pragmatist. I would see that as being perhaps one of those things in the future. I don't see it as now. I see this as being an acknowledgement of where the state has come from and where we see ourselves going. I don't see it is incorporating a separate government or anything like that.*⁸⁸

⁸⁷ Transcript of evidence, 12 August 2015, pp 7-8

⁸⁸ Transcript of evidence, 12 August 2015, p 16

9.12 Ms Emma Lee, melythina tiakanna warrana Aboriginal Corporation, was not supportive of dedicated seats for Aboriginal people in Parliament:

The Westminster system is not of our governance modes or reflective of how we represent our status as cultural peoples, but we recognise the right of the system to administer our Constitution and laws to provide social and economic equity and to collaborate on a national and international stage.

I do not believe that quarantining parliamentary seats or electorates for First Peoples is a culturally appropriate response to recognition. The Westminster system should be free for any First Peoples to engage in as members of their own community, entering parliament within a party or as an independent. However, Westminster is not equivalent to First Peoples' governance and our cultural recognition must be acknowledged on its own terms. Our recognition in the Constitution should be precisely for this reason.⁸⁹

9.13 The Hon. Ray Groom AO, former Premier, in his appearance before the Committee, discussed his reasons for opposing dedicated seats:

Mr GROOM - *Anyone in our community, subject to certain qualifications or disqualifications, can stand for parliament and if they get support from the community they can become members of parliament and make their contribution. I'm not so keen on certain sectors having certain seats. That could result in lots of different sectors pushing for numbers of seats and so on. People can join a party or stand as an independent and win a seat. There can be informal processes and informal consultation which should occur. Ministers should meet community representatives, et cetera, and that is the best way to get the message across.*

Mr JAENSCH - *Yes. In that regard, because it is incumbent upon parliamentarians and governments to consult widely on everything and to be in touch, if there is a group of people who are afforded recognition and honouring through our Constitution Act, might engagement with those people be a different sort of obligation to broad community consultation on things if we see fit to -*

Mr GROOM - *No, I don't think so. I don't think this is selecting - if this is what you're getting to, Mr Jaensch - a group and saying they're in a special situation so they're in the Constitution Act and we're favouring them almost. I don't see it that way. I see it as simply a matter of fact that these people were the First People here with a huge great history behind them.⁹⁰*

Mr Andry Sculthorpe, Tasmanian Aboriginal Centre, commented:

⁸⁹ Transcript of evidence, 12 August 2015, pp 72-28

⁹⁰ Transcript of evidence, 14 August 2015, pp 14-15

Our thinking is that advisory bodies in general have a limited potential to really help Aboriginal people. It needs to be recognised that Aboriginal people have a right to be involved, to actually make decisions on issues that affect Aboriginal people, the big issues around culture, heritage, land and language. In my mind it's not been demonstrated that an advisory body has ever really achieved that, so the idea of having recognition through Parliament is probably something that would be a stronger model so it sits Parliament or bodies that have decision-making power within the Parliament under the Constitution. A continuation of setting up advisory bodies isn't a strong result for us.

Recently more people, especially governments, are realising that is the way to go to have direct contact with the Aboriginal communities because there is a better outcome than an advisory committee. Advisory committees just advise things. When you have direct contact with the people you are wanting to achieve things for it is more meaningful when you have better outcomes.⁹¹

Ms Sarah Maynard and Mr Andry Sculthorpe, Tasmanian Aboriginal Centre, commented:

Ms MAYNARD - *Because I don't think the current system is working, to be honest with you. If we have community representation and people in our community who have a connection with these people, I feel they would automatically get us, know us and have our interests at heart. I think the continuing of open dialogue would be great if we had Aboriginal people allocated in the Parliament.*

Mr SCULTHORPE - *I think it would be very difficult for Aboriginal people to get elected to Parliament through the public electoral process.*

Mr JAENSCH - *As Aboriginal people?*

Mr SCULTHORPE - *Yes.*

Ms O'CONNOR - *Or without a party behind them?*

Mr SCULTHORPE - *Yes, for them to get voted into Parliament would be hard so there would need to be specific Aboriginal seats so they could be voted in by their community.⁹²*

9.14 Mr Greg Lehman commented that the answer to issue of dedicated seats or a treaty could only be addressed through further consultation with Aboriginal and non-Aboriginal people:

The common aspiration of Tasmanian Aboriginal people is to have a meaningful voice in the process of government and to be able to enjoy their culture in their ancestral home.

Whether this should follow the precedent of the Treaty of Waitangi and create dedicated seats in the Tasmanian Parliament, or the formation of a body of

⁹¹ Transcript of evidence, 14 August 2015, p 42

⁹² Transcript of evidence, 14 August 2015, p 43

*Aboriginal people to advise the Parliament as has been proposed by other submissions to this Inquiry, is a question that should properly be answered through more extensive consultation with Aboriginal people in Tasmania, and with other Tasmanians who must also be part of the solution.*⁹³

- 9.15 Ms Emma Lee, melythina tiakanna warrana Aboriginal Corporation, recommended that the amendments go beyond recognition and establish “recognition powers” in the Constitution for Aboriginal people. In her submission to the Committee, Ms Lee proposed that the following sections be inserted:

*Section 6 of the Constitution gives rise to the powers of the Governor of Tasmania with regard to continuance, whereby if the Crown is dissolved, there is a continuing role for the Governor. This is the appropriate place to acknowledge First Nations peoples as having the same rights and, as an “authority with continuance”, will have similar status to the Governor of Tasmania. One insertion in this Section will establish the ceremonial nature of our status – the recognition by Parliament of how First Nations peoples are viewed in relation to the Crown.*⁹⁴

*Section 7 of the Constitution is an appropriate place to give rise to “recognition powers”, which can outline that the Governor will appoint, by an act of Parliament, a structure to give rise to continuance and recognition powers on behalf of First Nations peoples of Tasmania. This structure, such as a Governor-appointed Elders Council, will be the body that tables Parliamentary reports and matters of State importance to the Tasmanian Parliament. Therefore, our sovereignty can be addressed without affecting the fabric of the Constitution, our issues can be raised without impeding our Westminster system and our rights can be negotiated rather than set over time.*⁹⁵

- 9.16 Ms Lee commented that the establishment of an advisory council was not something should affect the process of governance:

I believe you can show leadership here and what comes out of that, because it is an iterative process. Just because we have an elders' council or recognition sitting alongside the governor does not mean that these forms and shapes will change. That is the thing. We do not want to lock things in - we want to keep the Constitution simple. We do not want to lock in something that in a hundred years' time will have our young people looking back on our decisions here and now, and saying, 'What were they thinking?'

