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THE HOUSE OF ASSEMBLY STANDING COMMITTEE ON COMMUNITY DEVELOPMENT MET AT HENTY HOUSE, LAUNCESTON, ON 12 AUGUST 2015.

RECOGNITION OF ABORIGINAL PEOPLE AS TASMANIA'S FIRST PEOPLE INQUIRY

Mr MICHAEL MANSELL, ABORIGINAL PROVISIONAL GOVERNMENT, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR (Mr Barnett) - On behalf of the committee I recognise the traditional owners of the land on which we meet and recognise their elders past and present.

We are a committee of the Parliament and this inquiry is treated as a proceeding of the Parliament, so confidentiality and parliamentary privilege applies. It is an important legal protection that allows individuals to give evidence and be full and frank in the process. That helps us get the best information available, which we appreciate. It is not accorded, however, if statements that are defamatory or repeated or referred to by you outside this committee hearing. It is a public hearing and we welcome members of the public and the media.

Welcome to the table, Michael, and we would welcome your opening remarks.

Mr MANSELL - Thank you for that opening acknowledgement of the traditional owners. I support the notion of recognition of Aboriginal people in the Constitution or in some other form, subject to another point I want to make.

CHAIR - Federal Constitution or state?

Mr MANSELL - Either. Secondly, in an unqualified way I support the efforts of this committee. I think this committee's brief has been long overdue because when you look at the history of Aboriginal people in this state we were somewhere between 10 000-30 000 people. We were run off the land at the point of a gun. Even then people weren't satisfied; they hounded us to the islands and a couple of families down the coast and at Cygnet. From that time onwards Aboriginal people only survived because we were hidden away from interfering with white Tasmania's development. Even the next connection with the mainland of Tasmania's policy was when they came to the islands to take the kids away. After that, the assimilation policy kicked in and it wasn't until the 1970s that we finally did get ourselves organised in some way to fight back. During that whole 150-odd years of terrible treatment of Aboriginal people, nothing like this was set up. This is overdue and good on the Premier, good on the Parliament and good on you for setting this up. I have unqualified support for it.

The reason I qualified my comments on recognition, whether it is in the federal Constitution or the Tasmanian one is because we had been here for that long, ever since time began. We didn't come from New Guinea; we were always here. The landscape of Tasmania showed that Aboriginal people originated here and never moved from here.

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Why we would need, as a people, to be recognised by anybody can only be explained by somebody else, another race of people thinking they are superior and therefore Aboriginal people are somehow inferior but they will be given some status if we recognise that. I take issue with that, because I know it is not the intention of this committee, it is not the Parliament but it is an issue people need to be conscious of. We don't need any recognition of a fact that Aboriginal people have always been here. That is my qualification to my acceptance of the notion of recognition.

What is the best way to recognise Aboriginal people? Tasmania already has a reasonable track record that began with the Liberal government in 1995. It gave land rights to Aboriginal people as way of recognising Aboriginal people. That process continued through to 2003 over an eight-year period, but nothing since. The last 12 years have produced no land, and the first eight years did.

In 2006, the only state in Australia to compensate the victims of the stolen generation policy was Tasmania. Since 2006, nothing. The heritage legislation is badly overdue. The draft that was put up by Labor and the Greens, not to rehash the old arguments but it was completely unacceptable, in my opinion, and would probably have been in breach of the Racial Discrimination Act because it was that discriminatory.

Here we have something moving and if we take the pattern that Tasmania did from 1995 to 2006, it is recognition in some deed rather than a form of words. Why do I think that is the key to it? In all the meetings going around Australia in the last 12 months dealing with recognition, and the two meeting we have had in Hobart on this topic with a good cross-section of the Aboriginal community, people are all saying we will support recognition if it confers a benefit on us. If it is in the Constitution it must create a right and must impose an obligation. If it doesn't, then not interested.

Pat Dodson and Noel Pearson have also been travelling around the country and they picked up the drift too from this Aboriginal feedback, which is why they have had to modify their position from a preamble to more substantive changes.

What could happen in Tasmanian? I would love to see a formalised way of Aboriginal representation in the Parliament. There is no reason why this committee could not recommend an extra three seats be added to the 25 that you have now. Three Aborigines to be elected in Tasmania and to be part of -

CHAIR - By whom?

