

**GOVERNMENT RESPONSE TO
LEGISLATIVE COUNCIL SELECT COMMITTEE
REPORT ON ABORIGINAL LANDS**

AUGUST 2000

CONTENTS

	Page
OVERVIEW	3
RESPONSE TO INDIVIDUAL RECOMMENDATIONS	6
RECONCILIATION	9
ABORIGINALITY	14
LAND TRANSFER PROCESS	15
BURIALS AND CREMATIONS	23
APPENDIX 1 - CONSULTATION	24



OVERVIEW

On May 27 this year, every Australian State Premier, the Prime Minister and the Governor General attended Corroboree 2000 at the Sydney Opera House.

The Tasmanian Premier, Jim Bacon was a signatory to the Council for Aboriginal Reconciliation's vision for reconciliation by placing his handprint on the document. It commits the Tasmanian Government unequivocally to the reconciliation process. It is a document against which our future actions and legislation will be measured.

On May 28 a crowd estimated at more than 200,000 walked across the Sydney Harbour Bridge. Almost two months later between 15,000 and 25,000 committed Tasmanians walked across the Tasman Bridge in Hobart in the name of reconciliation.

The Year 2000 is unquestionably the Year of Reconciliation. The Government believes it is a sentiment that must continue and that the *Aboriginal Lands Amendment Bill 1999* will help maintain the goodwill and momentum towards reconciliation in Tasmania.

The Government announced its reconciliation package in October 1999 and introduced the *Aboriginal Lands Amendment Bill 1999* into the Parliament on 30 November 1999.

The introduction of the package followed in the tradition of the Parliament's enactment of two previous pieces of legislation to transfer land to the Aboriginal community.

The first was the historic *Aboriginal Lands Act 1995* which saw the transfer of 12 parcels of land to the Aboriginal community.

The second was the enactment of the *Aboriginal Lands Amendment (Wybalenna) Act 1999* which returned Wybalenna to the Aboriginal community.

These Acts recognised the rights of the State's Aborigines to practice their culture, and transferred ownership of a total of thirteen parcels of Crown land to the Aboriginal Land Council of Tasmania.

The Government has read and carefully considered the Legislative Council Select Committee's Report on Aboriginal Land. While we agree with a number of the recommendations contained in the Report we do not agree with the key conclusion in the Report that the transfer of the land parcels should not be supported as it does not assist reconciliation.

This Government is committed to continuing the process of reconciliation and believes that its commitment to reconciliation is confirmed by the legislative package.

The Government believes that the package recognises Aboriginal loss of land and culture in the time since European occupation and is a further sign that Tasmanians are willing to assist in the ongoing development of the Tasmanian Aboriginal community.

The Government believes that the return of land is fundamental to reconciliation and considers that land ownership is a key initiative in ensuring the recognition and survival of Aboriginal heritage and culture in this State.

The Government is criticised in the Report for not consulting broadly about the proposed transfer of land.

In relation to this, we support the view of eminent Australian historian Professor Henry Reynolds, who has argued that this Government and preceding Tasmanian Governments are the direct successors of the colonial governors of the 1830s and as such have a responsibility to rectify past injustices.

It is the Government's strongly held view that responsibility lies with the elected Government to negotiate with the Aboriginal community and to propose legislation to the Parliament

The Select Committee Report also puts the view that land claimed by the Aboriginal community should be assessed against criteria.

The Government has in fact used criteria to assess the land claims of the Aboriginal community. The factors considered by the Government in relation to each land claim were:

1. Significance of the land to the Aboriginal community.
2. Land to be owned by the Crown.
3. Other existing interests over the land not to be impediments to transfer.
4. Significance of land to non-Aboriginal community to be recognised.
5. Natural values to be recognised.
6. Public access issues to be addressed.

7. Appropriate arrangements able to be made for dealing with public infrastructure.

However, while criteria have formed the basis of assessment, the Government does not consider that return of land to the Aboriginal community should be assessed as just another type of land reclassification. Return of land also involves indigenous rights and aspirations, redress of historic grievances and retention of Aboriginal cultural heritage and these matters were also taken into account by the Government. Criteria and procedures used in other processes are not necessarily suitable for dealing with these sensitive and complex matters, which are essentially social and political rather than technical issues.

This Government realises that not all members of the Tasmanian community agree with the Government's proposal to transfer land to the Aboriginal Land Council of Tasmania. The Government is also aware however that there is wide support within the Tasmanian community for reconciliation, for addressing past actions against the Tasmania Aboriginal community and for the return of Crown land.

The Government considers that reconciliation is not just about words, it requires positive actions. This State must move forward with reconciliation by taking actions to support the long-term survival of Aboriginal culture in this State and to ensure a strong future for the Aboriginal community.

The Australian community is watching this decision. Tasmania's reputation for human rights, anti discrimination measures and Aboriginal reconciliation has come a long way in the past five years.

This Government believes the success or failure of this legislation will affect the State's reputation one way or the other.

The Government intends therefore to reintroduce its legislative package into the Parliament during the coming Spring Session.

The following sections address each of the recommendations contained in the Select Committee Report and discuss the main issues covered in the Report: Reconciliation, Aboriginality, the Land Transfer Process and Burials and Cremations.

An Appendix outlining the consultation process undertaken by Government has also been included.

RESPONSE TO RECOMMENDATIONS

A SUMMARY OF THE REPORT'S RECOMMENDATIONS AND THE GOVERNMENT RESPONSE IS PROVIDED IN THE TABLE BELOW.

