



2013

**PARLIAMENT OF TASMANIA**

LEGISLATIVE COUNCIL  
GOVERNMENT ADMINISTRATION COMMITTEE 'B'

**REPORT ON THE ABORIGINAL LANDS  
AMENDMENT BILL (No.27)**

**Members of the Committee:**

Hon Kerry Finch MLC (Inquiry Chair)

Hon Tony Mulder MLC (Deputy Inquiry Chair)

Hon Ruth Forrest MLC

Hon Rob Valentine MLC

Hon Ivan Dean MLC

Hon Tania Rattray MLC

Hon Adriana Taylor MLC

**The Committee wishes to acknowledge and pay respect to the Tasmanian Aboriginal community as the traditional and original owners and continuing custodians of this land.**

## Contents

INTRODUCTION.....	5
FINDINGS .....	8
General Findings in relation to the Bill .....	8
Eddystone Point Lighthouse Historic Site .....	8
Rebecca Creek .....	9
Broader Issues identified from the Inquiry external to the Bill .....	10
THE ABORIGINAL LAND ACT 1995 AND THE ABORIGINAL LAND AMENDMENT BILL 2012.....	11
The Aboriginal Land Act 1995.....	11
<i>The Aboriginal Land Council of Tasmania</i> .....	11
<i>The Functions and Responsibilities of the Tasmanian Electoral Commissioner</i> .....	14
The Aboriginal Land Amendment Bill 2012.....	19
EDDYSTONE POINT LIGHTHOUSE HISTORIC SITE (LARAPUNA) .....	20
Background to the Site.....	20
Lease Arrangements with the Australian Maritime Safety Authority .....	28
Views on the return of Eddystone Point Lighthouse Historic Site .....	30
<i>Support for the return of the Site</i> .....	30
<i>Concerns with the return of the Site</i> .....	34
REBECCA CREEK.....	38
Views on the return of Rebecca Creek .....	43
<i>Support for the return of the Site</i> .....	43
<i>Concerns with the return of the Site</i> .....	45
LONG-TERM CONSIDERATIONS WITH THE PROCESS OF RECONCILIATION.....	53
Reconciliation within the broader Tasmanian community .....	53
Reconciliation within the broader Tasmanian Aboriginal Community.....	59
APPENDIX A – PUBLIC SUBMISSIONS .....	68
APPENDIX B – PUBLIC HEARINGS .....	69

APPENDIX C – CORRESPONDENCE MINISTER FOR AB12ORIGINAL AFFAIRS.....71

APPENDIX D – CORRESPONDENCE FROM THE AUSTRALIAN MARITIME SAFETY  
AUTHORITY .....73

APPENDIX E – CORRESPONDENCE TO AND FROM BREAK O'DAY COUNCIL .....77

APPENDIX F – MINUTES OF MEETINGS.....82

APPENDIX G – DISSENTING STATEMENTS..... 128



## **INTRODUCTION**

1. On Tuesday 22 November 2012, the Legislative Council resolved that the Aboriginal Lands Bill (No.27) (the Bill) be referred to the Legislative Council Government Administration Committee 'B' for further consideration and report.
2. For the duration of the inquiry, Hon Rob Valentine MLC was a substitute Member for Hon Mike Gaffney MLC and Hon Ruth Forrest MLC was a substitute Member for Hon Greg Hall MLC.
3. At its first meeting, Hon Kerry Finch MLC was elected Chair of the inquiry and Hon Tony Mulder MLC was elected Deputy Chair.
4. There were 3 parts to the inquiry process. Firstly, the Committee called for public submissions. In total, 15 submissions were received – **Appendix A**.
5. The Committee allowed a period of 3 months for submissions to be received in order to allow sufficient time for community groups to consult on the Bill. The Committee also wrote directly to a number of identified stakeholders inviting their submissions.
6. The Committee then conducted public hearings in Hobart, St Helens and Smithton during August and September 2013 and received evidence from a diverse range of stakeholders – **Appendix B**.
7. The Committee would like to thank the interested parties who made written submissions and the witnesses who presented evidence at the public hearings.
8. There were a limited number of objections received in relation to the principle of the Bill.
9. As part of the regional visits to St Helens and Smithton, the Committee also undertook site visits of the parcels of land that are the subject of the Bill - Rebecca Creek (in North West Tasmania near Smithton) and Eddystone Point Lighthouse Historic Site (Irapuna) near St Helens.
10. The Committee would like to thank the Aboriginal Land Council of Tasmania (ALCT) and the Minister for Aboriginal Affairs for facilitating the site visits to the parcels of land that are the subject of the Bill. The Committee found the visits to be beneficial as part of its deliberations on the Bill.
11. The Eddystone Point site (Irapuna – intentionally spelt with lowercase) is referred to in this report as the 'Eddystone Point Lighthouse Historic Site' because it is the name chosen by the Government. This should not be read as

the Committee not acknowledging the dual naming of the site as Irapuna. The Committee wishes to acknowledge that this has been a difficult inquiry to conduct in balancing the rights of people from diverse communities and backgrounds to be given an opportunity to make their support or concerns in relation to the Bill known, whilst respecting the rights and views of other communities and individuals.

12. The Committee believes that witnesses have genuinely presented their opinions in good faith, whilst acknowledging that not all communities and individuals agree with some of the views expressed.
13. The Committee wishes to thank the witnesses and interested parties for the way they have constructively contributed to the inquiry process.
14. The term 'Tasmanian Aboriginal community' is referred to throughout this report. The term should be read as meaning those people capable of meeting the definition of an Aboriginal person in accordance with section 3A of the *Aboriginal Lands Act 1995* (the Act) or in accordance with the State Government Policy on Eligibility for Aboriginal and Torres Strait Islander specific programs and services.
15. Those communities and individuals that self-identify as being a Tasmanian aborigine and who made contributions to this inquiry, are referred to by their specific community names in this report and elsewhere, as local aboriginal communities.
16. In confirming this definition, the Committee acknowledges the recognition that local aboriginal communities may hold at Commonwealth and State Government levels and the work they do within their local communities.
17. The Committee was pleased that the Minister for Aboriginal Affairs, the Hon Cassy O'Connor MP, agreed to participate in the hearings process as it was important to be able to discuss a range of Government policy matters with her directly.
18. The Committee was disappointed the Tasmanian Aboriginal Centre (TAC), as a major stakeholder and advocate for the Tasmanian Aboriginal community, declined the invitation to give evidence. However a brief written submission was provided.
19. A respectful request to visit Preminghana as part of the Committee's visit to the North West Coast was declined by the ALCT as, in their view, it was not

relevant to the Bill. The declining of this request was of concern to some members of the Committee, given there is a right of pedestrian access over the site in accordance with section 27 of the *Aboriginal Land Act 1995* (the Act).

20. The Committee had requested the visit due to it being the subject of a previous land transfer and therefore a relevant example of a site that ALCT is responsible for. Preminghana had also been referred to in various submissions received.

21. The report contains the following sections that deal with the major issues associated with the Bill.

- a. Findings
- b. The Bill and the Aboriginal Lands Act 1995
- c. Eddystone Point Lighthouse Historic Site (Irapuna)
- d. Rebecca Creek
- e. Long term challenges with the process of reconciliation

22. The report refers briefly to several broader issues associated with the Tasmanian Aboriginal community and local aboriginal communities that were raised in the evidence. These issues include aboriginal eligibility and identity, self-determination and reconciliation and are associated with the Committee process of inquiry.

23. The report includes a series of findings that are drawn from the evidence.

24. The diverse views within the Committee will be matters for individual Members when the Bill is further debated in the Legislative Council.

## **FINDINGS**

### **General Findings in relation to the Bill**

1. The Committee is of the view that land returns will make a further contribution to the objectives of reconciliation;
2. There are currently 15 parcels of land held in trust under the Act. The Bill proposes to add an additional 2 parcels of land to Schedule 3 -
  - a. Eddystone Point Lighthouse Historic Site;
  - b. Rebecca Creek.
3. Limited objections were received in relation to the principle of the Bill;
4. The Minister for Aboriginal Affairs has confirmed that land vested in the ALCT in accordance with Schedule 3 of the Act does not hold the same legal status as private land but holds a similar status to land classified as national parks. *The Aboriginal Lands Act 1995* vests land under Schedule 3 of the Act with the ALCT in trust for aboriginal persons in perpetuity;
5. The ALCT acknowledges that they have been a land manager for approximately 18 years and is still developing its expertise.

### **Eddystone Point Lighthouse Historic Site**

6. The site was chosen by the Government for inclusion in the Bill following ongoing discussions with the Tasmanian Aboriginal community as part of reconciliation. It appears the Tasmanian Aboriginal community was largely responsible for the determination of the site;
7. The majority of concerns related to general access to the site and the ongoing maintenance of the European buildings on the site;
8. The Bill provides for public access to the lighthouse during daylight hours unless there is a significant aboriginal cultural event being held on the land;
9. The Bill does not provide for public access to the land surrounding the remaining historic buildings on the site or to the grave site on the land without approval of the ALCT;
10. There is no evidence of access having being denied to members of the public seeking to visit the site during the 8 years it has been under a lease agreement between the State Government and the ALCT, with the exception of acknowledged occasions of significant aboriginal cultural events;

11. Community concerns relating to access to the boat ramp and adjacent car park are unfounded since access will not alter;
12. The Government has not committed to recurrent funding to enable the ALCT to appropriately maintain the historic buildings on the site;
13. The ALCT has proposed a tourism venture for the site and surrounding national park area. The proposal has in-principle support from the Parks and Wildlife Service;
14. The proposed tourism venture will require appropriate support (financial and other) by Government in order for the venture to be successful;
15. The Director of Heritage Tasmania believes there is an important opportunity on the site for an appropriate education program that includes Aboriginal and European history interpretation;
16. The Australian Maritime Safety Authority does not appear to have been adequately consulted in the preparation of the Bill as the leaseholder with a significant maritime safety interest in the site. It has raised issues about access and future lease arrangements for the site.

### **Rebecca Creek**

17. The Circular Head Aboriginal Corporation (CHAC) supports the principle of returning land to aboriginal communities in Tasmania;
18. The CHAC raised concerns about the rights of its members' access to Rebecca Creek, citing their experience with Preminghana;
19. The Circular Head Council does not support the proposed return of the land under the Bill. It has instead proposed that a reserve system be established that would enable broader access to the site and local involvement from CHAC. This proposal is supported by CHAC;
20. The Bill does not enable public access to the site due to the sensitivity of the relics contained there. The ALCT agrees with this position and does not propose to open the site to the public;
21. The Parks and Wildlife Service has indicated there may be an opportunity for appropriate off-site interpretation at the discretion of the Tasmanian Aboriginal community.

### **Broader Issues identified from the Inquiry external to the Bill**

22. There are individuals and community members in Tasmania who self-identify as being Tasmanian aboriginal but who are not recognised under the *Aboriginal Lands Act 1995*;
23. There are significant divisions within aboriginal communities in Tasmania, that in part relate to access arrangements to land administered under the Act by the ALCT;
24. Questions of aboriginality, self-determination and reconciliation within the broader aboriginal community in Tasmania are largely matters for those communities and individuals to resolve internally over time as part of self-determination;
25. The State Government does not believe it has a role to play in resolving the conflict between aboriginal communities in Tasmania;
26. It is unclear whether the ALCT is performing all of its functions and powers under section 18 (1), (2) & (3) of the *Aboriginal Lands Act 1995*;
27. The Tasmanian Electoral Commissioner has raised concerns with his roles and responsibilities relating to eligibility under the Act including -
  - a. His responsibilities in relation to the ALCT elections;
  - b. His responsibilities in relation to the determination of Aboriginal persons under section 3a of the Act.
28. The Tasmanian Aboriginal Centre was critical about the delay in the passing of the Bill and with the limited quantity of land to be returned.

## **THE ABORIGINAL LAND ACT 1995 AND THE ABORIGINAL LAND AMENDMENT BILL 2012**

25. The Committee's primary consideration has been to scrutinise the Aboriginal Land Amendment Bill 2012 (the Bill).

26. As part of this task, it has also been necessary for the Committee to consider the Aboriginal Land Act 1995 (the Act), given the Bill is an Amendment Bill.

### **The Aboriginal Land Act 1995**

27. According to its long title, the purpose of the Act is -

*'An Act to promote reconciliation with the Tasmanian Aboriginal community by granting to Aboriginal people certain parcels of land of historic or cultural significance.'*

28. It is important to briefly consider who is responsible for the parcels of land returned to the Tasmanian Aboriginal community under the Act.

29. It is also important to consider how land is managed under the Act in order to consider the issues raised in evidence as part of the inquiry.

### **The Aboriginal Land Council of Tasmania**

30. Land that is intended for the benefit of the Tasmanian Aboriginal community in perpetuity is vested in an organisation established under the Act. The organisation is known as the Aboriginal Land Council of Tasmania (ALCT).

31. Part 2 of the Act confirms that the ALCT is a democratically elected body corporate, the membership of which constitutes eight Aboriginal persons.