Mr MANSELL - By Aboriginal people. All the arguments about who are Aboriginal people would settle down over time. I know people say there have been court cases. Eric Abetz was challenged in the High Court for his eligibility to stand for an election. It is not unique to Aboriginal people. If there is a benefit available from the Parliament or the public there will be contest about who is entitled to have access to it. That debate should not override the key issue of how you give Aboriginal people in Tasmania formal access to empowerment. Laws and policies that directly affect Aboriginal people are made in the parliaments. It is true, there have been Aboriginal people in parliaments, but they have never been put there by Aboriginal people. They are compromised because they are put there by the political parties they represent, and then they have divided loyalty. If you are

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put there by Labor or Liberal or the Greens, who do you represent? Is it Aborigines or the political party that put you there? It is a compromise.

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

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

One of the ideas is to pick up the model that New South Wales did in 1983, I think, where they set aside 7.5 per cent of the land tax collected into a fund. Aboriginal people would have that fund and then be able to reinvest in Tasmania.

Ms O'CONNOR - Do you know whether that policy is still in place in New South Wales?

Mr MANSELL - It had a sunset clause. I think it was over 15 years, so I think 1998. They had a whole bucket of money to invest in New South Wales, but they had no land, so it was a bit of imbalance. We do not have much land and we have no money.

It is those sorts of practical ways of conferring a direct benefit in Aboriginal people that I talk about. There may be others, but they are examples that I propose that the committee could take up. That pretty much summarises what I am on about.

CHAIR - To get real clarity on the recognition of Aboriginal people in the Tasmanian Constitution - you referred to both federal and state - it sounds like you are open to that and you support it on certain terms and conditions that it must provide rights and obligations. Your submission refers to tokenism and that constitutional recognition of Aboriginal people has to be meaningful. Can you clarify that you support constitutional recognition? Would you flesh out the terms and conditions upon which you would support it? Would you oppose a preamble or do you think it should be in the actual particular section of the Constitution? Should justiciability be included or not?

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

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To the first part, I think from 2004 Victoria and then later Queensland, New South Wales and South Australia put a form of recognition of Aboriginal people in the preamble to their state constitutions. Aborigines in those states have openly said to me, 'We have not gained a single benefit as a result of those formal words.' On the basis of this feedback and looking at the way those words have been drafted, that is why I say they are meaningless words.

They are designed to make someone feel good, but they are certainly not designed to help Aborigines.

One of the issues about national recognition of Aborigines in the Constitution - and it will flow onto the states - is who decides in the finish that this form of recognition is the best way to go or that one. Some of the submissions from church groups have quite rightly made the point that it is surely up to Aboriginal people to give consent.

You cannot impose a benefit on someone and say, 'There you are, it is for your good.' A lot of the discussion in the federal constitutional debate is about making white people feel good. It is not about ensuring Aborigines get a benefit. People around Australia - you know, people who are very well off, the footballers, people employed in universities, Aborigines employed in the government - are all saying this is good. It is all right for them. But the 99 per cent of Aboriginal people who are not in that situation are saying, 'We need some help.' And a form of words is not going to -

CHAIR - How do we have meaningful discussion if the peak body for Aboriginal people in Tasmania does not put in a submission to this inquiry? You are here, which is terrific, and you have supported the inquiry. We have noted that on the record. But I want you to note that they had not put in a submission so it is hard to have meaningful engagement if they are not participating.

Mr MANSELL - When the federal government arbitrarily comes down and rips half of your organisation out without notice and says that the \$2 million that you deliver to give legal aid to 20 000 Aborigines is now going to be taken away, you've got a guy who wants an explanation. That is the sole reason why - the Tasmanian Aboriginal Centre was preoccupied in dealing with something they could not believe was happening. It is unprecedented since Gough Whitlam set up the legal service in 1974. The Tasmania Aboriginal Centre contacted me and said, 'You're whacking away on the typewriter, can you put in a submission?' Yes, I can. As soon as they get resettled, they intend to make a contribution as best they can, if they still have the opportunity to do so.

CHAIR - All right. In your submission you said there were 500 000 Indigenous Australians across Australia. How many in Tasmania?

Mr MANSELL - Yes. It is all guess work - 20 000 seems to be the going figure. Probably true.

Ms O'CONNOR - That is not the electoral roll as such. What is that number based on? Because we hear so many different numbers. I know it is guesswork, but -

Mr MANSELL - I do not know. I think the initial roll was 700 or 800 people who intended to vote, because it is not compulsory to vote. If it were compulsory, then it would be a

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different matter, but I do not agree it should be compulsory - I think it is up to people who want to vote to be able to vote.

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

Mr MANSELL - The Tasmanian Constitution?