REPORT RECOMMENDATION		GOVERNMENT RESPONSE
<i>Reconciliation</i>		
2.1	The process of reconciliation be continued to enable not only Tasmanians, but all Australians, to come together in the community and provide justice and equity to all.	This recommendation is supported.
2.2	The transfer of the proposed Crown land parcels should not be supported as it does not assist reconciliation.	<p>This recommendation is not supported.</p> <p>There is substantial evidence and support from the Commonwealth and State Governments and major reports such as the Royal Commission into Aboriginal Deaths in Custody that state the return of land is fundamental to achieving reconciliation.</p> <p>These particular eight parcels of land are significant to the Tasmanian Aboriginal community and have been assessed by the Government before being approved for transfer.</p>
2.3	Adequate funding be provided to assist with environmental land management of the parcels of land that were previously transferred to the Aboriginal community by the 1995 and 1998 Acts.	<p>This recommendation is supported.</p> <p>It is recognised that the Aboriginal Land Council of Tasmania would benefit from additional funds to assist in managing Aboriginal land. Natural Heritage Trust & ATSIC funds are being sought for this purpose.</p>
2.4	The <i>Aboriginal Relics Act 1975</i> be reviewed and the concept of site significance be introduced.	<p>The recommendation to review the Relics Act is supported.</p> <p>A review of the Relics Act has commenced, however, it has been delayed due to new Commonwealth legislation which is before the Federal Parliament (<i>Aboriginal & Torres Strait Islander Heritage Protection Bill 1999</i>). This will be an important guide for the new State legislation as it will set minimum standards that State legislation will need to meet to gain accreditation of State processes from the Commonwealth. The issue of site significance needs to be considered as part of the review.</p>

2.5	Financial support and encouragement be given to the Young Offenders Program on Clarke Island.	This recommendation is supported. This program is receiving funding of \$127,200 this financial year. In addition \$5,000 has been provided to review the program. The Government has shown support for the program and will consider further funding after the review.
2.6	Indigenous centres of cultural excellence be developed to assist in the education of the community as a whole.	This recommendation is supported. Tourism Tasmania, the Office of Aboriginal Affairs and DPIWE are currently working in partnership with the Aboriginal community with a view of developing Aboriginal tourism opportunities. This includes cultural centres.
Aboriginality		
3.1	Aboriginality be determined by the Aboriginal community.	This recommendation is supported.
3.2	In the case of a dispute as a result of a finding by the Aboriginal Land Council of Tasmania, a Tribunal be established to determine Aboriginality.	This recommendation is not supported. This recommendation contradicts recommendation 3.1 and takes away self determination from the Aboriginal community.
3.3	The Tribunal consist of three persons appointed by the responsible Minister - an Elder from the community where the applicant normally resides, an eminent Aboriginal person of statewide standing, and a current or retired legal practitioner.	This recommendation is not supported. As with 3.2 this recommendation contradicts the principal recommendation that Aboriginality should be determined by the Aboriginal community.
Land Transfer Process		
4.1	Claims by Tasmanian Aborigines for land rights is not sufficient justification to transfer Crown land.	This is a statement rather than a recommendation and is not supported. The Government did not make the decision to return the 8 parcels of land based solely on claims by the Aboriginal community. An assessment process was undertaken considering a range of issues.
4.2	If the Tasmanian Government proposes in future to transfer land to meet a claim for land rights by Tasmanian Aborigines, it should first develop criteria against which the claim can be tested.	This recommendation is supported. As noted above, an assessment process and criteria were part of the process which led to the recommendations that the land be transferred. The factors considered in this process included;

		<ol style="list-style-type: none"> 1. Significance of the land to the Aboriginal community. 2. Land to be owned by the Crown. 3. Other existing interests over the land not to be impediments to transfer. 4. Significance of land to non-Aboriginal community to be recognised. 5. Natural values to be recognised. 6. Public access issues to be addressed. 7. Appropriate arrangements able to be made for dealing with public infrastructure.
4.3	<p>The process for the development of such criteria involve:</p> <ul style="list-style-type: none"> • the preparation of draft criteria by Government; • independent, expert and fair testing of criteria through a rigorous process of assessment such as that managed by the Resource Planning and Development Commission; • a recommendation to Government by an independent expert body; and • approval by Parliament of the Government's preferred criteria. The recommended criteria should then be applied to all future applications for the transfer or management of land. 	<p>This recommendation is not supported.</p> <p>While criteria have formed the basis of assessment of land claims, the Government does not consider that return of land to the Aboriginal community should be assessed as just another type of land reclassification. Return of land also involves indigenous rights and aspirations, redress of historic grievances and retention of Aboriginal cultural heritage and these matters were also taken into account by the Government. Criteria and procedures used in other processes are not necessarily suitable for dealing with these sensitive and complex matters, which are essentially social and political rather than technical issues.</p>
4.4	<p>A process of rigorous assessment be determined to identify sites, on Crown Land with Aboriginal cultural heritage values of special significance for management of their special values.</p>	<p>The detail of this recommendation and the reason for making it is unclear. Aboriginal sites are already protected by the <i>Aboriginal Relics Act 1975</i>. Processes are also in place to identify and protect sites. Sites such as West Point, Sundown Point and Trial Harbour are examples of this.</p>
<i>Burials and Cremations</i>		
5.1	<p>Aboriginal burials and cremations as prescribed in the Bill be permitted.</p>	<p>This recommendation is supported</p>

RECONCILIATION

Reconciliation is fundamentally the reflection of the Council for Aboriginal Reconciliation's Vision which is '*A united Australia which respects this land of ours, values the Aboriginal and Torres Strait Islander heritage, and provides justice and equality for all*'.

