

RECOGNISING TASMANIAN ABORIGINAL PEOPLE IN THE CONSTITUTION ACT

In my view amending the Constitution Act to recognise Tasmanian Aboriginal people as the first Tasmanians has great merit and should be pursued.

In this day and age and with our current understanding it seems unbelievable that the State's foundation statute makes no reference of any kind to indigenous Tasmanians who have lived here for thousands of years.

There is now a focus on Commonwealth Constitutional recognition but recognition in our State's Constitution Act which was first enacted in 1855 really should precede recognition in the Commonwealth Constitution which of course did not become law until 1901.

Having indicated support for an amendment to our Constitution Act I want to emphasise that in my view it is essential that there be full and proper consultation with the Aboriginal people of Tasmania before the Parliament proceeds with Constitutional recognition.

Consultation is an important part of Aboriginal culture. Aboriginal people are very good at it. The process of consultation on this initiative should go beyond formal Committee hearings of this kind, although I do understand that these hearings are an essential part of the process.

In 1993 I wrote a brief paper on Aboriginal reconciliation which was titled "Tasmanian Aboriginal People – A Step Towards Full Recognition and Appreciation".

It is interesting to note that the paper which covered a number of issues which had been raised by Aboriginal people did not include any reference to Constitutional recognition. That is because it has become a significant issue only in quite recent times.

As you know, some States have already amended their Constitution Acts to include recognition so there are a number of precedents available. I have not looked at all of the State Constitution Acts but I did read the New South Wales amendment yesterday.

It appears to be quite well drafted except that I do not agree with the need for the qualifying words in section 2(3) which state that the provisions do not create any legal rights, etc. Those words detract from the positive spirit of subsections (1) and (2).

The risk of civil or administrative action flowing from such an amendment is in my view minimal (see section 8B of the Act's Interpretation Act of Tasmania).

Again, I emphasise the need for full and proper consultation on the precise words to be used.

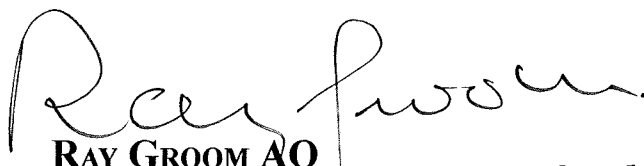
My assessment is that most members of the Aboriginal community of Tasmania are not likely to support Constitutional recognition in isolation. Most will probably want to see some other more tangible initiatives at the same time as words of recognition.

There are some further steps that might be taken in association with the amendment to the Constitution Act:

- (a) Noting that their connection with land is vital to Aboriginal people and to reconciliation, I believe there is scope for the transfer of some limited additional areas of land to the Aboriginal community. (These could include areas in the far North East of Tasmania and perhaps some traditional Aboriginal sites in the South West World Heritage Area.)
- (b) Other initiatives could relate to Aboriginal heritage. Measures that could be considered include:
 - Establishing a comprehensive catalogue of Tasmanian Aboriginal relics and objects, etc. held in interstate or overseas museums and collections.

- A Government backed effort to seek the return of those relics, objects, etc. to Tasmania.
- A catalogue of all Aboriginal heritage sites and cultural relics and items within Tasmania with the catalogue (and also the earlier mentioned catalogue) to be provided to the Tasmanian Aboriginal community.
- Parliament legislating to ensure that Tasmanian Aboriginal people play a central role in the care and management of Tasmanian Aboriginal heritage.

In summary, I strongly support recognition but believe that it should not proceed without full and proper consultation with the Tasmanian Aboriginal community and also that it should not proceed alone but should be one key element of a package of initiatives to advance reconciliation between the Aboriginal people of this State and the wider community.


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