Mr JAENSCH - Yes. I want to just test the premise. You have supported the intention of the committee and this inquiry. I read and I hear you questioning what the nature of recognition is, and that words in a document do not necessarily directly confer benefit. Do Tasmanian Aboriginal people see themselves in the constitution as it is now? Does it include them?

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

Mr JAENSCH - From some of your opening comments, you are challenging the idea that the insertion of something in the constitution fixes anything. From what you've just said, if Aboriginal Tasmanians were aware that there was a constitution and it specifically recognised Aboriginal people as the first people, they might feel they are a part of it now. It might have changed the way the people participate in things such as voting.

Mr MANSELL - There is no doubt that some people already think that. A lot of Aboriginal people say the words are okay; just put something in the Constitution and that's fine. There are probably Aborigines in Tasmania who would say the preamble is okay. I think the bulk of people would say, 'You can put those words in there and it might make some people feel good, but it won't connect with Aboriginal people generally'. It is just a form of words in some document that Michael reads and tells them about later, but it has no connection with them.

Mr JAENSCH - Do you think having specific reference to recognition to Aboriginal people in our constitution might then provide a stronger platform off which governments might build more of the policies or initiatives you are talking about which are about direct benefit? It creates the premise that we have first peoples and that we value their heritage and wellbeing. Therefore, a range of things can follow which are about addressing those issues. Without that premise in the Constitution, there is not a basis for us to be selectively applying those sorts of initiatives or policies.

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Mr MANSELL - The evidence doesn't support that. For example, South Australia put recognition in its state constitution but earlier this year some four-lane highway - a bit like the Brighton Bypass all over again - came across an Aboriginal burial ground and they refused to divert it. Constitutional recognition was already in place but they said, 'Dig the Aboriginal burial ground up and move it somewhere else'; so it didn't seem to change anything. Could a form of words in there spark some interest from the parliaments? Again, if we look at the other mainland states, there is nothing to indicate that is the case. When do things make a difference? I think it is when you get leadership in the government. If you look back - Ray Groom, Jim Bacon, Paul Lennon -

Ms OGILVIE - Sue Napier as well.

Mr MANSELL - She wasn't premier. Tony Fletcher did very good work, along with Ray Groom, on the land rights stuff. Will Hodgman is obviously finding it hard to get everything through his party but he is trying his best to find a way and reorganise the relationship. You don't need constitutional recognition to make a difference that gives Aboriginal people a benefit. When that benefit is significant enough, the two people say, 'We have achieved this together and this is a way of creating a better Tasmania that is more inclusive'. You don't need constitutional recognition to do it.

Ms O'CONNOR - Michael, we have talked about Commonwealth constitutional recognition before. This was some years ago when the debate had started and Bill Lawson was here engaging with the community on the issue. I remember at the time that you were very strongly sceptical of Commonwealth constitutional recognition to the point of not supporting it. I hear a slight shift in your language and I agree that it needs to be backed up with tangibles.

What has happened to you in the last few years where you have come to a point where you are not so strongly opposed to a change in the Commonwealth Constitution?

Mr MANSELL - I remember Ray Groom saying, 'Have you mellowed, Michael?' That was back in 1995.

Ms O'CONNOR - I am genuinely curious because it is a different language you are using now from when the idea was first put forward.

Mr MANSELL - The Aboriginal community cannot advance and be genuinely part of Tasmanian society without parliaments pushing aside ideological differences. There will always be people who, in the submissions that you have received, will say, 'There are no Aborigines in Tasmania; if there are, don't give them nothing'. You will always find that.

I also notice that probably 75 per cent of your submissions to this inquiry say, 'We agree that something should be done to recognise Aborigines'.

If the Aboriginal community needs something and I stand up as an advocate of Aboriginal people, then I have always been passionate about it. You grow up and see the problem and you think, 'This is not right; something should be done'. Then you suddenly find you have access to the political people and the media and, as a leader, you have to get something done. At the same time, whenever the governments have been willing to sit

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down with Aboriginal people - not just me, but a whole range of Aboriginal people - we have been able to negotiate an arrangement that will benefit Aboriginal people without harming anybody else. It is like the four-wheel drive tracks; we can sort that out.

Ms O'CONNOR - The court might sort it out.

Mr MANSELL - Probably not, because they are not going to sit until next year by the sound of it.

Ms O'CONNOR - When you talk about tangibles - that it would confer a right to the first people and an obligation on governments and parliaments - do you think that should be written into what we are working on here and do you think the natural extension of constitutional recognition is a formal treaty of some sort?

