

Mr Todd Butterworth
Secretary, Standing Committee on Community Development
House of Assembly
Parliament House
Hobart, Tasmania

Dear Mr Butterworth

Submission to Standing Committee on Community Development: proposals to amend the Tasmanian Constitution to recognise Aboriginal people as Tasmania's First People.

Thank you for agreeing to accept this late submission to the Committee for consideration.

Introduction

I have a strong interest in the subject of this inquiry. I am a Tasmanian Aboriginal person with over thirty years of experience working in Aboriginal organisations, including the Tasmanian Aboriginal Centre Inc., Wayee Aboriginal Radio Aboriginal Corporation, and the Tasmanian Aboriginal Land Council Aboriginal Corporation; as well as a range of public agencies in Aboriginal education policy and programs, Aboriginal heritage management, cultural tourism development and the literary and visual arts. In 1994, I was a member of the working group that negotiated the development of the Aboriginal Lands Bill, subsequently achieving passage through both houses of the Tasmanian Parliament with unanimous support and without amendment.

I currently work as a Research Associate at the National Centre for Indigenous Studies, at the Australian National University, although I continue to maintain a home and family in Hobart. I also continue to be actively involved in a number of development initiatives in Tasmania, through the Tourism Industry Council of Tasmania, the Hobart City Council, and several private sector projects in tourism and the arts including MONA, the Federal Group and Circa Morris Nunn Architects.

The Challenge

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

The consequence of this situation is that Australia offers intolerable levels of disadvantage to Aboriginal and Torres Strait Islander people. The details of these are readily available and it is not necessary to reiterate them here. However, it is important to emphasise that a number of critical indicators, especially suicide rates, demonstrate unequivocally that the current state of affairs is literally unendurable for many Aboriginal people. This situation is as relevant in Tasmania as it is in any other Australian jurisdiction.

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

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

I would like to put to the Committee that Tasmania's current situation dates back to a number of key decisions and consequent outcomes that today's Tasmanian government, at the highest level, must take direct responsibility for. These responsibilities flow from actions taken that effectively set the course of future treatment of Aboriginal people, and the ongoing effects that Aboriginal people endure today. The accumulated circumstances and consequences are complex, and will require more than a simple acknowledgement of prior occupation in the *Constitution Act 1934*.

This inquiry offers a rare opportunity to step back from the attempts of the past, to make a systematic and dispassionate assessment of the underlying reasons for our current circumstances, and to address some of the foundational reasons that Aboriginal people have yet to achieve the levels of health, wellbeing and livelihood that all Tasmanians have a natural right to.

Recognition in the Tasmanian Constitution may well offer an important symbolic step toward achieving this. However, tangible and lasting effects are *unlikely* to result unless a foundation of understanding and informed determination to address the multiplicity of past and present influences is established as the basis for action.

Vice-Regal Miscarriage

On his return to England, Lieutenant Governor Arthur wrote in a letter to Lord Glenelg in 1837, that he 'deeply lamented' his responsibility for an 'injudicious

course of proceedings' toward Aboriginal people as a result of becoming 'perplexed by the adverse opinion of others'. The Governor continued that 'on the first occupation of Tasmania (it was) a great oversight that a treaty was not, at the time, made with the natives and such compensation given to the chiefs as they would have deemed a fair equivalent for what they surrendered.'

Arthur had himself instituted an inquiry in 1830, forming the *Aborigines Committee*, whose aim was to understand the origins of Aboriginal hostility to settlers and to develop measures to improve the situation the colony found itself in. Its proceedings were conducted during a period of Martial Law and submissions focused mostly on the need to either remove or 'extirpate' Aborigines. The Committee did not act in the interests of Aborigines and instead succeeded only in compounded Aboriginal suffering.

After he had completed his commission in Tasmania, Arthur urged the Colonial Office to negotiate treaties and to set aside land for Native People in all future colonial ventures. Henry Reynolds argues that this reflected his awareness that a significant mistake had been made in Tasmania. It was probably a significant influence in the decision to negotiate the *Treaty of Waitangi* prior to the settlement of New Zealand.

It is ironic then that the Aboriginal people of Tasmania, the very place that inspired more judicious outcomes for Indigenous people elsewhere, have never enjoyed that recognition ourselves.

This profound injustice in the early nineteenth century has continued to be consistently argued by the descendants and heirs of Tasmania's First People ever since.