32. Part 2 of the Act considers a range of other important issues associated with the establishment; democratic election of members to; and the functions and powers of the ALCT in the performance of its duties.

33. Division 3, section 18(1) of the Act outlines the functions and powers of the ALCT in the performance of its duties -

1. To use and sustainably manage Aboriginal land and its natural resources for the benefit of all Aboriginal persons;
2. To exercise, for the benefit of all Aboriginal persons, the Council's powers as owner of Aboriginal land;
3. To prepare management plans in respect of Aboriginal land;

4. To use and sustainably manage any other land in which the Council acquires an interest; and
5. Such other functions as are imposed on it by or under this Act or any other Act.

34. Section 18(2) is important in the context of broader reconciliation in that it states -

*'The Council must perform its functions for the benefit of all Aboriginal persons and in the interests of reconciliation with the broader Tasmanian community.'*

35. Section 18(3) is also important in that it confirms the role of local aboriginal communities -

*'In its use and management of Aboriginal land and its natural resources, the Council is to have regard to the interests of local aboriginal communities.'*

36. The ALCT stated that it has historically supported the appointment of a local organisation to actively manage individual parcels of land and has therefore devolved the day to day management of some of the parcels of land under its responsibility.

37. Aboriginal Historian Mr Greg Lehman, who was involved in the negotiations and drafting of the Act, confirmed his understanding of the original intention of the Act to include the involvement of local aboriginal communities in the management of land -

*'That would be an ideal situation, to have Aboriginal people living in the local area to be involved - that was the intent of the 1995 bill and the intent of the act when it was passed, for sure. I can't speak for the members of the ALCT committee in terms of what their views would be on that. Perhaps that gets back to one of the points I made earlier on and that is, there is an opportunity there to build social cohesion and if that is missed then quite the opposite could occur.'*<sup>1</sup>

38. Part 3 of the Act addresses a range of issues associated with the management of land by the ALCT, including lease arrangements and management plans.

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<sup>1</sup> Hansard Transcript 23 September 2013, Mr Greg Lehman, p.62



39. Chairman of the ALCT Mr Clyde Mansell confirmed that his organisation was still developing its skills and experience as a land manager given the time it has been in existence. He also confirmed it had been working with local organisations in order to achieve this task. The Committee notes this has occurred in some areas where land has been returned -

*'The Land Council itself delegates management of Aboriginal land areas, and the delegated group then assumes that management. We assist where we need to, but we don't oversee. We always encourage that land manager, or land management group, to manage the land in accordance with the act.'*

*'Take into account that we have only been land managers ourselves for the last 18 years and we have always called on the expertise of groups like DPIPWE - threatened species, and all those branches. We have also tapped into various consultants and some of the greatest consultants are local people. We utilise their background knowledge of what the landscape was, in order to get an understanding of the best process when undertaking rehabilitation - what is the best process and what has worked and what hasn't worked. That is why each year we have a management plan and the management plan covers the whole broad aspect of scientific and cultural and social knowledge to set out a plan of the best way to look after the land, as determined by the community.'*<sup>2</sup>

40. Section 27 of the Act confirms the status of the parcels of land under the responsibility of the ALCT as land that is:

*'vested in the Council in trust for Aboriginal persons in perpetuity.'*

41. The Minister for Aboriginal Affairs was requested to clarify the status of land administered under the Act and provided a detailed explanation in correspondence of 4 October 2013 that confirmed the land held a status similar to that of national parks – **Appendix C**

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<sup>2</sup> Hansard Transcript 18 October 2013, Mr Clyde Mansell, p.14

42. Section 27 of the Act also prescribes public access arrangements and conditions associated with some parcels of land. Certain parcels of land do not include access rights for a variety of reasons.

43. Schedule 3 of the Act confirms the following general descriptions of the parcels of land under the responsibility of the ALCT and their associated registered plan reference numbers (not listed here).

1. Oyster Cove
2. Mount Cameron West
3. Mount Chappell Island
4. Steep (Head) Island
5. Kutikina Cave
6. Ballawinne Cave
7. Wargata Mina Cave
8. Badger Island
9. Babel Island
10. Great (Big) Dog Island
11. Risdon Cove
12. Cape Barren Island (part)
13. Wybalenna
14. Cape Barren Island
15. Clarke Island

### **The Functions and Responsibilities of the Tasmanian Electoral Commissioner**

44. The Tasmanian Electoral Commissioner performs several important statutory functions in relation to the ALCT and has broad powers under the Act in the performance of his duties. His responsibilities include:

1. The management of the electoral roll of eligible Aboriginal persons entitled to vote in ALCT elections;
2. The periodic election of members to the ALCT (held approximately 3 yearly in accordance with section 7 of the Act).

45. The Tasmanian Electoral Commissioner Mr Julian Type confirmed his responsibilities with the Committee and that he had reservations about the responsibilities he holds -

*'....that responsibility is to conduct elections for the Aboriginal Land Council. I think the community is well aware from the evidence today, and has been well aware for some time of some of the complex issues involved in the conduct of these elections.*

*I did comment on last year's annual report of the Tasmania Election Commission (sic) that it is probably not ideal that the Electoral Commissioner has the full range of responsibilities, as set out in the Aboriginal Lands Act, nonetheless that is what the act says and I will continue to discharge them to the best of my ability.'*<sup>3</sup>

46. The Act prescribes the criteria to be applied in determining who is eligible to be on the electoral roll for the purpose of ALCT elections.

47. Apart from some basic requirements in relation to age and residency, the Act notably requires at section 9 that the person 'is an Aboriginal person'.

48. In order to meet the definition of an Aboriginal person, three requirements must be satisfied under section 3 of the Act (which formed the foundation of major amendments to the Act that were enacted in 2005) -

1. Aboriginal ancestry;
2. Self-identification as an Aboriginal person; and
3. Communal recognition by members of the Aboriginal community.

49. In meeting these requirements, section 3 also notes that -

*'The onus of proving that a person satisfies the requirements referred to in subsection (1) lies on that person.'*

50. Importantly, the Act does not define Aboriginal community.

51. The State Government has applied a similar definition under its 'Policy on Eligibility for Aboriginal and Torres Strait Islander specific programs and services Delivered by the Tasmanian Government', although the definition is broader to include eligible Aborigines not of Tasmanian descent.

52. Aboriginal Historian Mr Greg Lehman noted his support for the need for such a definition -

*'My view is, and I have held this view for a long time, that if you are person who identifies as Aboriginal, you take pride in your heritage and*

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<sup>3</sup> Hansard Transcript 23 September 2013, Mr Julian Type, p.71

*your cultural identity and you are known by the people you live with and work with as Aboriginal, and you can establish unambiguous evidence of your descent then that should be all that is required. Unfortunately that's not all that is required in the eyes of some. There are some people who have said that if you haven't been involved with the Aboriginal community for three generations then your Aboriginality lapses. I think this is nonsense.....*

*I think it gets back to this problem, Ruth, of one size fits all. We have an expectation that everybody who identifies themselves as Aboriginal will be able to meet all the same criteria, which is probably more of a reflection of the requirements and consequences of having to administer public funding. You do need fairly well defined and strict criteria if you are going to be administering public funding, so that is how we came up with this. Nobody was talking about this sort of thing before the seventies. It is a consequence, unfortunately, of getting bureaucracies involved in a matter of personal identity.<sup>4</sup>*

53. In order to manage the electoral roll, whilst allowing for scrutiny of nominees, the Act provides for the Tasmanian Electoral Commissioner to establish a 'preliminary roll' under section 10 of the Act.

54. The inclusion of a preliminary roll enables objections in relation to nominations to be managed by the Tasmanian Electoral Commissioner before a final decision is made about the person's placement on the permanent roll.

55. The Tasmanian Electoral Commissioner Mr Julian Type confirmed the requirement for a preliminary roll during his evidence -

*'They are added to the roll and if no one objects to you when your name is on the preliminary roll then you are transferred to the elective roll - it is essentially an automatic process. There is only one chance to stop people moving on to the electors roll.'<sup>5</sup>*

56. Mr Type also raised his concerns with the responsibilities of the Tasmanian Electoral Commissioner as part of this process -

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<sup>4</sup> Mr Julian Type, Op.Cit. p.63

<sup>5</sup> Ibid

*'The act currently requires the electoral commissioner to determine whether or not a person is an aboriginal person in the event that an objection is made to that person's involvement on the Aboriginal Council Tasmania electors role. There is nothing about my skills or expertise or the expected skills or expertise of any electoral commissioner which would particularly equip you to discharge those duties.'*<sup>6</sup>

57. The Tasmanian Electoral Commissioner has established a 'Review Committee' in accordance with section 10(4) of the Act to manage any objections received in relation to nominations. The 'Review Committee' consists of 8 Aboriginal people that are periodically appointed to the Review Committee by the Commissioner directly.

58. Mr Type explained the role of the review committee during his evidence -

*'The review committee is based on section 10 part four of the Aboriginal Lands Act and in order to properly consider any objection, the electoral commissioner may request the advice of such persons as the electoral commissioner considers necessary, that is the legal basis for the review committee. I also took advice where appropriate from the Tasmanian archives and heritage office and as it turns out, in one particular case also sought advice from the register of births, deaths and marriages.*

*The act, as you can see, is not prescriptive as to where those people might come from. If I may ask the committee's indulgence and parenthetically note that this may currently not cause any great issue to the Aboriginal community because of the actions of the current commissioner and the preceding commissioner. It is a very broad licence and certainly doesn't in any way bind future electoral commissioners and I am sure electoral commissioners will come and go, as do most public office holders.'*<sup>7</sup>

59. Mr Type went on to explain in further detail the process he applies in reaching a decision in relation to any objection that is received -

*'Objections are lodged within 28 days from the publication of the preliminary roll - it is either a month or 28 days from the publication*

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<sup>6</sup> Ibid

<sup>7</sup> Mr Julian Type, Op.Cit. p73

*preliminary roll (sic) - and I then invite each of the persons against whom an objection has been lodged to make submissions. Those submissions are in accordance with the procedures for dealing with objections to enrolment and the guidelines concerning the requirements set out in section 3A of the Aboriginal Lands Act, which is to do with who is, or who is not, an Aboriginal person. I then make decisions based on the submissions I receive and the advice of the review committee, and advice from the Tasmanian Archives and Heritage Office, and possibly the Registrar of Births, Deaths and Marriages. I consider any other available information - as I said, I may seek advice from other sources if it appears necessary or appropriate.'*<sup>8</sup>

60. Chairman of the ALCT Mr Clyde Mansell outlined the role of the Tasmanian Aboriginal community in the determination of aboriginality under the Act -

*'With regard to the eligibility process to participate in the ALCT elections, I make the following comments. The Aboriginal Lands Act 1995 definition of an Aboriginal person is consistent with the view that the decisions about who is and who is not eligible to participate in the ALCT elections is a matter for the Aboriginal community, even though the process involves the participation of the electoral commissioner. You heard evidence from the electoral commissioner. It is a task they do not want and one we would prefer they did not have. But until politicians in this state listen to what we are saying to them and give us control over what we, as a community, should be involved in, then we have a way to go.*

*At least, the process that we follow now is one that gives the right of the Aboriginal community to test the legitimacy of the person making the assertion that they are Aboriginal.*

*Secondly, an applicant must self-identify as an Aboriginal person. Thirdly, a person must show evidence of their communal acceptance of that identification. People ask me, 'What's the difference between the processes?'. I repeat - we test it against the information we gather from*

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<sup>8</sup> Mr Julian Type, Op.Cit. p.75

*within the Aboriginal community of those family links and of that community's acceptance, and we test it against what other records we can use. That is, the historic and archival records of this state. They all assist us in making a determination about the legitimacy of the person.*<sup>9</sup>

61. The election and review process is outlined in further detail in the Tasmanian Electoral Commission publication 'The Aboriginal Land Council of Tasmania – Enrolment and Election Booklet 2011-12' -

<http://www.electoral.tas.gov.au/pages/OtherElections/ALCT/pdf/2011-12%20ALCT%20elections%20-Procedures%20and%20guidelines%20booklet.pdf>

### **The Aboriginal Land Amendment Bill 2012**

62. The Bill refers to the Act as being the 'Principal Act'.

63. The primary purpose of the Bill is to amend the Act to enable two additional parcels of land to be vested in the ALCT.

64. The parcels of land in question are -

1. Eddystone Point Lighthouse Historic Site (Irapuna); and
2. Rebecca Creek

65. The further purpose of the Bill is to amend section 27 of the Principal Act to enable certain access conditions to be included for the Eddystone Point Lighthouse Historic Site (as is the case for a selection of other parcels of land vested with the ALCT).

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<sup>9</sup> Hansard Transcript 18 October 2013, Mr Clyde Mansell, p.3-4

## **EDDYSTONE POINT LIGHTHOUSE HISTORIC SITE (LARAPUNA)**

66. The Committee received a diverse range of evidence in relation to the Eddystone Point Lighthouse Historic Site. As part of the inquiry process, the Committee also undertook an inspection of the site.