Mr MANSELL - It could be. You don't need constitutional change to have a treaty. You don't even need a form of words in the Constitution to say, 'We have now recommended this, therefore it must confer a benefit and impose an obligation'. You could put a report back and say, 'It would be good if you put this in the Tasmanian Constitution because it consolidates and gives it some oomph and status'. If you recommend something and you received some resistance, you could say, 'Just legislate'. My understanding is that the Tasmanian Constitution gets amended through both Houses and Parliament legislating anyway. You don't need a referendum.

Ms O'CONNOR - Correct.

Mr MANSELL - Is that right?

Ms OGILVIE - Yes.

Mr MANSELL - Whatever you come up with, it can either be in the Constitution and if, for example, it was a treaty, it would say, 'There will be a treaty with Aborigines made by 2020 or something'.

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

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

Ms O'CONNOR - But you might need to revise it up to four so we have an odd number in the House.

Mr MANSELL - All of these things should be looked at, but three seats out of 28 is not going to make that much difference. If you add the 25, Aboriginal people are not looking to go into the Parliament to form government or be able to use their numbers, if they got in there,

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to lever this or lever that. The main idea is to have a formal voice in the Parliament. This was talked about in the Northern Territory when the federal government set up the self-governing act. I am vague on this, but I think they initially said that the federal parliament allowed one or two Northern Territory senators into the parliament, but they were not allowed to vote on certain things and that was later dumped to say no, they fully represent the Northern Territory on all the parliamentary business, so there are more options there to consider.

CHAIR - There are two senators from the Northern Territory?

Mr MANSELL - Two senators, yes.

Ms OGILVIE - Michael, thank you so much for coming and nice to see you in person. I was probably quite a small person last time we met many years ago.

Mr MANSELL - You were very young, so don't remind me how old I am.

Ms OGILVIE - Probably before I did my law degree. I am very aware of the great relationship that you had amongst your profession and still do. For me, for my sins, having read the Constitution, I looked at the gaps and having seen this large gap - and there are others that we need to address and I will come to later in this term around women and sexism and other things that I think we need to fix - this seemed to be the glaring omission. On the legal spectrum we worked very closely with the Hodgmans, the Grooms and the Ogilvies in past days as well and I see this very much as a families-driven discussion, which is very fruitful and should be very fruitful amongst the Aboriginal communities as well. I want to be very respectful of your leadership role.

Mr MANSELL - Thank you.

Ms OGILVIE - My personal view is - and I was kicking around Melbourne Uni during the Mabo days - that we haven't done the right thing and that we have a long way to go. If we can make this one incremental step, and if I can bring my people on that journey, it is a gift that you can give us to say we can work together. That is why I am so delighted that Guy has stepped up to take on this challenge and to lead this discussion. He and the Liberal Party and Will Hodgman will have the full support of me and my party in this regard and I would like it to be above politics in that sense. That is why I am glad to be sitting with you today to pass on that message, and being a southerner I got a bit lost on the way here, so maybe we can fix that as well -

Mr MANSELL - Parking is hard to find here.

Ms OGILVIE - and to bring you down to Hobart next. I am passionate about this. This is a small idea that I think has the capacity to bring people together. If I have to end with my question it would be, do you think I am on the right track? Do you think we're on the right track?

Mr MANSELL - I am not sure if you were here when I said earlier that I give unqualified support to this committee and its work. I did stress though that it would be regrettable if

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the committee ended up with a recommendation for formal words in the Constitution that didn't connect with Aboriginal people.

Ms OGILVIE - Indeed, I have the same thought.

Mr MANSELL - However, if the committee could recommend something that conferred a benefit or imposed an obligation in some form or another, that is progress. That is a powerful political statement by the committee and we would support it.

Ms OGILVIE - Supplementary, very briefly. I put it to you that the form of words probably ought to be developed by your communities if we were to recommend something in concert with the committee. I would hope that it would very much be a collaborative thing. Thank you.

Ms COURTNEY - I just have one question. The Aboriginal community, whether we are looking at Tasmania or Australia as a whole, is made up of many different people with different views on a range of issues. It is not one homogeneous group of people, just as parliamentarians we are not a homogeneous group of people. Looking at the terms of reference, and looking specifically at proposals for amending the Tasmanian Constitution, how would you suggest a committee such as ours successfully engage with that entire spectrum? I see it as a big challenge for a committee such as this to not only engage with this entire spectrum. The hearings and submissions are one part of that, but then how do we distil that into an outcome or a set of outcomes? Could you talk to that briefly, please?