The flexibility comes out of that. I am looking at that long-distance future from where we are sitting here and I am looking towards this parliamentary committee to provide a leadership on what they think suits our systems. We

⁹³ Submission 12, Greg Lehman, p 6-7

⁹⁴ Submission 2, Emma Lee, p 2

⁹⁵ Submission 2, Emma Lee, p 2

*can come up with all this; we love our model, but in the end we understand that we are going to rely on the goodwill of non-Indigenous people to get this through because we do not have Aboriginal people sitting in parliament. So make it a good one, is all I can say. I can guarantee you our support to road-test any model that you come up with, and feedback into it because this is about working together. It is apolitical, and it is collaborative and does not end here.*⁹⁶

- 9.17 Mr Michael Mansell, Aboriginal Provisional Government, argued that an amendment which provides a benefit, such as dedicated electoral representation, could address issues affecting Aboriginal people:

Ms O'CONNOR - *Do you think a treaty could deliver some of those tangibles that we are talking about here - economic empowerment, a degree of self-determination, parliamentary representation - or do you think that is something that sits outside this work we are doing on constitutional recognition?*

Mr MANSELL - *All these things run together. One issue affects something else. Yes, a treaty could provide that but so too could specific legislation. If you amended the Electoral Act to give three seats to Aborigines, that would suddenly deal with the lack of empowerment and they would say, 'We don't have to worry about Michael talking for us anymore'.*⁹⁷

- 9.18 Ms Sarah Maynard and Mr Andry Sculthorpe, Tasmanian Aboriginal Centre, commented:

Ms MAYNARD - *I think a treaty would be the ideal.*

Mr SCULTHORPE - *A treaty has been talked about for a long time and I think there is a strong will in Aboriginal communities right around Australia for a treaty, so that could be the mechanism if not through constitutional change.*⁹⁸

- 9.19 Reverend Jeff Gray, Tasmanian Council of Churches, expressed concern in relation to the issue of whether constitutional recognition could impact progress towards sovereignty and a treaty, which are issues his organisation supports:

Going back to other comments that were made, we would welcome further exploration of the meaning of 'treaty' and the implications of constitutional recognition on future possibility of treaty. This came up a few times - treaty and sovereignty. The church said they will continue to be actively involved in groups exploring ways of providing opportunities for education, knowledge-building and discussion on constitutional recognition. We continue to support

⁹⁶ Transcript of evidence, 12 August 2015, p 35

⁹⁷ Transcript of evidence, 12 August 2015, p 7

⁹⁸ Transcript of evidence, 14 August 2015, p 43

recognition as long as the form of recognition offered can be seen as a step towards and not a blockage to the larger issues of sovereignty and treaty. That was a common theme. We are committed to work to educate members of the church about treaty.

A comment one group made - it was my indigenous people - was that because the Constitution is the foundational legal document for all government in Tasmania the statement of recognition needs to address the foundations of our relationships between Aboriginal and other Tasmanians and, if possible, open the way for some of the foundational injustices to be addressed.⁹⁹

Committee Comment:

- 9.20 The Committee notes that the weight of evidence received does not support dedicated seats in Parliament for representatives of Tasmanian Aboriginal people or a treaty being drafted between Tasmanian Aboriginal people and the Tasmanian Government.
- 9.21 The Committee notes that proposals for a treaty and direct representation in Tasmanian Parliament has been considered by the Committee as outside the terms of reference.

⁹⁹ Transcript of evidence, 14 August 2015, p 31

10 VIEWS ON SELECTED RECOGNITION

- 10.1 The Committee heard from a number of witnesses about the possibility that including recognition of Aboriginal people in the Constitution would introduce an element of racism into the Constitution.
- 10.2 Ms Linda Luther in her submission, presented her opposition to recognition as it would add create discrimination through the insertion of race:

Everyone is equal in this democratic process and there is no mention of race in relation to voting or any other provision in the Constitution. The Constitution should not discriminate positively or negatively in relation to any group in our society.

To add any clause in relation to Aboriginal people brings race into the Constitution and this should be avoided. Racism has no place in our Constitution.¹⁰⁰

- 10.3 Mr David Houghton noted that recognition would divide Tasmanian citizens into Aboriginal and non-Aboriginal people:

The Tasmanian Constitution, at present, is completely devoid of any reference to race, ethnicity or heritage. All citizens are therefore presently treated as equal under the laws of this State. Any additions to this Constitution which recognise Aboriginal people as Tasmania's First People, regardless of good intentions, will be introducing a racist element by separating citizens of this State into Aboriginal and non-Aboriginal people. There is surely no argument that racism is totally abhorrent and has no place in Australian society. However, racism is still racism whether it is for good or bad intentions.

...It is extraordinary that, after 212 years of European settlement in Tasmania, considerable immigration by scores of nationalities, and 159 years of existence under a sound Constitution free of racism, that we should contemplate such a retrograde, divisive and dangerous step as that being proposed.

The identity of Australians and thus Tasmanians should only be based on citizenship of this country and not on race, ethnicity or heritage. Surely the time has come to bring to an end the "age of guilt" that has poisoned relations between Aboriginal and non-Aboriginal Australians, and an end, also to apologising and compensating. We should, instead, be working to secure the acknowledgement of Australians as one people living as equals under the same

¹⁰⁰ Submission 4, Linda Luther, p 1

laws in our common homeland. Such an ambition would be derailed by a Constitutional amendment which would move us in the opposite direction.¹⁰¹

10.4 Mr Houghton, when appearing before the Committee, commented:

*I maintain that the state Constitution sets out the rules by which the state is governed, and it is no more and no less than that. It makes no distinction between peoples of different race, their heritage, their ethnicity - we are all equal in the eyes of the law. That is a good thing.*¹⁰²

10.5 Mr Lindsay Dawe argued that recognising Aboriginal people:

*...could in some people's eyes make them seem separate and more deserving than other Tasmanian Australians, which could then possibly serve to alienate them from a significant portion of society and do very little to further their efforts in reconciliation and assimilation into a society that should already treat and recognises them as equal, it could also encourage some in the Aboriginal community to confidently pursue any opportunity to request the Government for other concessions.*¹⁰³