### **Background to the Site**

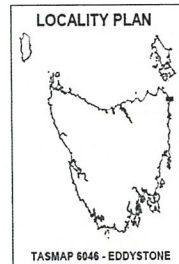
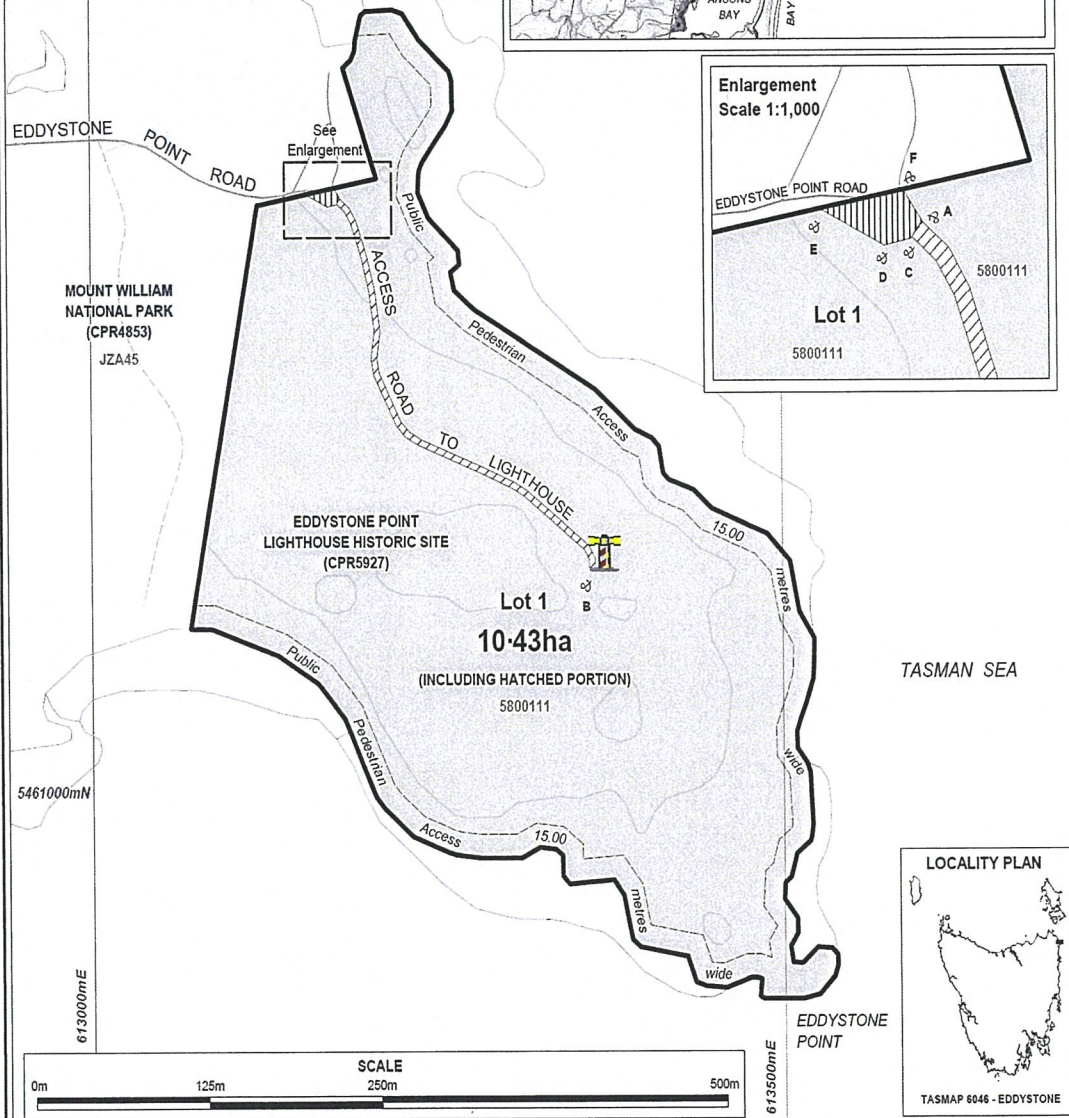
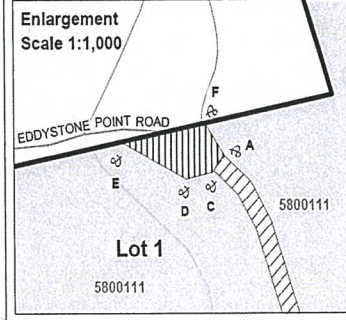
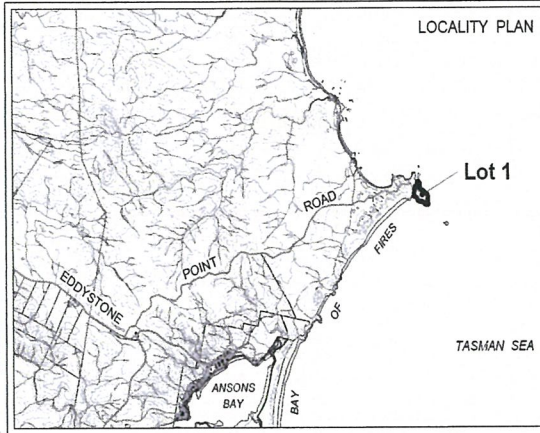
67. The Eddystone Point Lighthouse Historic Site is located in Tasmania's North East and is situated adjacent to the Mt William National Park. The site has more recently received dual Aboriginal naming recognition and is now also known as larapuna.



68. The area of land in question under the Bill is a parcel of 10.43ha in total. The map on the following page is the Central Plan Register (CPR - number 9466) for the site.



**NOTE:**

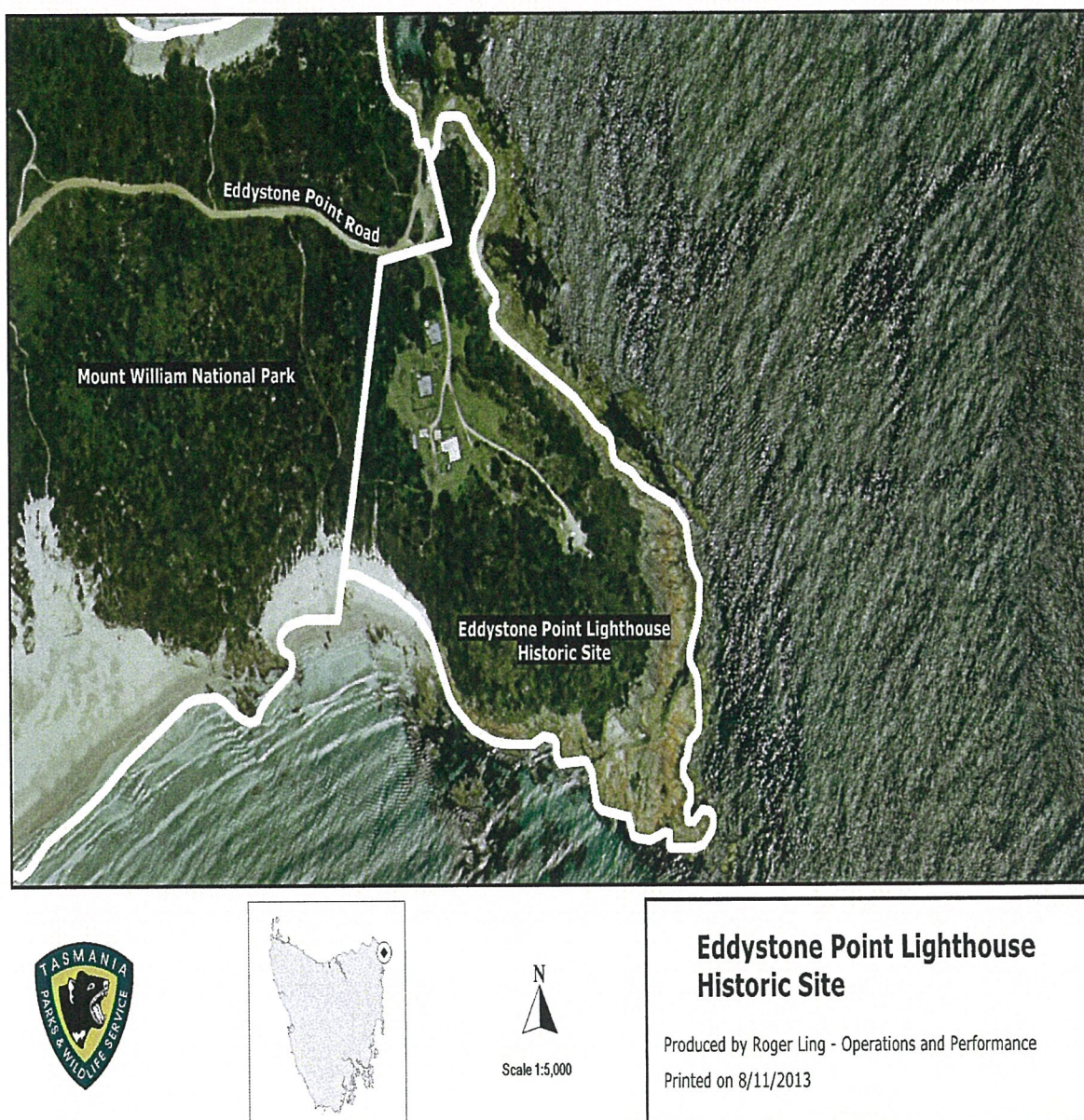
1. Lot 1 comprises the whole of FR213203-1.
2. All boundaries of Lot 1 are indicated by heavy black lines.
3. Details of individual parcel boundaries may be accessed through the Land Information System Tasmania (the LIST).
4. The hatched portion marked 'Access Road to Lighthouse' comprises a strip 4 metres wide, extending 2 metres either side of the road formation centreline.
5. There is reserved to the public pedestrian access during daylight hours over the Access Road to Lighthouse marked A-B and a strip of land extending 15 metres from and above high water mark.
6. There is reserved to the public vehicular and pedestrian access over the hatched area bounded by lines A-C-D-E-F-A. For survey details of A-C-D-E-F-A see Field Book 9289.



No.	PRODUCTION / AMENDMENT	AUTHORITY	REFERENCE	DRAWN	APPROVED	DATE	SCALE
1.	PRODUCTION	ALC - DPAC	CIS-3954	JG	RH	06-06-12	1:3,000
							GRID MGAB4 Zone 55
							DATUM(V) AHD
							CONTOUR 10 Metres
INFORMATION & LAND SERVICES - DEPARTMENT OF PRIMARY INDUSTRIES, PARKS, WATER AND ENVIRONMENT							GAZETTED:
							STAT RULE:
							EDDYSTONE POINT LOCALITY OF EDDYSTONE
							CENTRAL PLAN REGISTER Surveyor General Date Registered 06-06-12
							CPR 9466



69. The Government also provided the Committee with an aerial map of the site that outlined the boundaries of the land for CPR 9466.



70. Section 4 of the Bill provides for ongoing community access to the site, with the exception of 'when a significant Aboriginal cultural event is being held on that land'.

71. Access to the site is prescribed in the following terms –

- a. The Access Road to Lighthouse between the points marked A and B on Plan 9466 in the Central Plan Register except when a significant Aboriginal cultural event is being held on that land; and



- b. A strip of land extending 15 metres from and above high-water mark as specified on that Plan.

72. Importantly, access is not allowed to the area of land containing the remaining historic buildings and to the European grave site without the approval of the ALCT.
73. The proposed access is similar to the existing access under the current lease agreement between the State of Tasmania and the ALCT.
74. According to a Government factsheet on the site, the property is part of a traditional territory of the North Eastern Tasmanian Aboriginal tribes. The areas surrounding the site (outside the boundaries of CPR 9466) also contain middens, artefact sites and burial grounds.<sup>10</sup>
75. In the context of European history, the site was chosen for a lighthouse due to its relative suitability of access to nearby settlements in response to a hazardous rock discovered below the water line off St Helens Point that had caused a variety of shipwrecks.<sup>11</sup>
76. The lighthouse tower was built and first exhibited in 1889. The predominant building material used in the construction was granite. Various other buildings were also constructed on the site over time.<sup>12</sup>
77. According to former Lighthouse Keeper Mr John Denmen, the site was formerly closed in 1994.<sup>13</sup>
78. The site was historically owned and managed by the Commonwealth Government. In 1998, the site was handed to the State Government by the Commonwealth on condition that the European and Aboriginal heritage on the site was recognised.<sup>14</sup>
79. Initially, the State Government called for expressions of interest from people or companies interested in leasing the site. Then Minister for Primary Industries, Water and Environment Hon David Llewellyn MP said of the possible uses for the site at the time -

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<sup>10</sup> [http://www.dpac.tas.gov.au/\\_data/assets/pdf\\_file/0007/164662/Fact\\_Sheet\\_-\\_Irapuna.pdf](http://www.dpac.tas.gov.au/_data/assets/pdf_file/0007/164662/Fact_Sheet_-_Irapuna.pdf)

<sup>11</sup> <http://www.lighthouse.net.au/lights/tas/Eddystone%20Point/Eddystone%20Point.htm>

<sup>12</sup> Ibid

<sup>13</sup> Hansard Transcript 16 August 2013, Mr John Denmen, p.10

<sup>14</sup> Media Release Hon David Llewellyn MP, Minister for Primary Industries, Water and Environment 14 November 2001

*'Possible developments could include visitor accommodation in a variety of styles, corporate or institutional uses, education or retreat activities. Tours of the lighthouse would be a possibility as well as a museum and retailing activities'.<sup>15</sup>*

80. The Government's decision to call for expressions of interest resulted in active protests by the Tasmanian Aboriginal community as they were unhappy they had to competitively tender for the lease of the site.