Mr MANSELL - I meant to pass this around, Chair -

CHAIR - Would you like to table this document?

Mr MANSELL - I think this is the only copy in existence. I can table the other two documents but the one about Cape Barren is the only one in existence.

CHAIR - We can have it copied and return it to you.

Mr MANSELL - We have multiple copies of the Goose Island and lungtalanana/Clarke Island ones.

If a range of groups can come and talk to the committee, good - the more the merrier - and we would encourage that. In the end, the committee is going to have to accept that there is a body of Aboriginal people who have always been there and there are people on the edges of it who have every right to identify as they see fit, but they are on the outskirts of it. There will be people inside that broad Aboriginal community who disagree on things but generally we're not that far from being homogenous. A lot of arguments go on but when you see the people here, these are the people who were denied land rights and who were discriminated against; these are the real people. In the finish, I think the committee is going to have to say, 'Let's face facts. There is an Aboriginal community there and that doesn't mean you ignore other people who are on the outskirts.' It just means if you say no, there are 50 organisations and the main organisation, the Tasmanian Aboriginal Centre, is only one, therefore we take notice of the other 49, you do a disservice to the Aboriginal community. I don't know if that answers your question - I might have gone astray a bit.

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Ms O'CONNOR - I have a slightly delicate question and it goes to your previous answer and Sarah Courtney's question. The history of Tasmanian Aboriginal people is very different from that of Aboriginal people in the mainland states.

Mr MANSELL - In what sense?

Ms O'CONNOR - My feeling is it was more brutal. Aboriginal people were driven from their lands. Having read some of the histories, I think here there was a bleaker, more awful history, and then there was the denial of existence. The Aboriginal community came together in the 1970s but we are seeing today - and there is a meeting in Campbell Town with the Flinders Island mob and Rodney Dillon -

Mr MANSELL - Democracy.

Ms O'CONNOR - Yes, democracy - your people. How do we make sure as a committee and a community that the voices of people such as Rodney Dillon and Maxine Roughley[TBC] are also heard and strongly represented in this process?

Mr MANSELL - They are heard. Rodney Dillon was your key adviser on the heritage legislation, so they are heard. The Circular Head group last year received land handed over from the Indigenous Land Corporation in Adelaide. Rodney Dillon's group had land handed over on Bruny Island, I think this year, from the Indigenous Land Corporation - \$2.4 million. I wish we had Brett Whiteley campaigning for us. \$2.4 million went to Smithton, whereas the whole Aboriginal community lost \$2 million in legal aid. That is just to say, let us not believe that some people are being cut out and being treated badly. They are doing okay, but -

Ms O'CONNOR - It is an acknowledgement I think of the fracturing of the voice, in a way.

Mr MANSELL - Cassy, I think it is healthy that there are people who say, 'Michael does not speak for me. I speak for myself or somebody else speaks for me'. Good. The more voices that are heard, the better. If they are talking about the cause of Aboriginal people and it can help this committee's deliberations, then who could possibly argue against that? If the group in Campbell Town or if there are other groups not even at Campbell Town - the Lia Pootah group was not invited to the Campbell Town meeting; I don't know why - I would encourage them to come to this committee and put their views forward because it is raising the issue that you are looking at.

CHAIR - Thank you very much. We are out of time, Michael. Thank you for presenting today and thank you for the evidence. Just a reminder that with parliamentary proceedings, once you are outside, that is a wholly different matter.

Mr MANSELL - Right. Thanks for listening to me.

CHAIR - Thank you very much again for your evidence.

THE WITNESS WITHDREW.

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Mr PETER ROWE WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED

Mr ROWE - Mr Chairman, I had, I guess, a final version about some actual wording and I emailed that to Todd this morning. I was hoping to be able to table that, please.

CHAIR - Thank you. That has been received. I will just confirm that all members are happy for that to be tabled. They are. Thank you. Please proceed.

Mr ROWE - I am Peter Rowe; address: 28 Wallsend Rd, Kaoota, 7150. I am presenting this, as my submission says, as the special counsel of Tasmanian's Lia Pootah people. I noticed we got a little mention in the last session. That was rather interesting.

CHAIR - Just to clarify, are you representing yourself, or the Lia Pootah people, or both?

Mr ROWE - I am representing myself, but I have had negotiations with the Lia Pootah group and they are fully supporting the submission.

CHAIR - Thank you.

Mr ROWE - The submission that I have is maybe a little bit legalistic.