Following the infamous Roving Parties, the Black Line, and the commissioning of George Augustus Robinson as 'Conciliator' – all decisions by the Governor aimed at removing Aboriginal families from their homes to make way for British colonists – there have been repeated efforts to remind the Tasmanian government that a legitimate expectation was established in the hearts and minds of the Aboriginal people for proper treatment. These expectations were created either by Governor's proclamation, or through promises made directly by agents of the Governor.

The first, and perhaps most important of these reminders came from the individuals who themselves had experienced removal and imprisonment at Wybalenna on Flinders Island. Walter George Arthur, son of Rolpena (a Chief of the Ben Lomond people) and David Bruny (son of the Bruny Island Chief Worredy) began their well-known 1845 petition to Queen Victoria:

'Your petitioners humbly state to Your Majesty that Mr Robinson made for us and with Colonel Arthur an agreement that we have not lost from our minds since and we have made our part of it good.'

This was a reference to the decision taken by Aboriginal leaders such as Manalargena, Woreddy, and Montpellater, the leader of the 'Big River Mob', to accept the assurances being offered. An indication of these assurances is quite clearly made by Robinson when he brought the last armed resistance group of Aborigines into Hobart in 1832.

Robinson reached an agreement with the 'Big River Mob' to end their campaign of attempting to drive settlers off their lands, and accompany him to meet with the Governor in Hobart. As an agent of the Governor, Robinson provided documentation of the terms of his agreement in a letter he dispatched to the Colonial Secretary, John Burnett while making his way towards Hobart:

'I have promised them an interview with the Lieutenant-Governor and told them that the Government will be sure to redress all their grievances [...] They have placed themselves under my protection and are desirous for peace.'

The early Tasmanian historian James Erskine Calder's view, published in 1875, was that the co-operation of the Aborigines was not obtained by Robinson through 'fair persuasion', but by 'making promises that he should have known could not be kept'.

Historical records of this period make it clear that Aboriginal people freely co-operated with the government to bring peace to the colony, on the basis of a series of promises that they would be able to return to their lands and would be free to practice their culture without interference from settlers. Henry Reynolds assembles extensive documentation of Arthur's plan to offer firstly the western half of the island, and then the northeast as a place where Aboriginal people would be free from the interference of settlers in their way of life. Reynolds makes it clear that these plans were communicated repeatedly to a number of Aboriginal chiefs, and it was on this basis that agreement was eventually reached.

This agreement is again referred to in the 1883 letter to the *Launceston Examiner* from John Smith, John Maynard, Thomas Mansell, George Everett, Henry Beeton and Phillip Thomas of Cape Barren Island. In this letter, the authors remind the government of the agreement that was made by Aborigines to voluntarily go to Flinders Island and, as a consequence, that their needs would be met and they would later be allowed to return to their homes to practice their culture.

Later in his *Report on the Half Cast Reserve* of 1933, N. Hawkins stated that the islanders were 'obsessed with the idea that they have a legitimate right to the land of their ancestors', and that 'the people of Tasmania should be paying rent for Tasmania.'

These views were expressed by an honourable people expecting that the promises of the Tasmanian government would be held with the same honour. With this background in mind, it is possible to better understand the demands that began to be made more publicly in the 1970s. These were not simply a result of 1960s radicalism as many might think. They represent an unbroken

claim to a central element of the original agreement with the Crown representative in Tasmania.

As Mrs Furley Gardner, a Cape Barren Island resident said in a letter to the Examiner in 1977: 'We are claiming Land rights. What is wrong with that? It is our ancestors calling from their graves. Claim what is rightfully yours.'

Aunty Furley's letter represents the continuation of a long held understanding that an agreement had been made, which must eventually be recognised. This is the belief that underpinned negotiations with Premier Ray Groom, leading to the *Aboriginal Lands Act, 1995*. It is the belief that brought Aboriginal people to the consultation table for the review of the Tasmanian Wilderness World Heritage Area Management Plan in 2015, and it is the belief that drives ongoing requests for the return of land, meaningful joint land management relationships, and access to cultural resources.

In order to make a meaningful and progressive contribution to Tasmania's social and economic development, consideration of providing recognition of Tasmanian Aboriginal people in the state's *Constitution Act* must acknowledge this history, its legacies and its implications for justice. Failure to do this will be to repeat the 'injudicious proceedings' that Lieutenant-Governor Arthur so deeply lamented one hundred and eighty years ago. I assume that the Standing Committee will not wish to be responsible for such an outcome. If this is true, then Committee members must accept the challenge of finding ways to remedy a long-standing injustice that has its origins in a miscarriage of vice-regal responsibility.