The Council of Aboriginal Reconciliation was formed by a unanimous vote of the Federal Parliament in 1991 to promote a process of reconciliation between Indigenous Australians and the wider Australian community. The Council is committed to improving race relations in this country, and to fostering an ongoing national commitment to cooperate to address Aboriginal and Torres Strait Islander peoples' social, economic and political disadvantage. The Council also aims to foster an appreciation by the wider Australian community of Aboriginal and Torres Strait Islander cultures and achievements, and of the unique position of Aborigines and Torres Strait Islanders as the indigenous peoples of Australia.

In 1994, the Council for Aboriginal Reconciliation had a clear view of the practical achievements that were necessary to bring about reconciliation between Aboriginal and Torres Strait Islander peoples and the wider community. It identified eight key issues which were essential to the reconciliation process. Relevant key issues to the *Aboriginal Lands Amendment Bill 1999* are:

- **Understanding Country:** A greater understanding of the importance of land and sea in Aboriginal and Torres Strait Islander societies;
- **Valuing Cultures:** Recognition that Aboriginal and Torres Strait Islander cultures are a valued part of Australian heritage;
- **Addressing Disadvantage:** A greater awareness of the causes of indigenous Australians' disadvantage;
- **Responding to Custody Levels:** A greater community response to addressing the underlying causes of the high levels of Aboriginal and Torres Strait Islander people in custody;
- **Controlling Destinies:** Greater opportunities for indigenous Australians to control their destinies.

Recently, the Council for Aboriginal Reconciliation released the *Roadmap for Reconciliation*. The *Roadmap* recognises that all of us have a role to play in making reconciliation a reality. The actions proposed in the *Roadmap* respond to the call to do things differently. They will work best when developed and implemented in partnership with Aboriginal people and Torres Strait Islanders. They should allow for flexible local options, where possible, recognising that what works in one community might not work in another.

The Roadmap identifies four national strategies:

A National Strategy to Sustain the Reconciliation Process that builds on the progress towards reconciliation after the Council for Aboriginal Reconciliation completes its term.

A National Strategy to Promote Recognition of Aboriginal and Torres Strait Islander Rights that aims to ensure recognition, respect and understanding in the wider community of the status of Aboriginal and Torres Strait Islander peoples as the first peoples of Australia.

A National Strategy to Overcome Disadvantage that aims for a society where Aboriginal people and Torres Strait Islanders enjoy the same standard of living as other Australians.

A National Strategy for Economic Independence that aims for a society where Aboriginal and Torres Strait Islander peoples and communities can share the same levels of economic independence as the wider community.

The Government supports the Select Committee's recommendation that "*The process of reconciliation be continued to enable not only Tasmanians, but all Australians, to come together in the community and provide justice and equity to all*". However the Government cannot agree with the Committee's subsequent recommendation that "*The transfer of the proposed Crown land parcels should not be supported as it does not assist reconciliation*".

The Select Committee Report itself states¹: "*The committee concludes that to many within the Aboriginal movement the return of land is fundamental to a successful reconciliation process*"

In the time since the Council for Aboriginal Reconciliation was established, the Tasmanian State Government has proposed and supported the hand back of land to the Aboriginal community and has seen it as fundamental to achieving true reconciliation.

In October 1995 at the Joint Parliamentary Committee on Native Title & the Aboriginal & Torres Strait Islander Land Fund, a discussion between Senator Chris Evans, Chairperson of the Committee and Mr Allan Garcia, Director, Issues Management, Department of Premier and Cabinet regarding the *Aboriginal Lands Bill 1995* stated:

Senator Chris Evans:

"I am particularly interested in the experience of Tasmania because it appears as if you have established a model process in terms of reconciliation and negotiation."

Mr Allan Garcia:

"Absolutely. I think that from day one the Premier housed all this within a framework, or under a heading of 'reconciliation'. We were talking about the broader concept of reconciliation - perhaps such as your committee is involved in - but he wanted to see this as being uniquely Tasmania's reconciliation process. We

¹ Page 11

never wanted to start this process on a legal footing. It was never ever the intent to start a legal battle. It's simply reconciliation or nothing; the easiest thing would have been to have done nothing. We could have said, the Aboriginal community has concerns. They want some land."

Senator Chris Evans:

"There has been such limited generosity of spirit from the majority of state governments. I think that it is very commendable that Tasmania is now showing the model that can and should have been adopted elsewhere, at least as a starting point."

In its *Aboriginal Deaths in Custody and The National Commitment, Tasmanian Government Progress Report on Implementation to June 1997*, the Tasmanian Government stated:

"The Process of Reconciliation

Central to the Tasmanian Government's commitment to achieving full and proper recognition of and reconciliation with the State's Aboriginal community was the transfer of title of twelve parcels of land to that community."

This is further supported in the long title of the *Aboriginal Lands Act 1995* which states -

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

In 1993 as a lead up to the *Aboriginal Lands Act 1995*, the then Premier, the Hon Ray Groom stated in his paper - *Tasmanian Aboriginal People, A Step Towards Full Recognition and Appreciation*: "A recognition and understanding by the wider community of Indigenous peoples connections to the land and the sea is essential for reconciliation."

The then Premier, Hon Ray Groom, also stated during the Second Reading Speech of the *Aboriginal Lands Bill 1995*:

"I am now much more aware of the traumatic struggle of Aboriginal people and the fact that land is at the heart of any meaningful reconciliation between the original Tasmanians and the rest of the community....."

This will enable Aboriginal people to develop programs that will bring real benefits to the community, both cultural and economic. This measure will assist reconciliation.....