10.6 The Hon. Ray Groom AO, former Premier, believed that recognition would not insert racism into the Constitution:

*I know some people said it was racist to mention Aboriginal people in the Constitution or the Constitution Act, but around Australia, there are 30 or 35 acts of parliament where Aboriginal people are mentioned and no one has suggested it is a racist approach. I don't see this. It's simply a matter of fact that the people we are talking about, the Aboriginal people of Tasmania - their forebears - were here for thousands of years.*¹⁰⁴

10.7 Mr Peter Rowe also argued that recognition would not insert racism into the Constitution:

*I can understand people that have that view. I do not share the view at all. I see it simply as acknowledging what was an actual fact. When English settlers first came to Tasmania there were already people here. Commonwealth law has changed radically over the last 30 or 40 years and has recognised that. I do not see that as being racist. For example, the Mabo-type development - I think it is just an acknowledgement of factual history.*¹⁰⁵

¹⁰¹ Submission 5, David Houghton, p 2

¹⁰² Transcript of evidence, 12 August 2015, p 19

¹⁰³ Submission 10, Lindsay Dawe, p 1

¹⁰⁴ Transcript of evidence, 14 August 2015, pp 14-15

¹⁰⁵ Transcript of evidence, 12 August 2015, p 17

- 10.8 Professor Maggie Walter, University of Tasmania, also countered the arguments that it introduced an element of racism:

I have read some of the submissions and the usual warhorse of how it is divisive and it is racist. Those sorts of things come up. I am always reminded when those people go straight to the racism; it is a little bit like the corollary of domestic violence. If you say, 'I would like to talk about domestic violence as a problem,' people say, 'How dare you accuse me of beating my wife?' It is exactly that same leap of argument that happens there. It is not about being divisive. It is about recognition and within that, reconciliation. Reconciliation and recognition are not passive and they are not sole - one party cannot do it without the other. They have to be done in partnership. There is always a possibility that if this is not done right, Aboriginal people will say, 'Thanks, but no thanks.'¹⁰⁶

Committee Comment:

- 10.9 The Committee notes the concerns expressed in a number of submissions and by witnesses that amending the Constitution to recognise Aboriginal people would insert racism into the Constitution or establish a mechanism for Tasmanian citizens not to be treated equally. The Committee considers such notions or fears as misplaced.
- 10.10 The Committee considers that the recognition of Aboriginal people as Tasmania's First People in the Constitution is the inclusion of a matter of historical fact and not the insertion of "race" in the Constitution.
- 10.11 The Committee considers that recognition in the Tasmanian Constitution is unlikely to be a cause of discrimination in society.

¹⁰⁶ Transcript of evidence, 14 August 2015, p 19

11 CONCLUDING STATEMENT

This Committee has been tasked with inquiring into and reporting on proposals for amending the Tasmanian Constitution to recognise Aboriginal people as Tasmania's First People and any matters incidental thereto.

This Inquiry has invited the people of Tasmania to express their opinions on recognition of Aboriginal people in the Constitution, the effect on the process of reconciliation and the effect such a legislative reform would have on their lives.

The Committee acknowledges that a strong sense of injustice over past wrongs endures among many Aboriginal Tasmanians to this day.

Committee members convey their deep respect for these views and members from across parties valued the opportunity to hear community members express their perspective during the Inquiry.

The Committee has heard from a number of persons and organisations on the benefits and implications of the Constitution recognising Aboriginal people.

The Committee notes the considerable effort and range of initiatives of successive Tasmanian Governments as part of the continuing reconciliation process. The past effort has involved goodwill and cross-party support.

The Committee also acknowledges that in the year 2000, an estimated 25 000 people walked together over Hobart's Tasman Bridge in support of reconciliation.

The Committee has considered a variety of approaches whereby overseas and Australian polities have amended their constitutions to include statements of recognition of their indigenous peoples.

The Committee supports recognising Aboriginal people as Tasmania's First People in the Constitution.

The Committee considers that in order for the recognition in the Constitution to play any meaningful part in progressing reconciliation the full engagement of Tasmania's Aboriginal people is essential.

The Committee notes that the proposed wording of any amendment needs to be developed in consultation with Tasmania's Aboriginal people and the broader Tasmanian community.

The Inquiry has also provided an opportunity for the community to express their views on amending the Constitution and other issues and the Committee considers that its positive recommendations will assist the Tasmanian Government and the Tasmanian people move forward in the process of reconciliation.

This initiative for constitutional reform is another step on the journey of reconciliation and it is hoped that the goodwill and cross-party support that has been extended to date will continue.

**Parliament House
HOBART
17 November 2015**

**Guy Barnett MP
CHAIR**

APPENDIX A: SUBMISSIONS RECEIVED

1. Neville Clark – submission dated 13 June 2015
2. George Williams – submission dated 16 June 2015
3. Submission 3 - Ms Emma Lee – submission dated 1 July 2015; Submission 3 - Ms Emma Lee Appendix A – submission dated 1 July 2015
4. Linda Luther – submission dated 7 July 2015
5. David Houghton – submission dated 9 July 2015
6. Maggie Walter – submission dated 15 July 2015
7. Michael Mansell, Aboriginal Provisional Government – submission dated 16 July 2015
8. Mr Mark Brown, Australian Christian Lobby – submission dated 17 July 2015
9. Peter Rowe – submission dated 17 July 2015
10. Lindsay Dawe – submission dated 16 July 2015
11. Anonymous – submission dated 17 July 2015
12. Greg Lehman – submission dated 10 August 2015
13. Department of Premier and Cabinet – submission dated 17 August 2015
14. Ray Groom – submission dated 14 August 2015

APPENDIX B: DOCUMENTS RECEIVED

1. “Cape Barren Island: It’s Place in the Long History of Aboriginal Land Ownership”, Tasmanian Aboriginal Centre
2. “Need for Full Recognition”, the Hon. Ray Groom AO

APPENDIX C: MINUTES

STANDING COMMITTEE ON COMMUNITY DEVELOPMENT

Wednesday 3 June 2015

The Committee met in Committee Room 2, Parliament House at 2:00 p.m.

Members Present:

Mr Barnett
Ms Courtney
Mr Jaensch
Ms O'Connor
Ms Ogilvie

Minutes:

The Minutes of the meeting held on 12 February last were read and confirmed. (Mr Jaensch)

Reference from the House:

The Committee noted the resolution of the House, dated 27 May 2015, referring the following matter to the Committee:

- (1) The House refers the following matters to the Standing Committee on Community Development to inquire into and report upon:—
 - (a) proposals for amending the Tasmanian constitution to recognise Aboriginal people as Tasmania's first people; and
 - (b) any matters incidental thereto.
- (2) The Committee shall report by Thursday, 19 November 2015.