This miscarriage – or at least its consequences - is no secret. Most Tasmanians know that there is a too much in the island's history that is unspeakable. The face of Truganini, seen every day in history books and popular media, stirs the collective conscience, not just in Tasmania, but across Australia. The nation's very first history painting, Benjamin Duterrau's *The Conciliation*, which today hangs in the Tasmanian Museum and Art Gallery (see fig. 1), pictures the moment when the agreement was made. I believe strongly that not only must this agreement be eventually recognised if real, lasting resolution is to be achieved, but that this inquiry provides the ideal opportunity for this recognition.

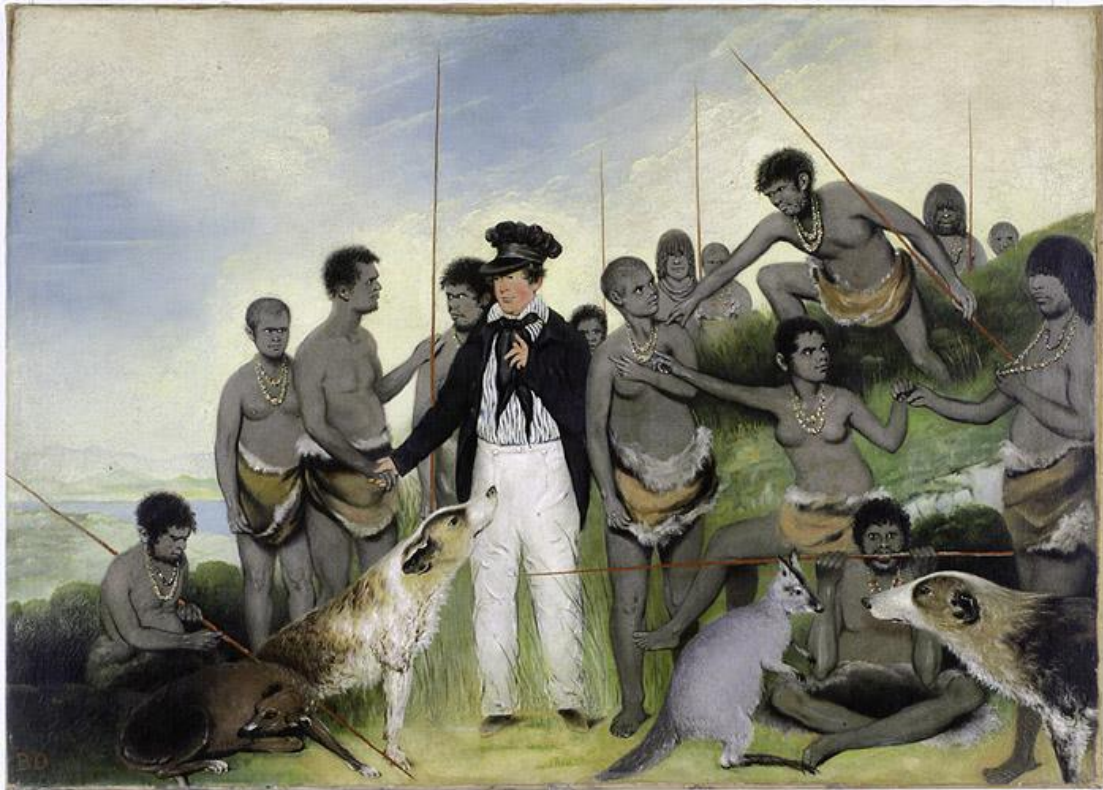


Fig.1 Australia's first history painting depicts the moment of agreement with G. A. Robinson, who offered promises on behalf of government to Tasmanian Aborigines – promises that have yet to be honoured. 'The Conciliation', Benjamin Duterrau, 1840. Oil on canvas, Tasmanian Museum and Art Gallery, Hobart.

A Way Forward

To succeed in this will require leadership from government, and to resist being dissuaded, as Arthur was, by 'the adverse opinions of others.' Arthur erred because of pressure from settlers who had to defend their lives and property against attack by Aborigines. This reason no longer exists. The common aspiration of Tasmanian Aboriginal people is to have a meaningful voice in the process of government and to be able to enjoy their culture in their ancestral home.