A successful step towards reconciliation, with the transfer of a balanced package of land, will build confidence within the broader community that successful resolution of high-profile Aboriginal issues is achievable. On 16 December 1993, I released a document entitled 'A Step Towards Full Recognition and Appreciation'. In that document I state that it was time the Tasmanian community gave full recognition to the unique contribution Aboriginal people have made, and will continue to make, to our island. It marked the first step towards achieving full and proper recognition of Tasmania Aboriginal people and their heritage and culture. The document identified land as a vital issue to Aboriginal people. As I mention earlier, land has special significance to Aboriginal people. Land is viewed as a community concept and

resources are shared throughout the community. There is also a deep understanding of their past connection with the land despite these were cultural disruption which has occurred in the past two hundred years of European settlement.

Therefore, in wishing to advance this reconciliation process and in acknowledging the significance of land to the Tasmanian Aboriginal community the Government has, in association with the Aboriginal community, identified specific parcels of land for transfer.....

As stated earlier, the transfer of land is part of the recognition and reconciliation process with the Aboriginal community. As such, my Government considers that the land in question should not be viewed in the same manner as normal freehold land which can be traded or used as security for other commercial purposes. Land ownership must be consistent with the cultural context in which the Aboriginal community exists.....

In summing up, I believe that the package outlined in this bill represents a major step for the Government and the Tasmanian community. The granting of land will help break down the barriers in Tasmania between the Aboriginal and non-Aboriginal communities and be a major step in the reconciliation process which I mentioned earlier. It will help the Aboriginal community to become more self-sufficient, placing the community on an equal footing with the general community.

Further to the comments made by Premier Groom in the House of Assembly, the Deputy Leader of the Government in the Legislative Council, Mr Tony Fletcher, supported these statements and went on to say:

“As a result of that process I personally - and I am sure the Premier as well - am now much more aware of the traumatic struggle of the Aboriginal people and the fact that land is at the heart of any meaningful reconciliation between the original Tasmanians and the rest of the community. It is significant, I believe, that the Government, the Cabinet and all.....

This measure will assist reconciliation and in turn a successful reconciliation process will have a positive impact on the general community.....

A successful step towards reconciliation, with the transfer of a balanced package of land, will build confidence within the broader community that successful resolution of high profile Aboriginal issues is achievable.....

I will now, having identified and briefly highlighted the land areas contained in the bill, outline the mechanics of the land transfer of land is part of the recognition and reconciliation process.....”

All the advice this Government has received suggests that the continuing connection factor and the history of the Aboriginal community in this State makes it highly unlikely that a claim for native title could be sustained in Tasmania. Therefore in wishing to advance this reconciliation process and in acknowledging the significance of land to the Tasmania Aboriginal community the Government has, in association with the Aboriginal community, identified specific parcels of crown land for transfer.”

Further support of the argument that the transfer of land is fundamental to achieving reconciliation comes from the Royal Commission into Aboriginal Deaths in Custody Report where Commissioner Elliott Johnston, QC wrote (Volume 2, page 468):

“Caring for the land rather than it’s exploitations is the orientation of Aboriginal feelings for land. This represents a continuing divergence in Aboriginal and non-Aboriginal conceptions of land-people relationships and underlines one of the meanings of reconciliation. Reconciliation requires recognition of the divergences in the philosophical differences between Aboriginal and non-Aboriginal people as much as it requires agreements in the political, economic and legal arenas. Before colonisation the demography of Aboriginal society changed in less absolute ways than it has since colonisation, yet a system of land tenure was in place that allowed for the possibility of decline in custodians for particular areas. The sharing of land through a variety of systems of descent inheritance is complex.”

Commissioner Johnston further stated that:

“I conclude that the recognition by non-Aboriginal society of the land needs (of which ‘land rights’ is a part) of Aboriginal people is an important element in effecting a change in race relations in Australia.”

Further Commonwealth support can be seen in then Prime Minister’s Paul Keating’s Second Reading Speech to the *Native Title Act 1993* where it is stated:

“The government has always recognised that despite its historic significance, the Mabo decision gives little more than a sense of justice to those Aboriginal communities whose native title has been extinguished or lost without consultation, negotiation or compensation. Their dispossession has been in total, their loss has been complete. The government shares the view of ATSIC, Aboriginal organisations and the Council for Aboriginal Reconciliation, that justice, equality and fairness demand that the social and economic needs of these communities must be addressed as an essential step towards reconciliation.

While these communities remain dispossessed of land, their economic marginalisation and their sense of injury continues”..... “Addressing dispossession is essential but will not be enough to overcome the legacy of the past and achieve reconciliation”.....

CONCLUSIONS

1. The Government supports the Select Committee’s recommendation that *“The process of reconciliation be continued to enable not only Tasmanians, but all Australians, to come together in the community and provide justice and equity to all”*
2. The return of land is fundamental to a successful reconciliation process
3. This view is shared by many individuals and groups, Aboriginal and non-Aboriginal including past Tasmanian Governments and the current Tasmanian Government.

ABORIGINALITY

The Government agrees with the Committee's primary recommendation that Aboriginality be determined by the Aboriginal community and reiterates its intention to include this principle in legislation.

This Government believes that self-determination is a critical part of addressing concerns of the Aboriginal community. The *Aboriginal Lands Amendment Bill 1999* incorporates this principle by making the Aboriginal Land Council of Tasmania the responsible party for accepting or rejecting objections to enrolment on the Aboriginal Land Council of Tasmania Electoral Roll, on the basis of Aboriginality.