Proxy:

The Committee noted the email from Ms White to the Chair, dated 30 April 2015 advising that Ms Ogilvie will be her proxy for the duration of the inquiry.

Advertisement:

The draft advertisement having been previously circulated by the Secretary was taken into consideration by the Committee.

The Committee deliberated.

Advertisement, agreed to with such advertisements to be placed in *The Mercury*, *The Examiner* and *The Advocate* on Wednesday, 10 June next, and placed in the Flinders Island News, the King Island Courier and a request made to place the advertisement on the Tasmanian Aboriginal Centre's website.

Media Release:

The draft media release having been previously circulated by the Secretary was taken into consideration by the Committee.

The Committee deliberated.

An amendment was proposed (Mr *Jaensch*) to insert at the end of the first paragraph:
“as Tasmania's first people”.

Which amendment was agreed to.

An amendment was proposed (Ms *O'Connor*) to delete the word “constitutional” in paragraph 4 and insert at the end of the paragraph “in the Tasmanian Constitution”.

Which amendment was agreed to.

An amendment was proposed (Mr *Barnett*) to include the terms of reference for the inquiry at the end of the media release.

Which amendment was agreed to.

Media release, as amended, agreed to.

**Invitations for
submissions to the
Committee:**

The Committee considered the proposed list of organisations and individuals to be directly invited to provide submissions to the Committee.

Ordered, That the following organisations and individuals be invited to make submissions:

1. Indigenous Tasmanians Aboriginal Corporation;
2. Circular Head Aboriginal Corporation;
3. Riawunna, Centre for Aboriginal Education;
4. Tasmanian Aboriginal Historical Services;

5. Tasmanian Aboriginal Centre Inc.;
6. Flinders Island Aboriginal Association;
7. Cape Barren Island Aboriginal Association Inc.;
8. Womens Karadi Aboriginal Corporation;
9. Aboriginal Legal Service;
10. Aboriginal Land Council of Tasmania;
11. Aboriginal Elders Council of Tasmania;
12. South East Tasmanian Aboriginal Corporation Cygnet;
13. Deloraine Aboriginal Cultural Association;
14. Friends of Eddystone Point;
15. Aboriginal Heritage Council;
16. Department of Premier and Cabinet;
17. The Law Society of Tasmania;
18. University of Tasmania Faculty of Law;
19. Professor Henry Reynolds;
20. Tasmanian Chamber of Commerce and Industry (TCCI);
21. Professor Maggie Walter;
22. Rodney Dillon;
23. Emma Lee;
24. Michael Stokes.

Public Hearings:

Resolved, That public hearings be held during the weeks commencing 3 August and 10 August 2015. (Mr Jaensch).

Media Strategy:

Resolved, That:

- (1) The Chair be the spokesperson in relation to the operations of the Committee.
- (2) That unless otherwise ordered, press statements on behalf of the Committee be made only by the Chair after approval in principle by the Committee or after consultation with committee members.
- (3) That the Chair issue a press statement in relation to hearings being held for the inquiry. (Mr O'Connor)

At 2.26 p.m. the meeting was adjourned until 9.30 am Tuesday 28 July 2015.

STANDING COMMITTEE ON COMMUNITY DEVELOPMENT

Tuesday 28 July 2015

The Committee met in Committee Room 2, Parliament House at 8:30 a.m.

Members Present:

Mr Barnett
Ms Courtney
Mr Jaensch
Ms Ogilvie

Apologies:

An Apology was received from Ms O'Connor

Submissions:

The Committee discussed the publication of submissions received.

The Committee deliberated.

Resolved:

i) That the following submissions be received and published:

1. Mr Neville Clark OAM (Submission No. 1)
2. Professor George Williams AO (Submission No. 2)
3. Ms Emma Lee, Melythina tiakanna warrana Aboriginal Corporation (Submission No. 3)
 - a. Ms Emma Lee, 'The Right Constitutional Change For Us' (Submission No. 3a)
4. Ms Linda Luther (Submission No. 4)
5. Mr David Houghton (Submission No. 5)
6. Professor Maggie Walter (Submission No. 6)
7. Mr Michael Mansell, Aboriginal Provisional Government (Submission No. 7)
8. Mr Mark Brown, Australian Christian Lobby (Submission No. 8)
9. Mr Peter Rowe (Submission No. 9)
10. Ms Lindsay Dawe (Submission No. 10)

ii) That the Committee not accept the submission by Mr John Powell as it does not address the Terms of Reference, that Mr Powell's submission be noted as correspondence.

iii) That Submission No. 11 be received and published on an anonymous basis. (Ms Ogilvie)

Request for extension:

The Committee discussed the request from the Department of Premier and Cabinet for a two week extension of the deadline to allow them to provide a submission to the Inquiry.

Resolved, That the Department of Premier and Cabinet be permitted an extension of time (until 31 July 2015) to make a submission to the Inquiry. (Ms Ogilvie)

Future Hearings:

Resolved, That the Committee will hold a public hearing in Launceston on Wednesday 12 August 2015 and in Hobart on Friday 14 August 2015. (Ms Ogilvie)

Invitations to witnesses:

The Committee discussed potential persons and organisations to appear as witnesses at the public hearings.

Resolved, That the following organisations and individuals be invited to be witnesses at the public hearings:

1. Aboriginal Elders Council of Tasmania
2. Aboriginal Legal Service
3. Circular Head Aboriginal Corporation
4. David Houghton
5. Emma Lee
6. Flinders Island Aboriginal Corporation
7. Indigenous Tasmanians Aboriginal Corporation
8. Law Society of Tasmania
9. Mark Brown, Australian Christian Lobby
10. Michael Buck
11. Michael Mansell, Aboriginal Provisional Government
12. Mr Michael Stokes
13. Mr Peter Rowe
14. Professor Father Frank Brennan
15. Professor George Williams
16. Professor Henry Reynolds
17. Professor Maggie Walter
18. Ray Groom AO
19. Sir Guy Green

20. South East Tasmanian Aboriginal Corporation
21. Tasmanian Aboriginal Centre
22. Tasmanian Chamber of Commerce and Industry
23. Tasmanian Council of Churches
24. The Hon. William Cox AO

(Ms Courtney)

**Publication of
hearings schedule
and witness list:**

Resolved, That Committee will publish the hearings schedule and witness list once finalised. (Ms Ogilvie)

**Publication of press
release with hearing
details:**

Resolved, That Committee will publish a press release with hearing details once finalised. (Ms Ogilvie)

At 9.56 a.m. the meeting was adjourned until 10.30 a.m. Wednesday, 12 August 2015.