81. The State Government subsequently announced that the tender process would not proceed until further discussions took place with the Aboriginal community and noted that several expressions of interest for the lease had been received.<sup>16</sup>

82. On 17 June 2002, the site was proclaimed as a reserved historic site under the *National Parks and Wildlife Act 1970*.<sup>17</sup>

83. On 9 February 2006, then Minister for Parks and Heritage Hon Judy Jackson MP announced that the Eddystone Point Lighthouse Historic Site had been leased to the Tasmanian Aboriginal Community through a non-competitive process -

*'A 40 year lease has been signed by the Tasmanian Government and the Aboriginal Land Council of Tasmania for land at Eddystone Point in Tasmania's north east.*

*The leased area includes three houses but not the Eddystone Point lightstation. Public access to the lightstation will continue under the lease agreement.'<sup>18</sup>*

84. The Minister also confirmed as part of the lease arrangements, that the Government would provide funding to undertake maintenance work on the site due to the poor state of the buildings on the site prior to the commencement of the lease -

*'I am therefore pleased to be able to confirm that the State Government will provide funding to ensure that maintenance work will be undertaken*

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<sup>15</sup> Media Release Hon David Llewellyn MP, Minister for Primary Industries, Water and Environment 17 August 2001

<sup>16</sup> Op.Cit.

<sup>17</sup> [http://www.austlii.edu.au/au/legis/tas/num\\_reg/putnpawa19702002n65521/](http://www.austlii.edu.au/au/legis/tas/num_reg/putnpawa19702002n65521/)

<sup>18</sup> Media Release Hon Judy Jackson MP, Minister for Parks and Heritage, 9 February 2006



*over an appropriate period of time. The timing of this work will be negotiated with the Aboriginal Land Council of Tasmania through an agreed schedule of works.*<sup>19</sup>

85. The Committee obtained a copy of the lease agreement between the State and the ALCT during the course of the inquiry.

86. As part of the inquiry process, the Committee undertook a site inspection with the support and assistance of the ALCT, in order to gain a better understanding of the topography, layout and tourism plans proposed by the ALCT.



Figure 1: Mr Clyde Mansell briefing the Committee on its tourism proposal

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<sup>19</sup> Ibid





Figure 2: Northern view of site from Lighthouse



Figure 3: The Eddystone Point Lighthouse





Figure 4: Cottage at Eddystone Point Site



Figure 5: Grave Site

### **Lease Arrangements with the Australian Maritime Safety Authority**

87. The Committee was aware that there were existing lease arrangements in place for several parcels of land within the Eddystone Point Lighthouse Historic Site between the State Government and the Australian Maritime Safety Authority (AMSA).

88. The Committee wrote to AMSA as the lessee, to confirm its perspective on the Bill. Chief Executive Officer Mr Graham Peachey confirmed the following important information as part of his written response in relation to AMSA's current lease arrangements with the State of Tasmania. The full correspondence is attached to the report at Appendix D:

- AMSA leases 3 parcels of land at Eddystone Point pursuant to the Heads of Agreement between AMSA and the State of Tasmania dated 9 April 1998;

<i>Leased Area</i>	<i>Use at Lease Commencement</i>	<i>Current Use</i>	<i>Area</i>
Lot 1 on CPR 4000	Proposed Helipad Site		400m <sup>2</sup>
Lot 2 on CPR 4000	Lighthouse	Lighthouse	216m <sup>2</sup>
Lot 3 on CPR 4000	Proposed Lighthouse site		400m <sup>2</sup>

- The responsible State Government Department is the Tasmanian Parks and Wildlife Service;
- The current lease expires on 30 April 2023, with the automatic option of a further lease term until 30 April 2048 (25 years) unless AMSA advises the State that it does not want to take up the option;
- The terms of the lease are the same for all three leases and enables AMSA and its invitees 24 hour access to the leased areas via adjoining land;



- The terms of the leased areas are restricted in that they may only be used by AMSA for establishing, maintaining and operating a 'Marine Aid to Navigation'.
- There is also the right to issue a licence to a third party to install and operate telecommunications, survey, meteorological, navigational and other like facilities (subject to State Government permission and the payment of annual licence fee to it);
- AMSA was required to issue a tourist licence to the State for Lot 2 as a condition of the lease;
- The leases may be surrendered by AMSA by giving no less than 60 days' notice;
- AMSA has ongoing responsibilities under the *Navigation Act 2012* with respect to aids to navigation which any lessor must be aware of;
- AMSA noted its ongoing obligation to preserve historic lighthouses and related marine artefacts for the community's benefit;
- AMSA currently assumes that should the Bill come into law, that the ALCT will become the lessor;
- If the ALCT does not agree to comply with the terms of the existing lease, AMSA has indicated it may need to enter negotiations with the State Government for the acquisition of the lighthouse. If that process was unsuccessful, the Federal Minister has the right to compulsorily acquire the land in accordance with the *Navigation Act 2012*.<sup>20</sup>

89. Mr Peachey also identified 2 potential issues that AMSA believed would require careful consideration by Government:

- i. The ALCT may seek to restrict access to the land in a way that is in breach of the lease, which could force AMSA to take legal action to enforce its rights under the lease; and
- ii. Upon expiration of the lease in 2023 or 2048, the ALCT may be unwilling to enter a new lease with AMSA and may seek to exclude it from the lighthouse site. This would present a serious issue for

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<sup>20</sup> Australian Maritime Safety Authority letter to Committee, 20 September 2013

AMSA, given its ongoing responsibility to maintain aids to navigation.<sup>21</sup>

90. The Committee also noted that AMSA emphasised the need for early communication between the parties and the need for the ALCT to fully understand the rights and responsibilities that AMSA holds on the site.

91. It was noted from the correspondence that little or no communication between the State Government and AMSA had taken place in relation to the future of the site in the preparation of the Bill.<sup>22</sup>

### **Views on the return of Eddystone Point Lighthouse Historic Site**

92. The Committee received a variety of evidence about the proposed return of the Eddystone Point Lighthouse Historic Site under the Bill. A diverse range of opinions were expressed in the written submissions received and from the evidence at public hearings.

#### **Support for the return of the Site**

93. The Minister for Aboriginal Affairs, the Hon Cassy O'Connor MP, commented on the selection of the site as part of ongoing reconciliation -

*'The end result of a conversation with the Aboriginal community on the part of the state government. Larapuna and the Bay of Fires has long been an area of (sic) that the Aboriginal community wanted to have returned to them and that was the basis for the 40-year lease.'*<sup>23</sup>

94. Chairman of the ALCT Mr Clyde Mansell summarised the importance of the region to the Tasmanian Aboriginal community -

*'Land return has provided the Aboriginal community, if you like, with confidence as much as anything to reconnect to parcels - cultural landscapes in this state - that will, as Graeme talked about before, provide healing, provide cultural wellbeing. If we look at larapuna, for instance, Eddystone Point, and I have heard the comment - the question rather than the comment - 'What Aboriginal heritage is there?'*

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<sup>21</sup> Ibid

<sup>22</sup> Ibid

<sup>23</sup> Hansard Transcript 23 September 2013, Cassy O'Connor MP, p.2

*Well, the whole landscape is, regardless of whether it's got a lighthouse on it or not.*<sup>24</sup>

95. At an earlier hearing, Mr Clyde Mansell also noted the importance of the site to the Tasmanian Aboriginal community in supporting a proposed tourism venture

*'As well as offering an opportunity for the community to regain strong cultural links, Irapuna can also provide a unique opportunity for interpretation of both Aboriginal and European heritage by the development of the intended tourism venture. If realised, this venture will also offer the possibility of developing an economic base and increase employment and training for Aboriginal people. The proposed venture at Irapuna also demonstrates our desire - and when I say 'our' I mean the Aboriginal Land Council of Tasmania - to develop a pathway to economic independence. It all shows the desire of the Aboriginal Land Council of Tasmania to educate and share with the wider community our history and culture. This venture will also provide an opportunity for the tourism experience in Tasmania to include Aboriginal interpretation, something which is drastically missing at the moment.'*<sup>25</sup>

96. Mr Clyde Mansell also noted the positive outcomes for the Tasmanian Aboriginal community that had resulted from previous land returns and the sense of community that it instilled. He noted by example, the programs developed by the Tasmanian Aboriginal community on Clarke Island following the return of land there, such as a program for young offenders -

*'The aim of that project was to take young Aboriginal people out of the system and change their pathways by giving them more opportunity to understand their history, their community and their culture. The program has worked very successfully, as Tony alluded. The percentages of people reoffending have dropped dramatically but I can't quote them off the top of my head. Graeme might be able to fill you in more than I can but I will finish up by saying that I agree that it is one of the really positive programs because the number of people reoffending and going back into the system has dropped drastically.*

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<sup>24</sup> Mr Clyde Mansell, Op.Cit. p.9

<sup>25</sup> Hansard Transcript 23 September 2013, Mr Clyde Mansell, p.23

*I can remember that when we first started that program we had something like about 10 young kids in Ashley that we were able to take out. Now I think the numbers are down to where there are one or two. It is a real example of how capacity and self-determination are helping.*

<sup>26</sup>

97. In seeking to gain a better understanding of the concept of a tourism venture on the site, the Committee researched other working examples of a local aboriginal community operating a similar tourism venture in Australia.
98. The best comparative example identified was 'Kooljaman at Cape Leveque' in the Kimberly region of far north Western Australia.
99. The Committee noted that the site, which includes a lighthouse, had previously been operated by the Western Australian Government until the lighthouse was automated in 1986. The site was subsequently purchased by the Aboriginal Development Commission and developed by the local Bardi people into a tourism operation that incorporated traditional Aboriginal culture and other activities.<sup>27</sup>
100. Further information about the tourism venture is available at the following website - <http://www.kooljaman.com.au/>
101. Parks and Wildlife Service Deputy Secretary Mr Peter Mooney confirmed his organisation's full support for such a venture at Eddystone Point Lighthouse Historic Site and the positive working relationship that had been developed to date with the ALCT -

*'It's a journey and so far the journey has been really good and we have worked very closely with ALCT to form a relationship and an awareness between both parties about exactly what is possible, because it is a national park and we do have a standing camp already in the national park run by the Bay of Fires company. That has been established for about 18 years now and it's quite a success.*

*We certainly believe that another similar type of arrangement, an overnight standing camp could occur, more towards the sense that in*

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<sup>26</sup> Mr Clyde Mansell, Op.Cit. p.8

<sup>27</sup> <http://www.kooljaman.com.au/>

*Tasmania there are very few overnight cultural walks available, and it's just a big gap. We get regular requests from operators and tourism wholesalers internationally that they want to have an overnight cultural experience and there is not one available at the moment in Tasmania. That's another reason, and also because they are a leaseholder of the historic site now at Eddystone Point. It's a natural fit because you could leave at a certain point and then have a camp experience and then go on and have a building experience at the historic site itself. We are very comfortable*<sup>28</sup>

102. Mr Graeme Gardner from the ALCT also noted the positive working relationship that had been established with the Tourism Industry Council of Tasmania in the development of a business plan for the proposed venture -

*'The Tourism Industry Council of Tasmania has been aggressively proactive for us. We have had them on board because they see a need for us. They have provided some good insight, contacts, and provided feedback to help steer us in our business plan for the venture which would hopefully turn one into many, later on.'*<sup>29</sup>

103. Aboriginal Historian Mr Greg Lehman noted his support for the return of the land but that ongoing Government support for the ALCT was essential if the proposed tourism venture was to succeed in the long term -

*'....Reading through one of Clyde Mansell's submission to the council on this matter, he has pointed to what seem quite tangible opportunities in terms of participation in development of local tourism projects for Irapuna.*

*Those opportunities are really important and when land is returned and those opportunities are not realised, then that almost inevitably starts to reflect negatively on that other opportunity, which is to build social cohesion and social capital. That is particularly important because I am sure all of you will agree that Tasmania, over the last 200 years, has*

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<sup>28</sup> Hansard Transcript 23 September 2013, Mr Peter Mooney, p.41-42

<sup>29</sup> Mr Graeme Gardner, Op.Cit. p.23

*had quite fraught history and there is plenty for the Aboriginal community to be unhappy about.*<sup>30</sup>

104. Director of Heritage Tasmania Mr Pete Smith noted the importance of shared heritage recognition and that the site may help support community education in relation to the Aboriginal and European history of the site and the region -

*'In relation to the issue of shared heritage and I think it is a vexed issue for Tasmania and it is one that we are not doing as well as we could. There is a tremendous amount of scope for us to better present a shared understanding of heritage in terms of cultural heritage or Aboriginal historic heritage and if there are opportunities to do that at this site then that would be a very positive thing. The Aboriginal story is not well told in Tasmania and there are some areas where we do that better than others. I think sites such as this have a potential to bring that forward both for locals, for school groups and for the broader visitor experience, to recognise that we have a shared heritage and that is part where we need to go in the future.'*<sup>31</sup>

105. The TAC commented on the European history associated with the site in its written submission and argued that this was an irrelevant reason to object to the land being returned to the Tasmanian Aboriginal community -

*'...with arguments about the existence of areas of European significance in the land parcels being considered for return. Of course there is European history. How could it be otherwise when Europeans have control of the land for over 200 years? Additionally, to use the near genocide of our ancestors as a reason to reject the return of small parcels of land is beneath contempt.'*<sup>32</sup>

### **Concerns with the return of the Site**

106. Several submissions were received by the Committee that raised specific concerns with the inclusion of the Eddystone Point Lighthouse Historic Site in the Bill.