To ensure due process, the Aboriginal Land Council of Tasmania will be required to prepare guidelines on the requirements for determining Aboriginality and make those guidelines available to any person who requests them. In addition, the legislation outlines an appeal process to be followed when the Aboriginal Land Council of Tasmania determines any objections to a person's eligibility on the basis of Aboriginality. This process will ensure that the principles of natural justice apply. The appeal to the Supreme Court, is consistent with a number of other Acts that have appeal rights to courts at the State and Federal level.

The establishment of a Tribunal, as recommended by the Select Committee is not supported as it takes away self determination from the Aboriginal community. The Select Committee Report considers that the proposed process is "*cumbersome and unnecessary*".

However the Government, and more importantly the Aboriginal community, consider that the proposed process is necessary to ensure that people who vote and undertake positions in the Aboriginal Land Council of Tasmania (ALCT) are eligible to do so.

Whilst it may appear the process is protracted and intense, this ensures natural justice is afforded to applicants required to establish their eligibility to participate in ALCT elections.

CONCLUSIONS

1. Aboriginality is best determined by the Aboriginal community.
2. The recommended process in the *Aboriginal Lands Amendment Act 1999* is appropriate and will ensure due process and natural justice.

LAND TRANSFER PROCESS

The Legislative Council Select Committee Report raises a number of important issues concerning the transfer of land in its Chapter 4.

Why land is important to the Aboriginal Community.

The issue of the importance of land to the process of reconciliation is discussed earlier in this Paper. The importance of land to Aboriginal communities throughout Australia and here in Tasmania is fundamental to the discussion over the transfer of land in Tasmania and unfortunately has not been acknowledged by the Select Committee.

Land ownership is fundamental to Aboriginal cultural heritage and to well-being both as individuals and collectively as peoples. Aboriginal relationship with land is of central importance as identity is formed through and in land. It is the key to cultural survival and it is recognised that without land, Aboriginal culture will not flourish.

Governments throughout Australia have recognised that for Aboriginal and Torres Strait Islander peoples, whether they live in cities, towns, or rural areas, their traditional and historical connection to land, water and other natural and cultural resources is central to their identity, to their sense of community and to their sense of justice.

The importance of land to Aboriginal people has been recognised in all major forums on Aboriginal issues and by all major political parties in Australia, as described in more detail in the Chapter on Reconciliation.

It is important to recognise that Aboriginal needs for land arise in different circumstances with different aspects of the significance of land being emphasised. For instance the spiritual connection that Aborigines have with the land can be one very important reason. Other reasons can range from securing title for the protection of sites of significance to using the land as a means of preserving cultural life.

Of all of these reasons, spiritual connection is not easy to portray as it cannot be seen and is most often not understood.

“The significance of land to Aboriginal people who have moved or been moved to other places as a result of colonisation is one that is perhaps less understood by non-Aboriginal people.....” (RCIADIC Report, Vol 2 page 468).

Importance of the eight parcels of land to be transferred.

While land as a general concept is important to the Aboriginal community, the specific areas of land which are to be transferred under the *Aboriginal Lands (Amendment) Bill 1999*, are also significant to the Tasmanian Aboriginal community. Although the reasons for this have been provided to the Select Committee in evidence, the Committee does not acknowledge the significance of the areas in its Report.

West Coast sites

The three West Coast sites, West Point Aboriginal Site, Sundown Point Aboriginal Site and Trial Harbour Aboriginal Site contain many Aboriginal archaeological sites within their bounds. Some of which are obviously spectacular and rare examples of particular cultural heritage, while others are small and remain undisturbed. Despite the differences in the nature of these places, together they form a cultural landscape which is not only extremely significant to the Tasmanian Aboriginal community, but has national and in many instances international, importance because of its scientific and cultural value.

West Point - West Point Aboriginal Site is 550 hectares and was proclaimed in 1976 under the *National Parks and Wildlife Act 1970* as an Aboriginal Reserve, and a protected site under the *Aboriginal Relics Act 1975*, due to the significance of the Aboriginal heritage located in the area.

Sundown Point - Sundown Point Aboriginal Site is about 135 hectares and in 1973 was declared to be a State Reserve under the *National Parks and Wildlife Act 1970*. Its name was changed from Sundown Point Aboriginal Reserve, to Sundown Point Aboriginal Site in 1979 and it was declared a protected site later that year under the *Aboriginal Relics Act 1975*.

Trial Harbour Aboriginal Site - Trial Harbour Aboriginal Site covers 0.63 hectares. In 1981 it was declared a State Reserve under the *National Parks and Wildlife Act 1970* and a protected site under the *Aboriginal Relics Act 1975* later that year.

Furneaux Islands

The areas of Crown land in the Furneaux to be transferred are: Cape Barren Island, Clarke Island, Vansittart Island, Little Dog Island and Goose Island.

Cape Barren Island - Many among the Tasmanian Aboriginal community see Cape Barren Island as home. There are long and lasting links, memories and attachments to this Island by the Aboriginal community.

The Island contains many Aboriginal heritage values. There are 39 Aboriginal sites recorded on the Tasmanian Aboriginal Site Index (TASI). There are also three caves on the Island that have not been recorded on the Index. The age of the sites range from about 10,000 years to 150 years.

Since European occupation, Cape Barren Island has had a chequered history. The Island has seen the establishment of the first sealing camp in the Furneaux area, at Kent Bay in 1798; the settlement of Aboriginal families as they were forced off the smaller surrounding islands by the Government of the day granting leases to non-Aborigines; 6,000 acres of land being reserved by the Government for Aborigines; the establishment of an Islander Association in 1897 which sent many petitions to the Government on land and mutton birding; the *Cape Barren Island Reserve Act 1912*; and in more recent times it was the focus of the Governments assimilation policies which we all know included the forcible removal of children from their families.