STANDING COMMITTEE ON COMMUNITY DEVELOPMENT

Wednesday 12 August 2015

The Committee met at Henty House, Launceston, at 10:15 a.m.

Members Present:

Mr Barnett
Ms Courtney
Mr Jaensch
Ms Ogilvie
Ms O'Connor

Minutes

The minutes of the meeting held on 3 June and 28 July last were read and confirmed. (Mr Jaensch)

**Request for
extension**

The Committee discussed the request from the Department of Premier and Cabinet for an additional extension of the deadline to allow them to provide a submission to the Inquiry.

Resolved, That the Department of Premier and Cabinet be permitted an extension of time to make a submission to

the Inquiry. (Mr Jaensch)

Media

Resolved, That the media be permitted to film and record proceedings of the public hearings held by the Committee. (Ms Courtney)

Other Matters

The Committee noted the apology from Professor Father Frank Brennan.

Resolved, the Committee would invite Professor Father Frank Brennan to appear at the public hearing on 14 August 2015. (Mr Jaensch)

Witness

Mr Michael Mansell, Aboriginal Provisional Government, was called. The witness took the Statutory Declaration and was examined by the Committee in public.

Mr Mansell tabled a document entitled “Cape Barren Island: It’s Place in the Long History of Aboriginal Land Ownership”.

The witness withdrew.

Witness

Mr Peter Rowe was called. The witness took the Statutory Declaration and was examined by the Committee in public.

Mr Rowe tabled a document entitled “Preamble”.

The witness withdrew.

Witness

Mr David Houghton was called. The witness took the Statutory Declaration and was examined by the Committee in public.

The witness withdrew.

Witness

Ms Emma Lee, Melythina Tiakanna Warrana Aboriginal Corporation, was called. The witness took the Statutory Declaration and was examined by the Committee in public.

The witness withdrew.

Witness

Mr Mark Brown, Australian Christian Lobby, was called. The witness took the Statutory Declaration and was

examined by the Committee in public.

The witness withdrew.

At 1.43 p.m. the meeting was adjourned until 10.20 a.m. Friday, 14 August 2015.

STANDING COMMITTEE ON COMMUNITY DEVELOPMENT

Friday 14 August 2015

The Committee met at Committee Room 2, Parliament House, at 10:20 a.m.

Members Present:

Mr Barnett
Ms Courtney
Mr Jaensch
Ms Ogilvie

Apology

An apology was received from Ms O'Connor

Submission

Resolved, That the submission by Mr Greg Lehman be received and published. (Ms Ogilvie)

Witness

Mr Rodney Dillon and Mr Lee Prouse, Weetapoonna Aboriginal Corporation, were called. The witnesses took the Statutory Declaration and were examined by the Committee in public.

The witnesses withdrew.

Witness

The Hon. Ray Groom AO was called. The witness took the Statutory Declaration and was examined by the Committee in public.

Mr Rowe tabled a document entitled "Recognising Tasmanian Aboriginal People in the Constitution Act", which was received by the Committee as a submission.

Mr Rowe tabled a document entitled "Need for Full Recognition", which was received by the Committee as a submission.

The witness withdrew.

Witness Professor Maggie Walter was called. The witness took the Statutory Declaration and was examined by the Committee in public.

The witness withdrew.

Witness Professor Henry Reynolds was called. The witness took the Statutory Declaration and was examined by the Committee in public.

The witness withdrew.

Witness Reverend Jeff Gray, Tasmanian Council of Churches, was called. The witness took the Statutory Declaration and was examined by the Committee in public.

The witness withdrew.

Witness Professor Father Frank Brennan SJ AO, Australian Catholic University, was called via telephone. The witness took the Statutory Declaration and was examined by the Committee in public.

The witness withdrew.

Witness Ms Sara Maynard and Mr Andry Sculthorpe, Tasmanian Aboriginal Centre, were called. The witnesses took the Statutory Declaration and were examined by the Committee in public.

The witnesses withdrew.

At 2.36 p.m. the meeting was adjourned until a date to be fixed.

STANDING COMMITTEE ON COMMUNITY DEVELOPMENT

Wednesday 14 October 2015

The Committee met at Committee Room 2, Parliament House, at 2:15 p.m.

Members Present:

Mr Barnett
Ms Courtney
Mr Jaensch

Ms Ogilvie

Apology

An apology was received from Ms O'Connor

Minutes

The Minutes of the meeting held on 12 August and 14 August last were read and confirmed. (Ms Ogilvie)

Submissions

Resolved, That the following submissions be received and published:

- Submission No. 13 - Department of Premier and Cabinet
- Submission No. 14 – Mr Ray Groom AO

(Ms Ogilvie)

Issues Paper

The Committee noted that the Issues Paper had been circulated.

Meeting date

Resolved, That the Committee would meet at 8:30am on 30 October next to discuss the draft report.

At 2.21 p.m. the meeting was adjourned until 30 October at 8:30am.

STANDING COMMITTEE ON COMMUNITY DEVELOPMENT

Friday 30 October 2015

The Committee met at Committee Room 2, Parliament House, at 8:30 a.m.

Members Present:

Mr Barnett

Ms Courtney (By telephone)

Mr Jaensch

Ms O'Connor

Ms Ogilvie

Minutes

The Minutes of the meeting held on 20 October were read and confirmed. (Ms Ogilvie)

Chair's draft report:

The Committee considered the Chair's draft report.

Chapter 1 title was read and agreed to.

Chapter 1 was read.

Paragraphs 1.1 to 1.4 was read and agreed to.

Chapter 2 title was read.

Ordered, that the chapter be titled: “Findings and Recommendations” (Mr Jaensch)

Paragraph 2.1 was read.

Ordered, that “The Committee notes” be inserted at the start of the sentence. (Ms Courtney)

Ordered, that the third and fourth sentences be deleted. (Ms Courtney)

Paragraph 2.1, as amended, agreed to.

Paragraph 2.2 was read.

Ordered, that “The Committee notes” be inserted at the start of the sentence. (Ms Courtney)

Paragraph 2.2, as amended, agreed to.