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<sup>30</sup> Hansard Transcript 23 September 2013, Mr Greg Lehman, p.57

<sup>31</sup> Hansard Transcript 23 September 2013, Mr Pete Smith, p.48

<sup>32</sup> Op.Cit.

107. The concerns were predominantly in relation to perceived uncertainties with ongoing access rights to the site (including boat ramp access) and with the preservation of the heritage listed buildings if it were to be managed by the ALCT (given the perception that the management of European heritage was not within its area of expertise).
108. Mr Clyde Mansell from the ALCT was asked about the boundaries of CPR 9466 and whether it included part of the adjoining car park -

*'If you have a look at the map, and I did not - the boundary now goes down the fence line in that area. Before, as Graeme said, it did come out a bit. When Parks notified us about that we were agreeable to have it brought back to the fence line, two metres outside the fence line, you would not be able to manage it.'*<sup>33</sup>

109. Mr Lindsay Dawe expressed his concerns as part of his written submission about the management of the site by the ALCT and in particular, the maintenance of the heritage listed infrastructure from the perspective of his family having a long term connection with the area -

*'I have grave concerns about A.L.C maintaining the status and integrity of any European heritage listed site and allowing the community access to it.'*<sup>34</sup>

110. Mr Peter Paulsen argued in his written submission that, whilst he supported the principle of land returns to the Tasmanian Aboriginal community, the heritage listed buildings on the site had no connection with the Aboriginal community. He also argued that if the buildings were to be included in a tourism venture, they should be excised from the land transfer and subject to a competitive tendering process -

*'If there is to be an opportunity to open the site as a serious tourism destination, I believe, the infrastructure of the houses, the light and immediate surround area, should be removed from this process of the land hand back and hand back, just that...the land. As a means of attracting the best operator for such a venture, the heritage site should*

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<sup>33</sup> Mr Clyde Mansell, Op.Cit. p.24

<sup>34</sup> Mr Lindsay Dawe written submission, 24 June 2013

*be offered through an open and transparent Tender Process. Only then can we be assured of a competent and experience (sic) operator which include measurable guidelines for the ongoing maintenance and restoration of the area.*<sup>35</sup>

111. Mr Paulsen elaborated on his concerns further during his evidence at a public hearing at St Helens -

*'If I can explain it to you, the infrastructure is the part that I am referring to and that is the lighthouse itself, the three cottages, the grave site and then the appropriate break. It struck me that if there is a line around that particular part of it, which really should have no genuine significance to the Aboriginal community for cultural purposes at all, if that were extracted from the argument then the balance of the land going back to the Aboriginals, if that's what they desire, then that makes sense to me. But if the ongoing objective is for cottages and that light to be developed as a tourism venture, that's a different proposition. Certainly a clear business case needs to be made for that and I think the best way to get the results for that particular exercise would be to put this out as a public tender so that we at least get something.'*<sup>36</sup>

112. Mr Denis Lisson noted his general concern with the principle of returning the site to the Tasmanian Aboriginal community -

*'I and many others I know and respect are deeply offended by the proposed hand back to the Aboriginal community, with the attendant restrictions to access. It must be said that my objection is one of principle, and is not directed to any specific group. This land the European heritage buildings upon it belong to no particular group no matter how passionate the claim.'*<sup>37</sup>

113. The Break O'Day Council was invited by correspondence of 12 April 2013, to make a written submission as a major stakeholder within the region. The Council did not respond to that invitation.

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<sup>35</sup> Mr Peter Paulsen written submission, 22 July 2013

<sup>36</sup> Hansard Transcript 16 August 2013, Mr Peter Paulsen, p.11

<sup>37</sup> Mr Denis Lisson, written submission, 8 April 2013



114. Representatives of the Council were later invited to a public hearing in St Helens. Mayor Sarah Schmerl accepted the invitation on behalf of the Council and attended the hearing. At the hearing, she confirmed the Council had not formed a view on the Bill but didn't have any objections to the Bill as presented. She then went on to confirm that she was providing her personal views on the Bill at the hearing and was therefore not representing the views of the Council.<sup>38</sup>
115. The Council subsequently wrote to the Committee on 24 October 2013 requesting an extension of time until the end of November 2013 in order to prepare a submission. The General Manager indicated in the correspondence that an extension of time was required to enable the Council to adequately canvass community concerns with the Bill. The Committee declined the request on multiple grounds.
116. The Council provided a further response by correspondence of 6 November 2013 in which it set out the individual positions of each elected Councillor in relation to the Bill. Although the correspondence was received well outside the timeframe for submissions, the Committee has attached the correspondence. The correspondence to and from the Council is attached to the report - Appendix E.
117. The St Helens & District Chamber of Commerce and Tourism Inc was also invited to make a written submission to the inquiry by correspondence of 12 April 2013. It did not respond to that invitation.
118. The Chamber subsequently notified the Committee of its position in writing by correspondence of 6 November 2013. Although the correspondence was also well outside the timeframe for submissions to be received, the Committee noted the Chamber was not in favour of the land being handed to the private sector and believed it should be retained in public ownership in perpetuity.<sup>39</sup>

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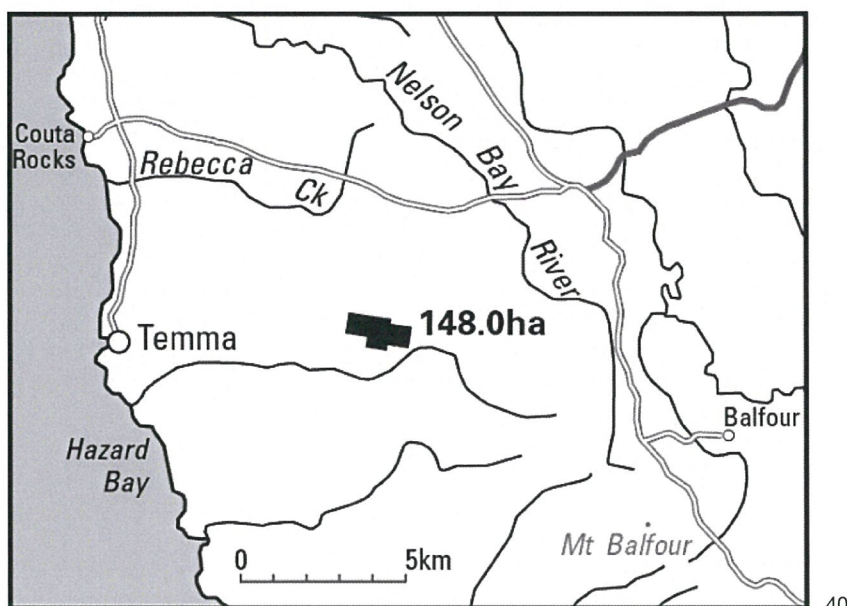
<sup>38</sup> Hansard Transcript 16 August 2013, Mayor Sarah Schmerl, p.19

<sup>39</sup> St Helens Chamber of Commerce and Industry, written correspondence 6 November 2013

## **REBECCA CREEK**

119. Rebecca Creek is located near Heemskirk Road in the Arthur Pieman area and is approximately 50 kilometres south west of Smithton. The following Government map provides an indication of its locality.

Map of Rebecca Creek



120. The property was previously owned by Britton Bros Pty Ltd and comprises five titles with a total land area of approximately 148 hectares. It was previously used for forestry activities.<sup>41</sup>
121. In the mid-1980s, evidence was discovered of an Aboriginal quarry and other associated cultural materials on the site. Due to the significance of the discovery, it became impractical to continue forestry operations on the property and the land was subsequently purchased by the State Government to ensure the preservation of the stone quarry and Aboriginal artefacts.<sup>42</sup>
122. Parks and Wildlife Service Deputy Secretary Mr Peter Mooney confirmed the current management arrangements for the site -

*'At the moment, Rebecca Creek is unallocated crown land in, I suppose, caretaker mode for a potential transfer to the Aboriginal community but it*

<sup>40</sup> Department of Premier and Cabinet, Aboriginal Land Hand Back Rebecca Creek.  
[http://www.dpac.tas.gov.au/data/assets/pdf\\_file/0006/164661/Fact\\_Sheet\\_-\\_Rebecca\\_Creek.pdf](http://www.dpac.tas.gov.au/data/assets/pdf_file/0006/164661/Fact_Sheet_-_Rebecca_Creek.pdf)

<sup>41</sup> Ibid

<sup>42</sup> Ibid

*has been private land in the past. The government bought it from Britton Brothers a number of years ago and has been holding on to it in anticipation of a handover. We haven't put a reserve status on it, because we are leaving it totally up to the Aboriginal community to decide, in their own right, what they do with that land. I have been to the site and it is an amazing site. The quarry site is well noted and recorded as the only location in Tasmania where that particular geology-type exists. There are examples of it all over Tasmania, so the Aboriginals have obviously used it as a trading tool over thousands of years in their daily activity. Culturally, it would be quite significant there.*<sup>43</sup>

123. The property is a significant source of spongolite, which was used for the production of stone tools by Tasmanian Aborigines.<sup>44</sup>
124. Spongolite is mostly comprised of fossilised sponges that formed on the sea bed millions of years ago. At the present time, the material has only been found at one location in Tasmania – Rebecca Creek, although spongolite stone tools have been found at Aboriginal midden sites throughout Tasmania.<sup>45</sup>
125. The importance of spongolite to Tasmanian Aborigines was largely due to the fact that it was capable of producing an extremely sharp edge and as a result, was a resource that was traded extensively.<sup>46</sup>
126. The spongolite quarry at Rebecca Creek is one of the richest and most extensively worked quarry sites known in Tasmania.<sup>47</sup>
127. The Committee undertook a site inspection of Rebecca Creek with the assistance and cooperation of the ALCT and gained a better understanding of the spongolite deposits and other relics contained on the site.

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<sup>43</sup> Hansard Transcript 23 September 2013, Mr Peter Mooney, p.45

<sup>44</sup> Ibid

<sup>45</sup> [http://www.tmag.tas.gov.au/\\_data/assets/pdf\\_file/0017/74150/Teachers\\_Aboriginal\\_WEB.pdf](http://www.tmag.tas.gov.au/_data/assets/pdf_file/0017/74150/Teachers_Aboriginal_WEB.pdf)

<sup>46</sup> Op.Cit.