Today, Cape Barren Island is still a unique community where the local Aboriginal organisation, the Cape Barren Islanders Community Aboriginal Association, is responsible for maintaining the power, water and sewerage system for the small community situated at the "Corner".

Clarke Island - The Island contains four Aboriginal sites recorded on the Tasmanian Aboriginal Site Index (TASI), as well as other sites that have been observed but not recorded on the Index. Stone tools found at the sites are like others found at about 20 other sites on surrounding islands and show a consistent pattern of occupation on those islands. Significant artefacts found on the Island are also estimated to date back to when the Island was part of the land bridge.

Since European occupation, a number of Aboriginal families have been associated with the Island including the Thomas, Maynard, Mansell, Everett and Beeton families.

This close association by the Aboriginal community continues today as the Tasmanian Aboriginal Centre (TAC) currently uses the Island for a diversionary program for Aboriginal youth at Ashley. The TAC chose the Island for a number of reasons including its isolation and the Aboriginal community's connection with the Island. The program aims to educate and rehabilitate the youth, not only through European education processes, but it also teaches the youth about their Aboriginal heritage and culture through their connection to the land.

Today, the Aboriginal community refers to the Island as Lungtalanana. {lung tul anuna}. George Augustus Robinson was informed by a wife of Chief Manalargenna {Mana lar genna} that this was the Island's name.

Little Dog Island - While it is recognised that non-Aboriginal members of the Furneaux community have a connection with Little Dog Island, the Aboriginal community has been trying for a number of years to have the Island returned.

In 1976 the Aboriginal community petitioned the then Premier Bill Neilsen for its return, citing recognition of prior ownership and an uninterrupted tradition of mutton birding.

A number of Aboriginal families from Cape Barren Island have a strong connection with Little Dog Island. These families commercially birded the Island in what the Aboriginal community see as one of their most important cultural activities. Even today these families still maintain a strong connection with the Island although commercial birding on the Island ceased in the 1980s.

Evidence of pre-European contact is supported by the 13 artefact sites that have been identified and recorded on the Tasmanian Aboriginal Site Index. Additionally, the area between Little Dog and Tin Kettle Island at low tide was a traditional Aboriginal fishing ground.

Vansittart Island - Much like Wybalenna, the Aboriginal community has a strong historical association with Vansittart Island. It was the second jump in George Augustus Robinson's program in relocating Tasmanian Aboriginal people from mainland Tasmania.

Firstly, he moved them to Swan Island and from there on to Vansittart Island in 1831. After about nine months the reserve was moved to Flinders Island. More than 20 Aborigines who had died during those nine months are buried on the Island. In later years their graves were robbed.

In the 1820s - 1830s, Vansittart was the centre of the Aboriginal sealing community. Today's Aboriginal community has been trying for a number of years to have Vansittart returned. It was part of the Aboriginal community's unsuccessful claim to the State Government in 1986.

Two artefact sites have been identified and recorded on the Index.

Goose Island - Goose Island is what could be best described as a turning point for the Aboriginal Community. It was here that Governor Du Cane met with Aborigines in 1871 after they had petitioned him protesting against the issue of a grazing licence on Mount Chappell Island and seeking land on Cape Barren Island. The licence had a detrimental impact on the only means of subsistence they had: mutton birding. Even though the Government had promised to reserve some islands for Aborigines in the 1860s, it was only after this petition that land was granted to them on Cape Barren Island; a decade later.

There are two artefact sites and two shelter sites located on Goose Island that have been identified and recorded on the Tasmanian Aboriginal Site Index.

Transfer of land through the Native Title process.

The Select Committee Report views the main avenue for gaining land rights as the Commonwealth Native Title Act and appears to argue that the same criteria and rules should apply to all Australian Aborigines.

The Report concludes:

"The Committee finds no evidence that suggests that the rejection of a Tasmanian native title claim is any different to the rejection of a native title claim elsewhere in Australia".

This conclusion, however, ignores Tasmania's post-European history and the systematic (and almost completely successful) attempts by the colonisers to wipe out the Tasmanian Aboriginal population. The near-eradication of the indigenous population and the removal of all remaining Aborigines in the 1830's to the Furneaux, where most died, was of far greater magnitude and had a much greater effect than actions in other States.

The success of the drive to eliminate the Aboriginal population resulted in the official and popular denial of a Tasmanian Aboriginal population until the 1970's.

In terms of Native Title, the dispossession of the Tasmanian Aboriginal community from their land and therefore the community's inability to prove continued association with the land claimed, means that no claim for Native Title in Tasmania can succeed. This does make the Tasmanian situation different from the situation in other parts of Australia.

This fact was well recognised by previous Governments, both Labor and Liberal, and was the reason that the then Liberal Government introduced the *Aboriginal Lands Act 1995* to return land to the Aboriginal community.

As the then Premier the Hon Ray Groom stated during his Second Reading Speech of the *Aboriginal Lands Bill 1995*:

“The Government wants to achieve progress in this area but believes that neither broad-based land rights which apply in a number of States nor native title would provide an effective answer in Tasmania. Native title exists in accordance with the laws and customs of indigenous people where those people have maintained their connection with the area and where their title has not been extinguished by acts of government.....”

All the advice we have received suggests that the continuing connection factor and the history of the Aboriginal community in this State makes it highly unlikely that a claim for native title could be sustained in Tasmania.”

The Leader of the Government in the Legislative Council, Mr Tony Fletcher, supported these statements and acknowledged:

“Native tile exists in accordance with the laws and customs of indigenous people where those people have maintained their connection with the area and where their title has not been extinguished by acts of government.”.....