Ordered, that a paragraph be inserted after 2.2, that states:

“The Committee notes that substantial land return began with Premier Groom, and continued with Premier Bacon and Premier Lennon. (Ms O’Connor)

Paragraph 2.3 was read and agreed to.

Paragraph 2.4, was read.

Ordered, “Tasmanian” be inserted prior “Government”. (Ms Courtney)

Paragraph 2.4, as amended, agreed to.

Paragraph 2.5 was read.

Ordered, that the word “meaningful” be inserted before “reconciliation”. (Ms O’Connor)

Paragraph 2.5, as amended, agreed to.

Paragraph 2.6 was read.

Ordered, that “the Tasmanian Aboriginal community” be amended to “Tasmanian Aboriginal people” (Ms O’Connor)

Ordered, that the report be amended so that all references of “the Tasmanian Aboriginal community” be amended to “Tasmanian Aboriginal people”. (Ms Courtney)

Paragraph 2.7 was read and agreed to.

Paragraph 2.8 was read.

Ordered, that “Tasmanian” be inserted before “Parliament” (Ms O’Connor)

Ordered, from the second sentence onwards become a new paragraph. (Mr Jaensch)

Paragraph 2.9 was read.

Ordered, that “Tasmania’s peak body for the Aboriginal community” be replaced with “the State’s peak body for Aboriginal Tasmanians”. (Ms O’Connor)

Paragraph 2.10 was read.

Ordered, that Paragraph 2.10 be replaced with: “The Committee considers that meaningful legislative reform is more likely with the full engagement of Tasmanian Aboriginal people.” (Mr Jaensch)

Paragraph 2.11 was read.

Ordered, that Paragraph 2.11 be deleted. (Ms Ogilvie)

Paragraph 2.12 was read.

Ordered, that “presented” be inserted before “in” and that “people” replaces “population”. (Mr Jaensch)

Paragraph 2.13 was read.

Ordered, that the word “Firstly” be deleted. (Ms Courtney)

Paragraph 2.14 was read.

Ordered, that “tightly” be replaced with “and carefully”.
(Mr Jaensch)

Ordered, “first people” be replaced with “First People”.
(Ms Ogilvie)

Ordered, that the report be amended so that all references of “first people” be replaced with “First People”. (Ms Barnett)

Paragraph 2.15 was read.

Ordered, that “who have made and continue to make a unique and lasting contribution to this State or similar wording is another option” be replaced with “and their unique and lasting contribution to this State or words to similar effect.” (Mr Jaensch)

Paragraph 2.16 was read.

Ordered, that words in Paragraph 2.16 be replaced with “The Committee notes that the proposed wording of any amendment needs to be developed in consultation with Tasmania’s Aboriginal people and the broader Tasmanian community.” (Ms Courtney)

Paragraph 2.17 was read.

Ordered, that “however notes” be replaced with “considers”, “tightly” be replaced with “and carefully” and “is” be deleted. (Ms Courtney)

Paragraph 2.18 was read.

Ordered, the before 2.18 a new paragraph be inserted which states: “The Committee notes the evidence before the Committee by former Premiers and lawyers that the inclusion of a non-justiciability clause will not give rise to any rights to Aboriginal people nor will it confer obligations on the Tasmanian Government or the Tasmanian public.”

Paragraphs 2.19 to 2.20 were read and agreed to.

Paragraph 2.21 was read.

Ordered, that “a bipartisan or” be deleted. (Ms O’Connor)

Recommendation 1 was read and agreed to.

Recommendation 2 was read.

Ordered, that “be counter-productive” be replaced with “mis-represent”. (Ms Ogilvie)

Recommendation 2, as amended, agreed to.

Recommendation 3 was read and agreed to.

Ms O’Connor withdrew from the meeting.

The Committee adjourned at 9:56 until 10:23am.

Chapter 3 title was read and agreed to.

Paragraphs 3.1 to 3.9 were read and agreed to.

Chapter 4 title was read and agreed to.

Paragraphs 4.1 to 4.9 were read and agreed to.

Chapter 5 title was read and agreed to.

Paragraphs 5.1 to 5.6 were read and agreed.

Ordered, that new paragraphs be inserted after 5.6 under a subheading “Previous Tasmanian Government Support” that states:

“5.7 The Committee notes the considerable effort and range of initiatives of successive Tasmanian Governments as part of the continuing reconciliation process. The past effort has involved goodwill and cross-party support.

5.8 This initiative for constitutional reform is another step on the journey of reconciliation and it is hoped that the goodwill and cross-party support that has been extended to date will continue.”

Paragraph 5.7 was read.

Ordered that, “the vast majority of evidence received through submissions and at the public hearings” be replaced with “the vast majority of submissions made to Committee.” (Mr *Jaensch*)

Paragraphs 5.8 to 5.10 were read and agreed to.

Subchapter title “Acknowledging Tasmania’s history” was read.

Ordered, that the subchapter title be deleted.

Paragraphs 5.11 to 5.41 were read and agreed to.

Subchapter heading “Financial benefits to be part of the amendment” was read.

Ordered, the heading be amended to “Benefits to be part of the amendment”.

Paragraphs 5.42 to 5.58 were read and agreed to.

Chapter 6 heading was read.

Ordered, that “Wordings” be replaced with “Wording”

Paragraphs 6.1 to 6.11 were read and agreed to.

Paragraph 6.12 was read.

Ordered, that post-nominal of persons cited in report be amended to ensure consistency throughout the report.

Paragraphs 6.13 to 6.13 were read and agreed to.

Paragraph 6.14 was read.

Ordered, that “inhibit the future Governments and Courts ability to exercise its will” be replaced by “inhibit future governments’ and courts’ abilities to exercise their will”.
(Mr *Jaensch*)

Paragraph 6.15 was read and agreed to.

Paragraph 6.16 was read.

Ordered that, “adapt the wording of the preambles used by other Australian states.” be replaced with “adopt the wording utilised in other Australian state constitutions.”
(Mr Courtney)

Ordered, that references to the submission by the Department of Premier and Cabinet be cited as by the Department and not by Mr Greg Johannes, and that the report be amended as such.

Paragraphs 6.17 to 6.23 were read and agreed to.

Chapter 7 title was read and agreed to.

Paragraphs 7.1 to 7.4 were read and agreed to.

Paragraph 7.5 was read.

Ordered, that “ courts” be replaced by “courts” and “ability to” is entered after “officers”.