<sup>47</sup> Ibid





Figure 6: Briefing at Rebecca Creek by Mr Caleb Peddar



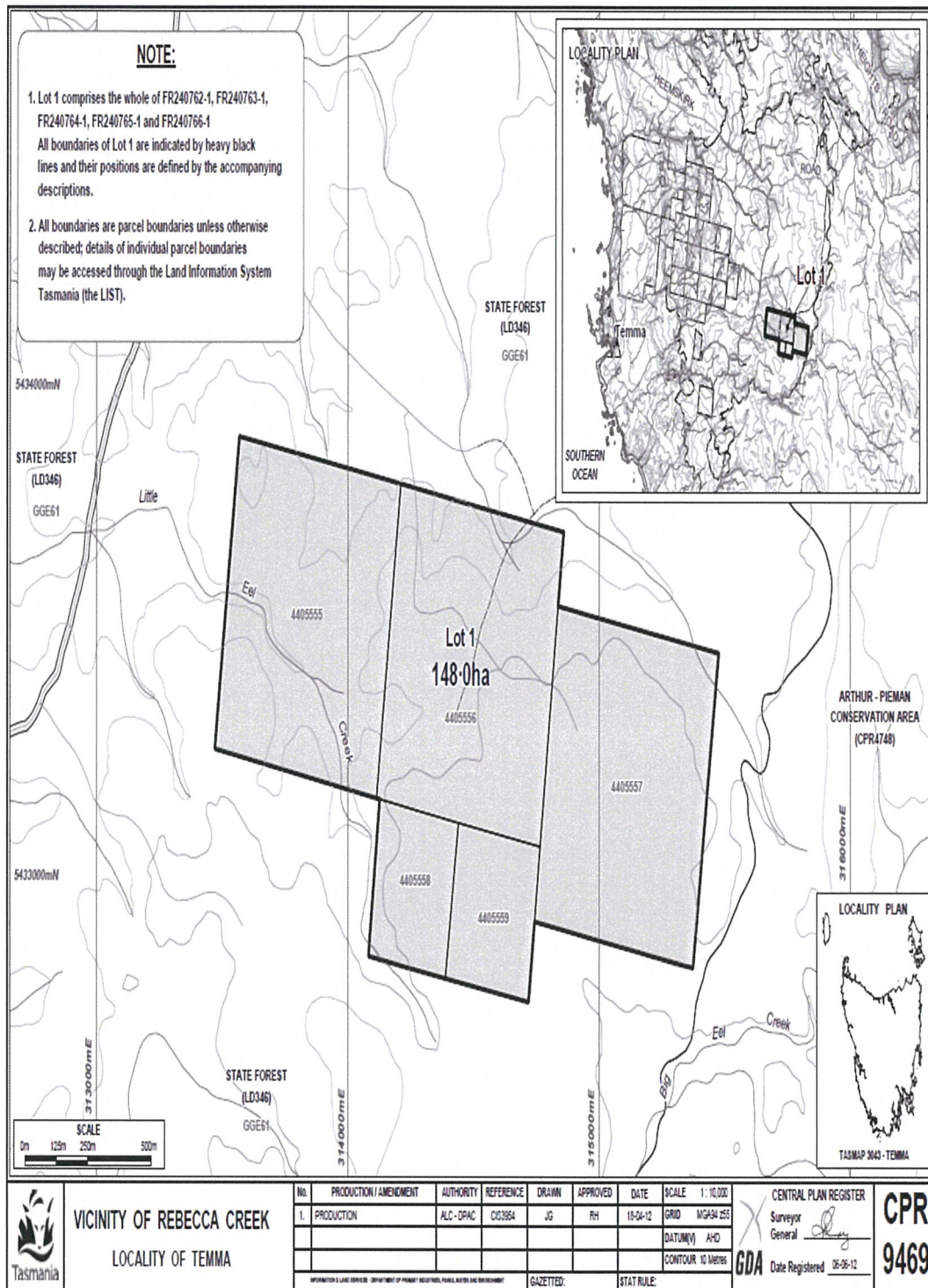
Figure 7: Example of spongelite



**Figure 8: Spongolite**

128. The area of land in question under the Bill is a parcel of some 148 ha. The map on the following page is the Central Plan Register (CPR - number 9469) for the site.
129. Unlike the Eddystone Point Lighthouse Historic Site, the Bill does not provide for public access on the land.





### **Views on the return of Rebecca Creek**

130. The Committee received a variety of evidence about the proposed return of the Rebecca Creek parcel of land.
131. It was commonly recognised that the site was of great significance and importance to the Tasmanian Aboriginal community and the preservation of its history.
132. Some witnesses did however question whether the site should be the greatest priority for return within the North West region in consideration of other sites of significance.
133. There were also concerns raised in relation to the ALCT as the trustee of the land and in particular the right of access to the site for the local aboriginal community.

### **Support for the return of the Site**

134. The Minister for Aboriginal Affairs the Hon Cassy O'Connor MP confirmed her Government's support for the return of Rebecca Creek to the Tasmanian Aboriginal community as part of her evidence to the Committee -

*'Rebecca Creek was part of the conversation of the Aboriginal community and members will recall that originally it was set aside for forestry but, because of the Aboriginal cultural significance of that area, the state government purchased the land from Britton brothers a number of years ago. At the moment Rebecca Creek is sitting there as the property of the crown and the crown has a very strong desire to return it.'*<sup>48</sup>

135. The Minister also noted the likelihood that access to the site would be strictly limited (no access rights prescribed under Clause 4) due to the sensitivity of the site. She did however confirm that this would ultimately be a matter for the Tasmanian Aboriginal community to determine -

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<sup>48</sup> Cassy O'Connor MP, Op.Cit. P.2

**Ms O'CONNOR** - .....The advice of heritage experts is that Rebecca Creek is an area that needs to be contained - that public access potentially poses a risk to the cultural heritage values of that area.

**Mr VALENTINE** - Like people removing artefacts and things like that.

**Ms O'CONNOR** - That is right, and if these lands are returned to the Aboriginal community, the Aboriginal community may decide that this is an area they wish to share with the broader Tasmanian/Australian global community because of its outstanding cultural heritage significance.

But it is not for us to stipulate what public access is allowed in the future at Rebecca Creek. It is not a place that anyone can walk onto, take artefacts, go camping, or fishing. It is a bit different from Irapuna which now has a public access right prescribed within the amendment bill. Access to the boat ramp, which I know means a lot to the local community there, is enabled.<sup>49</sup>

136. The ALCT expressed similar sentiments in its written submission to the inquiry in relation to the significance of Rebecca Creek to the Tasmanian Aboriginal community -

*'Rebecca Creek is a significant cultural site for the statewide Aboriginal community and if preserved under the Aboriginal Lands Act, it can become an important place for all Tasmanians. The property holds a rich deposit of spongolite which our Aborigines forbears used for the production of stone tools. It is the richest known Aboriginal stone deposit in Tasmania; the site produced very important cultural resource material which was traded across nations. This site is important to our community and must be returned to the ALCT to ensure the area is preserved for future generations. The return of this land to the communal ownership will also increase the ability of community to reconnect to a very significant cultural place and regain a very important cultural practice.'*<sup>50</sup>

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<sup>49</sup> Cassy O'Connor MP, Op.Cit. p.7

<sup>50</sup> Aboriginal Land Council of Tasmania written submission, 11 April 2013



137. Mr Clyde Mansell provided further comment on the importance of the site to the Tasmanian Aboriginal community during his evidence -

*'I urge you to recognise and support the fact that the return of Rebecca Creek would provide a meaningful way for our community to renew communal and cultural links with that significant landscape and you heard from the minister that the site at Rebecca Creek holds crucial links to artefacts going back to the people who roamed that country some 200 years ago. I ask you to understand these connections.'*<sup>51</sup>

138. Mr Clyde Mansell also confirmed that should the land be returned to the Tasmanian Aboriginal community, access to the site would in all likelihood be restricted -

**Mr VALENTINE** - *With regard to access to Rebecca Creek, what is the intention there?*

**Mr MANSELL** - *There is no access to Rebecca Creek at this time because of its cultural significance and possible interference with that. I would suggest to you that will remain the same.*<sup>52</sup>

### **Concerns with the return of the Site**

139. Several witnesses from the Circular Head region raised strong concerns in relation to the Bill. The concerns were not about the principle of returning the land to the Tasmanian Aboriginal community, but were about the role of the ALCT under the Act, and in particular, what they believed to be the exclusionary nature of the process to determine aboriginality and therefore the role of the local aboriginal community.
140. Most significant amongst the concerns raised was from the Circular Head Aboriginal Corporation Inc. (CHAC). Chief Executive Officer Ms Dianne Baldock noted her organisation's concerns with the consultation process that had occurred and the perceived lack of opportunity for input from the local aboriginal community.

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<sup>51</sup> Mr Clyde Mansell, Op.Cit. p.23

<sup>52</sup> Mr Clyde Mansell, Op.Cit. p.36

141. She also highlighted what she believed to have been the mismanagement of land that had previously been returned to the Tasmanian Aboriginal community in the Circular Head region, and sited Preminghana as an example -

*'In writing the submission we had many issues concerning that land hand-back. One of them was obviously the hand-back to TALC. As an example, the community feel that we have a connection to Preminghana, so we are the ones that have to cop the flak coming through the door. One of the things in the submission was the lack of respect for any property or land that the TAC have got control over, because they are not respecting it. It is okay to sit out there and say, 'This is our land and we respect country', but true Aboriginal people know what respect for country is and we are not seeing it.*

*Once the TAC or TALC take over this land, we are going to be the ones who have to pick up the pieces. As a CEO I speak for this community about the lack of consultation around that hand-back, which obviously did not include us. That is very disheartening because we are the keepers down here. We are the ones who are picking up the pieces. We are the ones who are working for community needs. We go out and teach our kids respect, but how are they supposed to take that on when they see another Aboriginal group come in and completely destroy Preminghana. Preminghana is an absolute disgrace to the TAC. If the hand-back is given to the TAC, Rebecca Creek is going to be another example of what Preminghana is looking like.<sup>53</sup>*

142. Chairman of CHAC Mr Graeme Heald expressed similar concerns about access rights to Rebecca Creek in the context of his organisation's experience at Preminghana -

**'Mr HEALD** - *If they get the land back obviously they are going to want money to manage it. A similar thing happened, which is not the government's fault, with Preminghana. There was a heap of money given, I believe, and when the money ran out, looking after that place stopped and it is left in a mess. You could do lots of things with tourism*

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<sup>53</sup> Hansard Transcript 6 August 2013, Ms Dianne Baldock, p.24-25

*and create employment and educate your people about the significance of those sites. We find that it gets locked up. One of our elders went down there and was charged with trespass on Preminghana, so if that happens out at Rebecca Creek and it is locked up -*

**Ms FORREST** - *Can you tell us about that? It was Norm Richardson?*

**Ms BALDOCK** - *Yes. He was charged for trespassing and it went on his record. He and his wife went down to Preminghana and decided to walk Mount Cameron.*<sup>54</sup>

143. Chairman of the ALCT Mr Clyde Mansell was asked about the issue of access to Preminghana during his evidence and provided the following explanation -

**Mr MANSELL** - *If the land was returned. They can't access it now. I noted the comments about Aboriginal people being denied access to Preminghana. No-one is denied access to Preminghana - the act provides access. The only access we do not want is access which sees vehicles being used off the formed roads.*

**Ms RATTRAY** - *Is that why that person was prosecuted?*

**Mr MANSELL** - *Yes.*

**Ms RATTRAY** - *Was that because of vehicle access and not personal access?*

**Mr MANSELL** - *As I understand it - and I don't profess to know all the ins and outs of the case - the person left the formed roads and walked up the mountain. I believe there was an issue of public safety - that was the key issue there.*<sup>55</sup>

144. Mr Heald and Ms Baldock later summarised CHAC's opinion on the terms of access that should be considered to accommodate the local aboriginal community -

**Ms BALDOCK** - *If it is handed back to them we want to be able to have access. We don't want, 'No, you can't go there', and if we go there we don't want to be charged for trespassing. It would be great if it did not*

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<sup>54</sup> Hansard Transcript 6 August 2013, Mr Graeme Heald, p.25

<sup>55</sup> Mr Clyde Mansell, Op.Cit. p.37

*go back to them, but if it does go back we don't want to be denied any access to those pieces of land, like we have been in the past and I believe it will continue.*

**Mr HEALD** - *We can't influence the decision. We can only say what we think but if a committee is set up to look after that land then there should be one or two persons from CHAC on that committee, alongside the Circular Head Council and the government, so we can have a say in what happens on that land, because we want to see a common good for the community and a balance so that Aboriginal people can enjoy the significance of our culture and sites, and so can non-Aboriginal people together.*<sup>56</sup>

145. Ms Baldock was also asked about the roles of the different Aboriginal communities in Tasmania -

*'Wherever you read about Tasmanian Aboriginal people, it is 'the Tasmanian Aboriginal community'. There is more than one community. There would be people in other parts of Tasmania who would willingly stand here and say exactly the same words.'*<sup>57</sup>

146. Elder of CHAC Mr Alan Wolf also gave separate evidence before the Committee and confirmed his support for the return of land but that in this instance, it should be returned to CHAC as the local community -

**'CHAIR** - *You are in agreement with the principle of land hand-backs and the idea of reconciliation being consolidated by this process?*

**Mr WOLF** - *Definitely. There are Aboriginal people here and the area needs it for employment and things like. It is a spiritual thing too. I have seen one woman from here, when we went down to the petroglyphs at Sundown Point she just stood there and cried. I would love it to go to CHAC. They would do great things with it. They are setting up a land council now. We are lucky here because we work with the community and with the council.*<sup>58</sup>

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<sup>56</sup> Op.Cit. p.30

<sup>57</sup> Dianne Baldock, Op.Cit. p.28-29

<sup>58</sup> Hansard Transcript 6 August 2013, Mr Alan Wolf, p.20

147. Mr Wolf also commented in detail on the lack of recognition by the State Government, TAC and ALCT for the local aboriginal community and that this had been an ongoing issue for his community -

*'It was not only TAC that did not recognise us; it was also the state government because TAC was within the state government. No matter what has gone on in the past up here, we have never had a say in it. We have never been invited into the meetings, so it has been very hard for us to battle on.'*<sup>59</sup>

148. The Circular Head Council was also very supportive of the CHAC having an active role in the management of the Rebecca Creek site. Mayor Daryl Quilliam made the following supportive comments -