Return of land through other processes

The Select Committee Report puts the view that the native title process is the only avenue for granting land and that for the Tasmanian Government to grant land through a process other than native title would:

“ require the Tasmanian Parliament to establish a basis for land rights for Tasmanian Aborigines that is more generous than that applying to Australian Aborigines as whole.”

However, native title is not the only means of granting land rights in other States and Territories. In fact, land rights in various forms have been granted to Aboriginal communities in all States and the Northern Territory, including of course Tasmania, under non- native title legislation.

Both before and since the 1993 Native Title legislation numerous claims for land, both successful and unsuccessful have been made by Australian Aborigines. One of the most well known examples of this is the claim by the Gurindji people of Wave Hill, Northern Territory in 1968, which was initially unsuccessful but was eventually granted in 1975.

Well before the *Native Title Act* in 1993, legislation was in place in various states with the purpose of transferring land to Aboriginal groups. South Australia passed the *Aboriginal Lands Trust Act* in 1966, part of which states that:

“the Governor may by proclamation transfer any Crown lands or any lands for the time being reserved for Aborigines to the Trust”.

By 1972 Western Australia had its *Aboriginal Affairs Planning Authority Act* which allowed that the Governor:

“may by proclamation. . . place any land to which Part III applies under the control and management of the Aboriginal Lands Trust”.

1976 saw the introduction of the *Aboriginal Land Rights (Northern Territory) Act* and in 1983 New South Wales followed suit with its *Aboriginal Land Rights Act*, repealing the earlier *Aborigines Act 1969*. Queensland had a *Local Government (Aboriginal Lands) Act* in 1978, which was surpassed by the *Aboriginal Land Act* in 1991. This latter Act states clearly that *“A group of Aboriginal people may make a claim for an area of claimable land”.*

In the same year, Victoria’s *Aboriginal Lands Act* stated as part of its purpose: *“authorise the granting of. . . land for Aboriginal cultural and burial purposes”.*

These Acts generally differ from the *Native Title Act* in that they do not require that the claimant prove a continued link with the land in question. This difference often makes it more feasible for Aboriginal people who have been dispossessed of their land to make a claim through non-Native Title legislation.

Approximately 20% of South Australia is held by the Aboriginal Lands Trust on behalf of the Aboriginal Community; in Western Australia the figure is around 12-13%. Both states owe their relatively high figure to their respective state Acts. In Victoria and New South Wales, less than 1% of land has been granted to Aboriginal groups. By contrast the Northern Territory, with its *Lands Rights Act*, is 40% Aboriginal land.

In comparison, the land transferred to the Aboriginal community through the 1995 land transfers and the return of Wybalenna in 1999, amount to less than 0.2% of the area of Tasmania. If the eight parcels of land included in the 1999 Aboriginal Lands Amendment Bill are added the percentage of total land is still below 1%.

Transfer of land under the Tasmanian *Aboriginal Lands Act 1995* is therefore in line with actions in the rest of Australia.

Access to Indigenous Land Fund

The Select Committee Report proposes that the Tasmanian Aboriginal community have access to the Indigenous Land Fund, which is designed to provide funds for Aboriginal communities which are not able to successfully claim land through native title processes.

However, the Report is contradictory in its comments about the value of the Indigenous Land Fund for the Tasmanian Aboriginal community. On the one hand it states that access to the Fund is an important fall-back position for those Aborigines, particularly Tasmanian Aborigines, who are unable to mount a successful claim for land under native title legislation. Yet, on the other hand, the Report concludes that the fund, which is only available for the purchase of private land, is of limited usefulness to the Tasmanian Aboriginal community:

“It is clear that Tasmanian Aborigines could not mount a successful Native Title claim over Crown land and, because Indigenous Land Council funding can only be used to acquire private property, opportunities to acquire Crown land are very limited” (page 35/36)

Criteria for assessing return of land

The Select Committee recommends that the Government develop criteria against which claims for land rights can be tested and suggests a process by which criteria can be developed. It is unclear from the Report whether it is the development of the criteria or the assessment of land claims which it is recommended be carried out by an independent body such as the Resource Planning and Development Commission. The Recommendations Section states the former, while the Conclusions suggest the latter.

In relation to criteria, the Government has in fact used criteria to assess the land claims of the Aboriginal community. The main criteria can be summarised as follows:

1. Significance of the land to the Aboriginal community.
2. Land to be owned by the Crown.
3. Other existing interests over the land not to be impediments to transfer.
4. Significance of land to non-Aboriginal community to be recognised.
5. Natural values to be recognised.
6. Public access issues to be addressed.
7. Appropriate arrangements able to be made for dealing with public infrastructure.

While criteria have formed the basis of assessment, the Government does not consider that return of land to the Aboriginal community should be assessed as just another type of land reclassification. As discussed above, land is fundamental to the process of reconciliation. Return of land also involves claims for land rights, for redress of historic grievances and retention of Aboriginal cultural heritage. Criteria and procedures used in other processes are not necessarily suitable for dealing with these sensitive and complex matters, which are essentially social and political rather than technical issues. As such an expert, independent, technical body is not considered the most appropriate forum for dealing with these matters.

CONCLUSIONS

1. Land ownership is fundamental to the maintenance of Aboriginal cultural heritage and to well-being of Aborigines both as individuals and collectively as peoples.
2. The eight parcels of land to be transferred are all of significance to the Tasmanian Aboriginal community.
3. The dispossession of the Tasmanian Aboriginal community from their land and therefore the community's inability to prove continued association with the land claimed, means that no claim for Native Title in Tasmania can succeed.
4. However, Native Title is not the only means of granting land rights. Land rights in various forms have been granted to Aboriginal communities in all States and the Northern Territory, under non-Native Title legislation.
5. The Government has used criteria to assess the land claims of the Aboriginal community.