Whether this should follow the precedent of the *Treaty of Waitangi* and create dedicated seats in the Tasmanian Parliament, or the formation of a body of Aboriginal people to advise the Parliament as has been proposed by other submissions to this Inquiry, is a question that should properly be answered through more extensive consultation with Aboriginal people in Tasmania, and with other Tasmanians who must also be part of the solution.

This will raise critical issues, not the least of which is appropriate criteria for the establishment of Aboriginal franchise. While difficult, and surrounded by potential for conflicting opinion, addressing this core issue must not be shied away from. In exactly the same way as injustice for Aboriginal people has been compounded by the complexity of colonial history in Tasmania, the matter of

Aboriginality has also been compounded by a series of judicial and administrative decisions over recent decades.

Piecemeal attempts to respond to these matters have collectively failed to deliver a profound resolution. The result has been a continuing state of tension and conflict between successive governments and Aboriginal people. This fraught relationship with the non-Aboriginal population of Tasmania has become characterised by distrust and conflict – to the extent that Aborigines are almost expected to be oppositional. Combined with the long shadow of our colonial past, these conditions have acted to constrain the openness, honesty and generosity with which Tasmania should be facing the future. This can be transformed by decisive action on the part of government, recognising its own responsibility through decisions taken in the 1830s by Lieutenant Governor Arthur.

Recommendation

My recommendation recognises that:

- the current state of affairs was created by a vice-regal miscarriage;
- the history of relationships between Aboriginal people and the government is complex and characterised by deep injustice and its manifold consequences; and
- any resolution must be a multifaceted one that reaches deep into the heart of our democratic processes;

To adequately respond to this, a Royal Commission be established. The Commission should be charged with investigating and reporting on the historical, social and legal implications impacting on relationships between Aboriginal people, government and the Tasmanian society as a whole. To do this, it should examine:

- previous inquiries, study groups, and other investigations initiated by government, dating back to the Aborigines Committee of 1830;
- historical evidence of the treatment of Aboriginal people, including not only dispossession of land without just compensation, but also the 'extirpation' practiced on the Aboriginal population of Tasmania;
- the social and economic consequences of this treatment for generations of Aboriginal families;
- evidence for successful and just interventions in comparable jurisdictions (ie, Canada and New Zealand) to improve the wellbeing and livelihoods of Aboriginal people.

In light of the failure of previous inquiries into Aboriginal affairs to generate meaningful outcomes for the benefit of Aborigines, a Royal Commission should have the ability to make recommendations for a multifaceted response to the challenge of recognising Aboriginal people in Tasmania, our interests, our legitimate aspirations and our just treatment. Such a set of recommendations would create the first-ever comprehensive and critical response to the results of past failure, and will be able to provide a sound and transformative set of measures from which can be drawn appropriate statutory and administrative

amendments. It will be these that will enable currently dysfunctional relations between Aborigines and the state to be rectified.

Only after such a commission should decisions be taken for 'amending the Tasmanian constitution to recognise Aboriginal people as Tasmania's first people'. My submission rests on the critical importance of 'matters incidental thereto', as it is inattention to the complexity and enormity of these matters that has resulted in previous efforts failing to create the change that will be necessary to successfully resolve over two hundred years of hardship for Aboriginal people in Tasmania.

The establishment of a Royal Commission might at first seem to be disproportionate to the task, or a case of over-reach. However, such commissions of inquiry are often called to investigate the treatment of minorities, matters of public concern (and controversy), and which impact on the safety, wellbeing and treatment of those who may have been subject to systematic injustice, especially when there is evidence of continuing impact. The situation of Tasmanian Aborigines meets all these criteria. It must be remembered that administration of British settlement in Tasmania resulted directly or indirectly in the deaths of at least five thousand people in half a lifetime, and the impact of this period is still being felt.

My submission is that only such an unprecedented and historic action can succeed in avoiding the inadequacy and failure of previous efforts. A Royal Commission would also be an unambiguous act of leadership on the part of government to address, with the utmost seriousness and with appropriate resources and authority, a profound flaw in our social fabric. This flaw has existed since the first application of Crown Law on our island home, and currently shows no signs of abating. It must be investigated thoroughly and effectively before we can know how it should be properly addressed in the Tasmanian Constitution.

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