Paragraph 7.5

Paragraphs 7.6 to 7.8 were read and agreed to.

Paragraph 7.9 was read.

Ordered, that “did note” be replaced with “noted” and “that argued” be deleted. (Ms Courtney)

Paragraph 7.10 was read and agreed to.

Paragraph 7.11 was read.

Ordered, that “courts exercise” be replaced “courts’ ability to”. (Mr Barnett)

Paragraph 7.12 was read and agreed to.

Paragraph 7.13 was read.

Ordered, that “such” be deleted and “of rights conferred on to Aboriginal people or obligations on the Tasmanian Government or public” be inserted after “concerns”. (Ms

Courtney).

Paragraph 7.14 was read and agreed to.

Paragraph 7.15 was read.

Ordered, that “other” be inserted after “amendments to the”. (Mr Jaensch).

Paragraphs 7.16 to 7.18 were read and agreed to.

Paragraph 7.19 was read.

Ordered, that “Former” be replaced with “former”, that “noted” be deleted, and “Government” be replaced by “Tasmanian Government and”.

Paragraph 7.20 was read and agreed to.

Chapter 8 title was read and agreed to.

Paragraph 8.1 was read.

Ordered, that “The Committee has considered the importance of such change being successful in playing a meaningful part in the process of reconciliation. The Committee considers that in order for this to be achieved it is imperative that further consultation is had with the Aboriginal community prior to an amendment being drafted for consideration by the Parliament” be replaced with “The Committee has considered the importance of legislative change being successful in playing a meaningful part in the process of reconciliation.” (Mr Jaensch)

Paragraph 8.2 was read.

Ordered, that “The Committee notes” be inserted prior to “submitters”.

Paragraphs 8.3 to 8.8 were read and agreed to.

Paragraph 8.9 was read.

Ordered, that “The Committee welcomed representatives of the Tasmanian Aboriginal Centre’s appearance as

witnesses before the committee at a public hearing, however, the Committee notes with disappointment that Tasmania's peak body for the Aboriginal community did not make a written submission to this inquiry." Be replaced with "The Committee welcomed representatives of the Tasmanian Aboriginal Centre appearance as witnesses before the Committee at a public hearing, however, the Committee was disappointed that the State's peak body for Aboriginal Tasmanians did not make a written submission to this inquiry." (Ms Courtney)

Paragraph 8.10 was read and agreed to.

Paragraph 8.11 was read.

Ordered, that "the" prior to "strong" be deleted. (Ms Courtney)

Paragraph 8.12 was read and agreed to.

Chapter 9 title was read and agreed to.

Paragraphs 9.1 to 9.3 were read and agreed to.

Paragraph 9.4 was read.

Ordered, that "proposed for" be replaced with "who proposed". (Mr Jaensch)

Paragraph 9.5 was read.

Ordered, that "on" be replaced with "only". (Mr Jaensch)

Paragraph 9.5, as amended, was agreed to.

Paragraphs 9.6 to 9.19 were read and agreed to.

Paragraph 9.20 was read.

Ordered, that "The Committee notes the weight of evidence opposes the granting of seats in Parliament to the representatives of the Tasmanian Aboriginal community and secondly opposed a treaty being drafted and signed between the Tasmanian Aboriginal community and Tasmanian Government" be replaced with "The

Committee notes that the weight of evidence received does not support dedicated seats in Parliament for representatives of Tasmanian Aboriginal people or a treaty being drafted between Tasmanian Aboriginal people and the Tasmanian Government”. (Mr *Jaensch*)

Paragraph 9.21 was read.

Ordered, that “The Committee recognises that a proposal for a treaty has serious drawbacks and in the Committee view such a proposal is unwarranted and counterproductive” be deleted, was agreed to.

Paragraph 9.22 was read.

Ordered, that “The Committee also notes furthermore that such a proposal is outside the terms of reference.” be replaced with “The Committee notes that proposals for a treaty and direct representation in Tasmanian Parliament has been considered by the Committee as outside the terms of reference.” (Mr *Jaensch*)

Chapter 10 title was read.

Ordered, that “Opposition to Recognition” be replaced with “Views on Selected Recognition”. (Ms *Courtney*)

Paragraph 10.1 was read.

Ordered, that “as the original inhabitants would insert” be replaced with “in the Constitution would introduce”. (Mr *Jaensch*)

Paragraphs 10.2 to 10.8 were read and agreed to.

Paragraph 10.9 was read.

Ordered, that “by” be inserted after “submission and”. (Mr *Jaensch*)

Paragraph 10.10 was read.

Ordered, that “The Committee considers the recognition of Aboriginal people in the Constitution as the inclusion of a historical fact that Aboriginal people inhabited the land

which now comprises Tasmania prior to establishment as a colony.” be replaced with “The Committee considers that the recognition of Aboriginal people as Tasmania’s First People in the Constitution is the inclusion of a matter of historical fact and not the insertion of “race” in the Constitution.”. (Mr *Jaensch*)

Paragraph 10.10, as amended, was agreed to.

Paragraph 10.11 was read.

Ordered, that “Further, the Committee does not consider that an ‘acknowledgement’ in the Tasmanian Constitution is unlikely to be a cause of discrimination in society.” be replaced with “The Committee considers that recognition in the Tasmanian Constitution is unlikely to be a cause of discrimination in society.” (Ms *Courtney*)

Chapter 11 title was read.

Ordered, that “Committee Conclusions” be replaced with “Concluding Statements”. (Ms *Courtney*)

Ordered, that paragraph line numbering be removed from Chapter 11 was agreed to.

Paragraph 11.2 was read.

Ordered, that “This Inquiry has provided the people of Tasmania to express their opinions on recognising Aboriginal people in the Constitution and the process of reconciliation and the effect such a legislative reform would have on their lives.” be replaced with “This Inquiry has invited the people of Tasmania to express their opinions on recognition of Aboriginal people in the Constitution, the effect on the process of reconciliation and the effect such a legislative reform would have on their lives.” (Mr *Jaensch*)

Paragraph 11.3 was read.

Ordered, that:

“The Committee notes that the Constitution of every Australian state except for Tasmania recognises indigenous people as the first inhabitants of the land” be

replaced with “The Committee has heard from a number of persons and organisations on the benefits and implications of the Constitution recognising Aboriginal people.

The Committee notes the considerable effort and range of initiatives of successive Tasmanian Governments as part of the continuing reconciliation process. The past effort has involved goodwill and cross-party support.” (Mr Barnett)

Paragraph 11.4 was read and agreed to.