BURIALS AND CREMATIONS

The Select Committee recommends that Aboriginal burials and cremations as prescribed in the *Aboriginal Lands Amendment Bill* be permitted.

The Government intends to proceed with the proposed amendments which recognise the Aboriginal community's right to practice their culture in relation to cremations on Aboriginal land. Amendments to allow for Aboriginal burials have not been included in the Bill as provisions in the *Local Government (Building and Miscellaneous Provisions) Act 1993* enable private burials to occur.

CONCLUSIONS

1. The *Aboriginal Lands Amendment Bill 1999* will enable Aboriginal cremations to take place on Aboriginal land.
2. Aboriginal burials are provided for already under the *Local Government (Building and Miscellaneous Provisions) Act 1993*.

APPENDIX 1

CONSULTATION

The Aboriginal Land and Cultural Issues Working Group which constituted representatives from government agencies and members of the Aboriginal community met eight times on: 17 December 1998, 18 February 1999, 18 March 1999, 22 April 1999, 10 and 31 May, 16 and 24 June 1999. In addition, sub-committees met to consider specific issues between meetings. Their final report was submitted to the Premier for consideration in August 1999.

During the development of the Report, Aboriginal members of the Working Group undertook consultation with the residents and lease and licence holders of Cape Barren Island.

In addition, the Aboriginal community representatives met with a group of members from the following organisations to obtain a representative position on the issues:

- ⇒ Tasmanian Aboriginal Centre
- ⇒ Aboriginal Land Council of Tasmania (ALCT)
- ⇒ Deloraine Aboriginal and Cultural Association
- ⇒ Aboriginal Elders Council of Tasmania, Aboriginal Corporation
- ⇒ Mersey-Leven Aboriginal Corporation
- ⇒ South Eastern Tasmanian Aboriginal Corporation
- ⇒ Flinders Island Aboriginal Association
- ⇒ Cape Barren Islanders Community Association
- ⇒ Tasmanian Aboriginal Land Council [withdrew 17 May]

The Premier met with the Aboriginal community on 20 May to outline the agenda of the Aboriginal Land and Cultural Issues Working Group and to discuss its progress to date.

Working Group members, Richard Bingham (Chair) and Clyde Mansell (ALCT), visited Flinders Island on 6 October to discuss access issues with the Holloways and the Robinsons, freehold owners on Vansittart Island and Little Dog Island respectively.

Prior to the Premier's announcement on 12 October, a number of persons were briefed by the Premier's personal and departmental staff, including:

- ⇒ members of the Parliamentary Labor Party
- ⇒ Sue Napier, MHA, Leader of the Opposition and Peter Hodgman, MHA, Shadow Minister for Aboriginal Affairs
- ⇒ Peg Putt, MHA, Leader for the Greens
- ⇒ members of the Legislative Council, Tony Fletcher, MLC and Colin Rattray, MLC

In October 1999, the Premier wrote to all freehold, lease and licence holders, on Vansittart Island, Little Dog Island and Cape Barren Island (approximately 80 people/organisations) giving details of the proposal and a contact number for further information. Many stakeholders took the opportunity to call Departmental staff and discuss any matters of concern. Others responded in writing to the Premier.

The Premier also wrote to holders of shack licences at West Point and Sundown Point, explaining the impact of the proposed transfer.

The Premier met on 21 October 1999 with the Circular Head Council and members of the Arthur Pieman Coalition to discuss issues arising from the Package. This meeting in Smithton was also attended by the Minister for Primary Industries, Water and the Environment, David Llewellyn, Members of Parliament Steve Kons and Bryan Green, the Secretary Department of Primary Industries, Water and the Environment, Kim Evans, together with Ministerial and Departmental officials and members of the public.

Meetings were held on 26 October 1999 on Flinders Island attended by the Secretary Department of Justice and Industrial Relations and chair of the Aboriginal Land and Cultural Issues Working Party, Richard Bingham, and members of the Premier's personal and departmental staff. Meetings were held with:

- ⇒ Mayor Lynn Mason;
- ⇒ Flinders Council;
- ⇒ Flinders Island Aboriginal Association representatives; and
- ⇒ Freehold owners from Vansittart and Little Dog Islands.

The Premier's Department staff met with stakeholders in Smithton on 4 and 5 November. Meetings were held with:

- ⇒ executive of the Arthur Pieman Coalition (APC)
- ⇒ Circular Head Council
- ⇒ Circular Head Aboriginal Association
- ⇒ APC - Surfing Representatives
- ⇒ APC - Agister Representatives
- ⇒ APC - Fishing Representatives
- ⇒ APC- Camping, horse riding Representatives
- ⇒ APC - Tourism and local business Representatives
- ⇒ APC - Kelp harvesting Representatives
- ⇒ APC - Shack owners Representatives
- ⇒ APC- Off road vehicle Representatives
- ⇒ Representative from the District Community Consultative Committee
- ⇒ Representative from the Stanley Land Care
- ⇒ Local farmer and conservationist, Geoff King.

The Premier met with the Flinders Council Mayor, Lynn Mason, and Councillor Michael Graham on 17 November for further discussions on the land transfer.

Prior to the Bill being tabled in Parliament approximately 56 letters were received by the Premier from stakeholders and members of the public in regard to the Package. The main issues raised were in respect to future lease/licence arrangements with the Aboriginal Land Council of Tasmania, public access, consultation and specific interests such as those represented by the Arthur Pieman Coalition. The Premier responded to all correspondence.