*'I know as a council we feel quite strongly that is the case, especially when we have CHAC - our local aboriginal people. I have spoken to the Premier on a number of occasions, and the Deputy Premier as well, that we have a corporation here in Smithton that is looking after the Aboriginal people extremely well. We are very supportive. If anybody was going to be given land in our area I would have thought they would have been at least consulted, and given to these people rather than TALC. They are certainly doing a lot of work in our area. They are respected by the majority of the people in our area and when they first started in Smithton they were probably queried as to what their intentions were. They have worked very well in our community and have been very supportive of work that we do in the Arthur-Pieman area and the Tarkine, so we would have thought that if any land was going to be given to any Aboriginal corporation then this is the group it should have been given to. I know they are keen to do a lot of activities for the Aboriginal people, and for the European people as well, because they are keen on promoting the Aboriginal culture, which most other groups in Tasmania are not doing, so I think that is quite important.'*

*Circular Head Council believes that if Rebecca Creek quarry sites and surrounds are handed back to the Tasmanian Aboriginal Land and Sea*

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<sup>59</sup> Ibid

*Council it would be locked up and no longer available for the greater community. CHAC would work with us much better than TALC. When TALC has been involved in other handbacks they actually stopped most other people from using that land, which is land owned by the government and so should be available to all people other than when they have cultural activities. Obviously the general public cannot go to those but then for the rest of it they should be able to.*<sup>60</sup>

149. Mayor Quilliam also noted the Council's concerns with management of the Preminghana site under the management of TALC -

*'Circular Head Council believes that the Mount Cameron hand-back has been an abject failure. Mount Cameron west has in the past been overrun by gorse. They did a lot of work when they were first given the land, going back four or five years ago, but it has grown now and it is a fire hazard and a weed hazard. If there was a fire in that area and the wind was in the wrong place, it could be a major problem for the local area.'*<sup>61</sup>

150. In not supporting the return of Rebecca Creek in the terms contemplated under the Bill, the Circular Head Council proposed an alternative arrangement to reserve the land whilst enabling broader access to the site. Mayor Quilliam explained the proposal further and cited other examples of where it had been introduced -

**'Ms FORREST** - *As you suggest in your submission, that would have to be done as a declared state reserve?*

**Mr QUILLIAM** - *Yes.*

**Ms FORREST** - *With a lease to CHAC or something like that, as opposed to a handback back to TALC?*

**Mr QUILLIAM** - *Yes, which is another way it could operate. That is the conclusion we have come to if they want to protect it. It is already protected under the Aboriginal Relics Acts because you are not allowed to disturb any of these artefacts anyway. If they feel they want to*

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<sup>60</sup> Hansard Transcript 6 August 2013, Mr Daryl Quilliam, p.1-2

<sup>61</sup> Ibid

*identify it as an area of significance, they can make a reserve. We have two other reserves in our area, West Point and Sundown Point, that are managed by Parks under this criterion. The good thing about Parks managing it is that we all have access to it. We are not allowed to destroy it or anything like that but in a reserve we all have access. With ownership, we can be denied access, and that has been demonstrated with Mount Cameron.*<sup>62</sup>

151. Mayor Quilliam also confirmed the Council's support for a limited tourism venture at the site that would enable improved educational opportunities -

*'If ALCT uses this land for tourism and showing people what their culture is all about, I am sure this community would totally support them. I believe there is a lack of that in our state. The Aboriginal people were very important; I think they were very clever people. They looked after the community and the environment better than we have in a lot of ways. There is a lot the Aboriginal community could teach the local people, and if they utilised that to teach us, I am sure the local people would totally support them. It is very sad to see the land is totally useless because of not being used.'*<sup>63</sup>

152. Parks and Wildlife Service Deputy Secretary Mr Peter Mooney noted the feasibility of off-site interpretation being established to provide further information as a more appropriate alternative to on site activities, given the sensitivity of the site -

*'There are some shining examples worldwide where really special indigenous sites are interpreted, but not at the original site. They are off site, but interpreted so that you get an experience and a feeling and an understanding of the deepness of the values, but you don't have to be at the site itself. There are caves in France and there is some stuff in South America, and even on the mainland of Australia they are starting to build off-site interpretation facilities that give you the*

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<sup>62</sup> Daryl Quilliam, Op.Cit. p.5

<sup>63</sup> Daryl Quilliam, Op.Cit. p.6

*experience and immersion, but don't let you impact on the original site.*<sup>64</sup>

153. In general terms, the Council's evidence was noted by the Committee to present a European perspective on land ownership, rather than the Aboriginal concept of 'country'.
154. Mr Paul Docking indicated in his written submission that he was a 'member of the broader Tasmanian Aboriginal community' and noted several key concerns with the proposed return of Rebecca Creek:
- That the local Tasmanian Aboriginal community group CHAC would not receive recognition in order to access the site due to it not being recognised by TALC or the TAC;
  - That the previous prosecution of CHAC members who accessed parts of Preminghana was concerning;
  - The importance of section 19 and 32 of the Act in the context of the role of local aboriginal people.<sup>65</sup>

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<sup>64</sup> Mr Peter Mooney, Op.Cit. p.45

<sup>65</sup> Mr Paul Docking written submission, 11 April 2013



## **LONG-TERM CONSIDERATIONS WITH THE PROCESS OF RECONCILIATION**

155. Several important broad issues were raised in the evidence that were not specific to either the Eddystone Point Lighthouse Historic Site or Rebecca Creek but required some consideration by the Committee.
156. It is not the Committee's intention to analyse these issues in detail as part of the report as the issues are complex and broader than the terms of reference for the inquiry.
157. It is however important to briefly note the issues that were raised as they are central to the ongoing process of reconciliation in Tasmania and the role of indigenous and non-indigenous communities as part of that process.

### **Reconciliation within the broader Tasmanian community**

158. The Reconciliation Action Network, which is the national organisation promoting reconciliation between Aboriginal and Torres Strait Island peoples and the broader Australian community, has published a narrative of what it considers reconciliation to mean. The complete text is available at its website - <http://reconciliation.org.au/nsw/education-kit/what-is-reconciliation/#what> The following extracts are worthy of inclusion in this report -

*'In its broadest sense, 'reconciliation' means coming together. In Australia it is the term used to refer to the bringing together of Aboriginal and Torres Strait Islander, or Indigenous, and non-Indigenous Australians. Supporting reconciliation means working to overcome the reasons there is division and inequality between Indigenous and non-Indigenous Australians.....*

*Another important cause of division is misunderstanding, prejudice and racism, as many non-Indigenous people still know little about Indigenous people and history.*

*Examples of reconciliation in action include projects to combat racism and prejudice, to educate the community about Indigenous Australia and Australia's shared history.....*

*Other reconciliation projects aim (sic) bring Indigenous and non-Indigenous people together to learn more about each other, and others focus on addressing disadvantage by providing services for Indigenous people.*<sup>66</sup>

159. Mr Graeme Gardner from the ALCT confirmed his understanding of the process of reconciliation during his evidence -

*'Reconciliation, in our first view of it, is the very act of returning land. That in itself is an act of reconciliation. To follow that is the activities, the physical activities that one does, or both do, to then be put into that basket of reconciliation. Sharing cultural values with each other is reconciliation. There is no 'Okay, we are this far apart, we are working a way together'. As long as we acknowledge each other, our differences in most cases are cultural differences. We acknowledge that the structure is in place where, as a minority, we are part of this state. All those acknowledgements are reconciliation. It's when there is a denial from either side it pushes things out a bit.*

*At the end of the day, how much reconciliation there is, if it's judged by our activities, we have to look at how much is judged by your activities. I think recognising or acknowledging each other and doing acts for the benefits of all people is reconciliation.*<sup>67</sup>

160. The Committee received evidence from a number of witnesses who expressed support for the concept of land being returned to the Tasmanian Aboriginal community as part of ongoing reconciliation, but who had genuine concerns with the management of land and the engagement of local communities as part of the process in Tasmania.
161. In its written submission, the TAC argued that the Committee should look at the big picture and challenge the Government in relation to the size of the land proposed to be returned under the Bill. It argued that the land proposed for return was limited in size to such an extent, so as not to support the broader aims of reconciliation -

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<sup>66</sup> <http://reconciliation.org.au/nsw/education-kit/what-is-reconciliation/#what>

<sup>67</sup> Hansard Transcript 18 October 2013, Mr Graeme Gardner, p.10

*'Having had 67,000 square kilometres of land stolen, it is almost contemptuous that the Aboriginal community is now offered a mere 150 hectares. Even then it appears some Members will quibble, under pretexts of varying plausibility, with the small amount of land being returned.....*

*It would have been far more productive had the Legislative Council members indicated to the government that 150ha of land trivialised the efforts of past parliaments and the importance of maintaining the momentum of reconciliation. Such leadership would also have confirmed the importance of the reconciliation process in the scheme of developing a better Tasmania'.<sup>68</sup>*

162. Minister for Aboriginal Affairs the Hon Cassy O'Connor MP was asked about the Government's position on the process of reconciliation in light of these and other comments. She indicated that the size of the land parcels under the Bill should not be used as a measure of the broader intention for ongoing reconciliation -

*'The fundamental premise behind these land returns is that reconciliation is a journey of many steps, some of them are small and some of them are larger. I believe that land returns to the Pallawa are a very important part of the reconciliation journey in Tasmania. The return of Irapuna and Rebecca Creek, which is 148 hectares and 10.4 hectares respectively, are very important to the Pallawa people of Tasmania and we need to recognise that as the wider community.'<sup>69</sup>*

163. Aboriginal Historian Mr Greg Lehman summarised his view of the process of land returns as part of ongoing reconciliation and the challenges associated with meeting those objectives. His observations highlighted the need for ongoing support for Tasmanian Aboriginal communities who played a role in the management of land under the Act if the process was to succeed. He also noted that reconciliation was an ongoing process that would take considerable time to achieve tangible results given the unfortunate history of the Tasmanian Aboriginal community -

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<sup>68</sup> Tasmanian Aboriginal Centre written submission 10 July 2013

<sup>69</sup> Hansard Transcript 23 September 2013, Cassy O'Connor MP, p.1

*'My two key concerns are that there are two particular opportunities that are presented when lands are returned and it will be up to people in the future to have opinions about how well we have achieved those opportunities. The two I am thinking of - the first is to maintain social and community cohesion, particularly in local areas and the second is to ensure that the potential for cultural and economic development is realised. For example, I do not think it is enough for governments to simply sign over title to a parcel of land and then that is the end of it. It is important to provide resources so that opportunities can be realised, and different opportunities are presented on different parcels of land. Some of them are there to be considered for nature conservation purposes, for example, such as mutton bird islands which may or may not be commercially utilised. The community has an interest in nature conservation in common with the Parks and Wildlife Service in that case. Other areas of land represent very significant potential for economic development.*

*... People often say to me, 'Why is it important for people to identify as Aboriginal these days?'. One of the answers to that is that it is not easy to forget things that have happened less than two lifetimes ago. Two grandmothers ago, people were losing members of their family in very tragic and aggressive circumstances. It takes societies a long time to recover from that. These gestures can be very powerful acts of reconciliation and building of cultural and social capital if they are managed appropriately. That means taking the time and ensuring, for a start, that quality information is available. That was probably one of the main reasons why I was enthusiastic about coming along because, reading through some of the minutes of the hearings you had at Circular Head, for example, there is a quite a lot of hearsay and naive understanding of history, and of approximations and people getting things wrong. No process can be as effective as it should be if it is*

*denied access to quality information. If I can do my best to offer a bit of quality information in this process, then I will be happy.*<sup>70</sup>

164. Chairman of the ALCT Mr Clyde Mansell provided the Committee with his observations of the history of reconciliation in Tasmania and noted his concerns with some of the evidence received by the Committee, which he believed ran counter to the ongoing process of reconciliation -

*'I witnessed every land return made by the Tasmanian parliament since 1995. Now some 18 years later I feel the spirit and goodwill under which previous government (sic) have acted is diminishing. There seems to be an attempt to change the process. A change will not only discourage reconciliation, it allows petty and irrelevant comments or beliefs to determine the basis of how and why Aboriginal land should be returned. Having read the Hansard of the hearings at Smithton and attending the St Helens' hearings, I regrettably get the feeling that the process of land return is being sidetracked by a debate or argument about issues not necessarily connected to the task at hand. I never thought I would be sitting here in 2013 attempting to defend my people, our aspirations, our rights to have land returned or even defending reconciliation. To me, this requirement just raises the question about how far we have really come.'*<sup>71</sup>

165. Some of the submissions did question whether the concept of land hand backs was in fact compatible with the broader objectives of reconciliation. These questions were raised with the belief that it was creating broader divisions within the Tasmanian community.
166. Mr John Coulson questioned whether the original objectives of the Act in relation to reconciliation were being achieved by the return of further land to the Tasmanian Aboriginal community as proposed under the Bill -

*'So this submission is being made as an effort to persuade the Legislative Council to draw a line in the sand as I believe making more land grants is detrimental to Tasmanian society and is generating further*

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<sup>70</sup> Hansard Transcript 23 September 2013, Mr Greg Lehman, p.57

<sup>71</sup> Hansard Transcript 23 September 2013, Mr Clyde Mansell, p.21-22

*division. The fundamental objective in the 1995 Aboriginal Lands Bill was to promote reconciliation, a concept which needs closer objective scrutiny to determine if it will indeed accomplish it.*<sup>72</sup>