Paragraph 11.5 was read and agreed to.

Paragraph 11.6 was read.

Ordered, that paragraph 11.6 be deleted.

Paragraph 11.7 was read.

Ordered, that paragraph 11.7 be deleted.

Paragraph 11.8 was read.

Ordered, that paragraph 11.8 be deleted.

Paragraph 11.9 was read.

Ordered, that paragraph 11.9 be deleted.

Paragraph 11.10 was read.

Ordered, that paragraph 11.10 be deleted.

Paragraph 11.11 was read.

Ordered, that paragraph 11.11 be deleted.

Paragraph 11.12 was read.

Ordered, that paragraph 11.12 be deleted.

Paragraph 11.13 was read and agreed to.

Ordered, that “The Committee notes that the proposed wording of any amendment needs to be developed in consultation with Tasmania’s Aboriginal people and the

broader Tasmanian community.” be inserted prior to paragraph 11.14.

Paragraph 11.14 was read.

Ordered, that “with Aboriginal people” be removed after “reconciliation”. (Mr Jaensch)

Ordered, that “This initiative for constitutional reform is another step on the journey of reconciliation and it is hoped that the goodwill and cross-party support that has been extended to date will continue.” be inserted after paragraph 11.4.

Resolved, that the Committee adopt the report as the final draft report and once it is amended by the Committee Secretary that it be circulated to Committee Members prior to the meeting to be held on 6 November 2015 at which the Committee will finalise the report. (Mr Jaensch)

At 12.55 p.m. the meeting was adjourned until 6 November at 9:00am.

STANDING COMMITTEE ON COMMUNITY DEVELOPMENT

Friday 6 November 2015

The Committee met at Committee Room 2, Parliament House, at 9:03 a.m.

Members Present:

Mr Barnett (by telephone)
Ms Courtney (by telephone)
Mr Jaensch (by telephone)
Ms O'Connor
Ms Ogilvie

Draft report:

The Committee considered the draft report.

Ms O'Connor suggested that the following be inserted after Paragraph 11.2:

- (1) The Committee acknowledges that a strong sense of injustice over past wrongs endures among Aboriginal Tasmanians to this day.

- (2) Committee members wish to express their deep respect for these views and members from across all parties valued the opportunity to hear community members express their perspective during the Inquiry.
- (3) The Committee acknowledges that while insufficient reparation has been made for past injustices, Tasmania was the first Australian jurisdiction to formally apologise to Aboriginal Tasmanians for the forced removal of Aboriginal children from their homes and the first State to legislate to provide compensation to these children and their families.
- (4) The Committee also recognises the work of previous Tasmanian Premiers, including Premier Ray Groom whose government introduced the Aboriginal Lands Act 1995, returning putalina/Oyster Cove and piyura kitina/ Risdon Cove to Aboriginal Tasmanians; Premier Jim Bacon returned wybalena on Flinders Island to Aboriginal ownership; and Premier Paul Lennon legislated to return most of truwana/Cape Barren Island.
- (5) The Committee notes that, to date, approximately 55 000 hectares of land have been returned to Tasmania's First People and that this falls short of the Tasmania Together target of 90 000 hectares of lands to be returned by 2010.
- (6) The Committee also acknowledges that in the year 2000, an estimated 25 000 people walked together over Hobart's Tasman Bridge in support of reconciliation.

Discussion ensued.

Ordered, that (1) and (2) be amended as follows:

“

- (1) The Committee acknowledges that a strong sense of injustice over past wrongs endures among many Aboriginal Tasmanians to this day.

- (2) Committee members wish to express their deep

respect for these views and members from across all parties valued the opportunity to hear community members express their perspective during the Inquiry.”

Ordered, that (1) and (2) as amended be inserted after Paragraph 11.2, was agreed to.

In Chapter 11 insert:

(3) “Committee members convey their deep respect for these views and members from across parties valued the opportunity to hear community members express their perspective during the Inquiry.”

Question put, That the amendment be agreed to:

The Committee divided

Ayes	Noes
<i>Ms O'Connor</i>	<i>Mr Barnett</i>
	<i>Ms Courtney</i>
	<i>Mr Jaensch</i>
	<i>Ms Ogilvie</i>

It was resolved in the negative.

The Committee noted, that the Committee agreed with the sentiment contained in the proposed amendment, however did not believe the paragraph was suitable for the report.

In Chapter 11 insert:

(4) “The Committee also recognises the work of previous Tasmanian Premiers, including Premier Ray Groom whose government introduced the Aboriginal Lands Act 1995, returning putalina/Oyster Cove and piyura kitina/ Risdon Cove to Aboriginal Tasmanians; Premier Jim Bacon returned wybalena on Flinders Island to Aboriginal ownership; and Premier Paul Lennon legislated to return most of truwana/Cape Barren Island.”

Question put, That the amendment be agreed to:

The Committee divided

Ayes	Noes
Ms O'Connor	Mr Barnett
	Ms Courtney
	Mr Jaensch
	Ms Ogilvie

It was resolved in the negative.

The Committee noted, that the Committee agreed with the sentiment contained in the proposed amendment, however did not believe the paragraph was suitable for the report.

In Chapter 11 insert:

(5) "The Committee notes that, to date, approximately 55 000 hectares of land have been returned to Tasmania's First People and that this falls short of the Tasmania Together target of 90 000 hectares of lands to be returned by 2010."

Question put, That the amendment be agreed to:

The Committee divided

Ayes	Noes
Ms O'Connor	Mr Barnett
	Ms Courtney
	Mr Jaensch
	Ms Ogilvie

It was resolved in the negative.

The Committee noted, that the Committee agreed with the sentiment contained in the proposed amendment, however did not believe the paragraph was suitable for the report.

In Chapter 11 insert:

(6) “The Committee also acknowledges that in the year 2000, an estimated 25 000 people walked together over Hobart's Tasman Bridge in support of reconciliation.”

Amendment agreed to.

Resolved, That the Committee Secretary make corresponding amendments to the body of the report in accordance with the amendments agreed to by the Committee. (Ms *Ogilvie*)

Resolved, That the draft report, as amended, be adopted as the report of the Committee. (Ms *Ogilvie*)

Resolved, That a list of submissions received and published; a list of documents received and published; and the minutes of the Committee be appended to the report. (Mr *Jaensch*)

At 9:56 a.m. the meeting was adjourned until a date to be decided.