167. Mr Denis Lisson expressed similar sentiment in his submission -

*'.....I strongly support reconciliation as the only way forward. However I am concerned that handing back land, and the associated on-going attempt at appeasement is having a negative effect, and will ultimately lead to a seriously divided community.'*<sup>73</sup>

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<sup>72</sup> Written submission Mr John Coulson, 4 April 2013

<sup>73</sup> Written submission Mr Denis Lisson, 8 April 2013

### **Reconciliation within the broader Tasmanian Aboriginal Community.**

168. This report has earlier outlined the role of the Tasmanian Electoral Commissioner in the determination of aboriginality for the purpose of the election of members to the ALCT.
169. The questions of aboriginality and recognition are matters for the Tasmanian Aboriginal community to resolve.
170. The Committee noted the evidence of local aboriginal communities who are recognised at Commonwealth and State levels in various ways, but do not meet the definition of an Aboriginal person under section 3 of the Act.
171. The Committee noted that some local aboriginal communities were excluded from any role in the management of land returned to the Tasmanian Aboriginal community under the Act.
172. Chairman of the ALCT Mr Clyde Mansell confirmed his position in relation to what constituted the Tasmanian Aboriginal community -

*'There is but one Aboriginal community. This community is made up of three core cultural, ancestral groupings and families. It is made of people from the Bass Strait Islands, like me and Graeme's family. Clearly, the history and the archival records of this state show our continuance - no debate. We are the people who link directly into the north-east of this state and go back to our ancestral father, Mannalargenna.*

*The community is also made up of Aboriginal women who were removed from Wybalenna to Oyster Cove and relocated into the general population. These women include Fanny Cochrane Smith, who settled at Nicholls Rivulet down in the Channel. Fanny's family line continues to live in the Channel and nearby Huon Valley today. Many of her family connections live in other cities around the state and on the mainland, as do the people from the islands.*

*The third core cultural group and ancestral family are those people descending from Dolly Dalrymple Briggs who married and had a large*



*family on the north-west coast of the state. Her descendants also live around the state. We are the Aboriginal community.'*<sup>74</sup>

173. Part of the confusion may understandably be linked to the inconsistency between the Commonwealth and State Governments on the issues of aboriginality and entitlement.
174. The Minister for Aboriginal Affairs the Hon Cassy O'Connor MP was asked whether the State Government should play a role in resolving the ongoing conflict in Tasmania. The Minister confirmed that she did not believe there was a role for Government in the resolution of this conflict -

***Mr MULDER** - Going back even to 1995, there was always the issue, not only of the reconciliation between the wider community and Aboriginal people, but reconciliation within the Aboriginal community. What steps has the government taken, given the fact that this was a (sic) first flagged as an issue in 1995 and was a subject of a Legislative Council committee in 2000. What steps have been taken to try to resolve or to try to get some reconciliation within the disparate Aboriginal communities?*

***Ms O'CONNOR** - Well again, is it for the government to direct members of any particular community to talk to each other?*

***Mr MULDER** - It is when you empower one segment of the community to decide who is in that community.*

***Ms O'CONNOR** - Under the act, we have empowered the Aboriginal Land Council as the statutory manager but there are provisions within the act that require ALC to engage with local communities about the future management of that land. Having been the minister in this portfolio for more than 2 years now, I understand that there are significant and enduring divisions within the Aboriginal communities of Tasmania. I do not think that is our business because these are matters for Aboriginal communities to resolve. It is a vexed question, Mr Mulder.*

***Mr MULDER** - May be so, but if you do not see government as having a role in reconciling within the Aboriginal community, it then does not*

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<sup>74</sup> Mr Clyde Mansell, Op.Cit. p.3



*question why you would see a role in reconciling between one group of the Aboriginal community and the Tasmanian community at large. It is a role of government to attend [sic] reconciliation between differing perspectives in the community - that is what democracy is about, getting that reconciliation moving so that we move forward together. The answer to my original question seems to be that we have done nothing about resolving the issue because we think it is none of our business.*

**Ms O'CONNOR** - *What we have done is to fund a number of organisations outside the Tasmanian Aboriginal Centre, and outside the Aboriginal Land Council of Tasmania, to represent their local communities. So we give strength through government support to a number of Aboriginal communities in Tasmania but this is a very vexed question. I have spoken to many people in Tasmania who identified strongly as Aboriginal Tasmanians and feel very aggrieved that they are not recognised as such. Ultimately, that is the community's responsibility to resolve some of those issues. I would dearly love to see more conversations between communities who have a tension between them. One of those is the Flinders Island Aboriginal Association and its relations with some leadership within the Aboriginal community. I have a great deal of respect for FIA [sic] and the work that they are doing on Flinders Island. It is a matter of great regret to me that there are not better relations there.*

*Ultimately, you cannot make people communicate with each other while there are unresolved issues between those communities; you cannot make people want to work together. You can try to bang heads together, but I think ultimately that will cause more harm than good.<sup>75</sup>*

175. Aboriginal Historian Mr Greg Lehman made an important contribution to the topic of aboriginality and reconciliation and noted the importance of separating the concept of aboriginality from eligibility -

*'It is an issue that is at the same time extremely difficult and extremely easy. I am contacted by a lot of people who want to talk to me about*

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<sup>75</sup> Cassy O'Connor MP, Op.Cit. p.13

*Aboriginality and the first thing I do is work out whether they are talking about Aboriginality or eligibility and there is a key difference in that. Eligibility is about whether or not you are eligible to participate in a particular service that is provided exclusively for Aboriginal people or whether you are eligible to benefit from an initiative, whether it be to participate in electoral process or whatever. This might sound like splitting hairs but, it is a very important distinction because administrative appeals, tribunals and federal courts, senior public servants such as Mr Type, are there to administer processes, policy based bureaucratic processes, around eligibility and they do not determine a person's Aboriginality. That to me is what makes the process quite simple, unfortunately people get very easily upset and quite emotional about the idea that their cultural identity is being denied them and people have an idea of their cultural identity for a range of reasons.*

*Some, like many people who you would have met, whose families come from Cape Baron [sic] Island or a couple of the other major family groups, Dolly Briggs's family or Fanny Cochrane Smith's family, have a cultural identity because of the strong family history and continuing cultural practices. Other people have a view about a cultural identity because of things that they have discovered or have been told and it is that latter group that often get in to trouble because oral histories are informative but not determinative. They can provide clues and hints and suggestions that should lead to quality processes of research to determine what is at the basis of those oral histories.<sup>76</sup>*

176. As noted previously Mr Lehman also commented on the requirement for a definition of an Aboriginal person relating to the spending of public monies arising from programs and services -

*'I think it gets back to this problem, Ruth, of one size fits all. We have an expectation that everybody who identifies themselves as Aboriginal will be able to meet all the same criteria, which is probably more of a*

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<sup>76</sup> Hansard Transcript 23 September 2013, Mr Greg Lehman, p.59

*reflection of the requirements and consequences of having to administer public funding. You do need fairly well defined and strict criteria if you are going to be administering public funding, so that is how we came up with this. Nobody was talking about this sort of thing before the seventies. It is a consequence, unfortunately, of getting bureaucracies involved in a matter of personal identity.'*<sup>77</sup>

177. Chairman of the ALCT Mr Clyde Mansell strongly stated his position in relation to the question of aboriginality and the right of the Tasmanian Aboriginal community to self-determination -

*'I see the attack on the right of the Aboriginal community to determine aboriginality as an attack on self-determination and I would like to take this opportunity to refer to articles 3 and 4 of the United Nations Declaration of Rights of the Indigenous Peoples. Article 3 says:*

*Indigenous persons have the right to self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development.*

*Article 4 goes on to say:*

*Indigenous peoples in exercising their right to self-determination have the right to autonomy or self-government in matters relating to their internal -*

*And I emphasise the word 'internal' -*

*- and local affairs, as well as the need for financing their autonomous functions.*

*I think really that is the basis of providing an opportunity to the Aboriginal community to engage in free expression of self-determination. Unless that is afforded to us, then the basic right is forbidden us. I also see the attempts as being culturally disrespectful to*

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<sup>77</sup> Greg Lehman, Op.Cit. p.63

*the Aboriginal community, to the ALCT and to me as a leader and an ambassador for my community.*<sup>78</sup>

178. Mr Clyde Mansell also outlined the process under the Act that was applied in order to formally recognise a person's aboriginality. He advocated strongly that this was a transparent and appropriate process that the Tasmanian Aboriginal community was responsible for -

*'In relation to people self-identifying, anybody could self-identify as anything. It is about them bringing that back to what the core cultural grouping determines as being necessary. It is about how you define that. In that regard, if you look at the process of the Aboriginal Land Act, the electoral provisions, we do everything in our power to provide an opportunity to the individual making the determination, to provide us with evidence that will substantiate their identification. The group that comes together is made up of those core groupings that I spoke to you about and there is investigation back to people outside of that structure who are part of the Aboriginal community to determine their knowledge or acknowledgement of the person making the claim.*

*We also bring in expertise [sic] advice about the recorded history of this state. People must accept that Tasmania has some of the best archival records there are. We use processes available to us to try to build up the linkage, to make connection. When we cannot make connection, I do not believe we have any opportunity to do anything else and that is what the Supreme Court of this state found in the cases I referred to them.*

*We do not just look at a list of names and think, we do not like that person, so they are not getting in. There are some real tests done and very serious conversation. I can only guarantee to you that we do everything in our power to find that connection, but if we cannot find it then I do not know what we can do other than to say we are unable to make the connection, which is what we have done.*<sup>79</sup>

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<sup>78</sup> Hansard Transcript 18 October 2013, Mr Clyde Mansell, p.2

<sup>79</sup> Mr Clyde Mansell, Op.Cit. p.16

179. The Parrdarrama Pungenna Aboriginal Corporation noted its concerns with the process by which land that had previously been handed back to the Tasmanian Aboriginal community had excluded local aboriginal communities such as theirs

*'As a Community we would like to see the land handed to the Aboriginal community living on Country in the areas of hand back. Custodianship should lie with the community who connect, live, walk and breathe on that country on a daily basis – not a group who leave foot prints on an ad-hoc basis and without any real attempt to communicate with the local people.*

*If the land hand back is to be managed by one body or group then that group should reflect the number of Aboriginal Communities in this State – not controlled by larger – more powerful groups – a body that is reflective of all the Aboriginal communities and family groups in each area.<sup>80</sup>*

180. Chairman of the Circular Head Aboriginal Corporation Inc Mr Graeme Heald noted his organisation's ongoing challenges with the question of aboriginality and its ability to provide support for its community members -

*'Tasmania is the only state in the commonwealth that has a different recognition for aboriginality. A bill was passed eight or 10 years ago that to be recognised for Aboriginal jobs and education you needed to be recognised by the Tasmanian Aboriginal Centre. Who says they have the right to say who is and who isn't? There is a lot of detail and evidence compiled over years and years. It affects us when we take somebody into the legal situation. Say a kid or a family needs assistance. You go into Burnie Legal Aid and say, 'I've got Joe Blow from Circular Head. He's an identified Aboriginal person and got himself into trouble.' You go over to the Tasmanian Aboriginal Centre, that has the money, and they say, 'We don't recognise that person. They don't fit under our criteria under state recognition. Go back to Legal Aid'. Legal*

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<sup>80</sup> Parrdarrama Pungenna Aboriginal Corporation written submission, 27 June 2013

*Aid says, 'You've identified this person as an Aboriginal so they should be able to be serviced', but they don't get it.<sup>81</sup>*

181. Chief Executive Officer of the Circular Head Aboriginal Corporation Inc Ms Dianne Baldock noted her organisation's attempts to start a dialogue with Tasmanian Aboriginal leaders on the issue of reconciliation within the Aboriginal community -

***'CHAIR** - Is there any sense that there might be some reconciliation or some opportunity for a better understanding of each organisation? Are there any attempts being made to -*

***Ms BALDOCK** - Several attempts have been made. We have invited the TAC to meet. When they come into our community they come in very strong. There is always a bus load of them. We would like to sit down and talk but they are not wanting to take that on because they feel they are the leaders of Tasmanian Aboriginals, but like Graeme said, they do not speak for us.*

***CHAIR** - When would have been the last time you held out an olive branch and maybe suggested discussions?*

***Ms BALDOCK** - I think we have local politicians working on that. We have sent many invitations to come down to Circular Head and let us work through a reconciliation plan, but it never happens.<sup>82</sup>*

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<sup>81</sup> Hansard Transcript 6 August 2013, Mr Graham Heald, p23

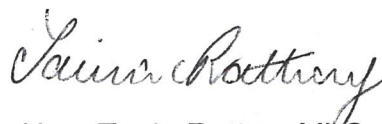
<sup>82</sup> Hansard Transcript 6 August 2013, Dianne Baldock, p.26



Signed this 19th day of November two thousand and thirteen.



Hon. Kerry Finch MLC  
Inquiry Chair



Hon. Tania Rattray MLC  
Committee Chair