Ms O'CONNOR - It is actually very useful because you have given us contrasting languages around recognition; so it is a very useful submission.

Mr ROWE - I have only just retired as an army lawyer this year. I am trying to work out what the hell I am going to do with the rest of my life. It is a little bit different, moving all around the place all the time.

The law is the same everywhere and I have had a look at the Constitutions that have been amended in other states. The ones that I will put in the submission are New South Wales, Queensland and Victoria. The extra document tabled incorporates some of the wording from South Australia because that was one of the more recent ones. They are the four states that have already had some alteration to their Constitution.

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

I have been fairly heavily involved with that recently, mainly with soldiers. I said a very brief hello to the Premier at the unveiling of some gravestones in Hobart earlier this year with one of the Lia Pootah gentlemen there, getting a bit of air time on ABC. That has become a bit of a hobby because, in World War I in particular, if you were an Aboriginal

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person, you were not allowed to join the armed forces. You sometimes had to go to different stations to try to get into the army, which was rather novel when you think that, as a country, what we had done to Aboriginal people and what we, as Aboriginal people were willing to do to defend that country. Coming from a military background that has been of interest to me over recent years.

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

I have also looked at some of the issues we often have here and Tasmania seems to be the unique place where we have a different definition to what is an Aboriginal person to the rest of Australia. I have some extracts from different court cases. They seem to revolve around a common theme. There is not much change there. I am not sure that that is relevant to the first part of the issue the committee is looking at. It is probably more relevant to the second part of the issue which will be any subsequent change that might need to be looked at along with constitutional change. That is what that addresses.

Very briefly, looking at the document I have tabled, I think that collects the best of the four states and puts it into a nice, succinct preamble. I don't know how far you are down that road yet of looking at actual wording. I think it is pretty good, where it is the Parliament itself, on behalf of the people of Tasmania, that is making the change, acknowledging and respecting Aboriginal people as the original custodians of the land in Tasmania and that Tasmania's First People - I have the three little sections there:

have a unique spiritual, social, cultural and economic relationship with their traditional lands and waters -

'Traditional lands and waters' being the very important part there -

They have made and continue to make a unique and lasting contribution to the identity of the state.

I was interested to hear Michael's comments about hearing the views of the wide section, which to me sounded a bit of a change to what I have heard in the past. That was very interesting.

Ms OGILVIE - This is a positive thing.

Mr ROWE - The last one that I have put in there might be a bit radical for some groups, but certainly not as radical as some that have been suggested in other states and even for the Commonwealth Constitution. I took that one from South Australia - that Tasmania's First People have endured past injustice and dispossession of their traditional lands and waters.

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Ms O'CONNOR - For the benefit of the committee, could you tell us who the Lia Pootah people are, some of their history and some of the difficulty the Lia Pootah have had in being acknowledged by the TAC and the wider Aboriginal community, and why that is.

Mr ROWE - I probably do not get involved in the politics of it as much as some of the more vocal and strident members. It is a major issue in a country where we talk of discrimination against Aboriginal people. In our state we have probably the greatest amount of discrimination of all against the Aboriginal people by other Aboriginal people. It is very unusual in the rest of Australia. Watching television last week really brought that home where we had a young girl in Cairns - she was in year 12 - who was doing some dance and public speaking. She was as dark skinned as you could be, but she wouldn't qualify as an Aboriginal person under some of our definitions in Tasmania because she said she does not have documentary evidence of her family background. They were part of the Stolen Generation; they do not even know for sure which mob they came from.

Ms O'CONNOR - Is that similar to the history of the Lia Pootah?

Mr ROWE - Very similar. That is the big issue with the Lia Pootah group - they do not have the same level of documentary evidence.

Ms O'CONNOR - Can you tell us about the geographical country of the Lia Pootah?

Mr ROWE - The country of Lia Pootah is almost everywhere in Tasmania. I thought it was more southern-concentrated but it is not. It is anyone who, in effect, was not rounded up and put on an island. That was where the government documentation was thorough. As most Aboriginals in Australia do not have that sort of history, it is often said that 80 per cent of Australia's Aboriginal people would not qualify under some of the Tasmanian definitions of an Aboriginal person.

Ms O'CONNOR - Can you see that this comes back to what sets Tasmania's Aboriginal history apart from mainland states? The extent of the dispossession and that battle for identity? Once there was a level of official recognition that in fact Truganini was not the last Aborigine we saw this strengthening and growth of Aboriginal Tasmanians. So would you acknowledge this identity issue is intimately connected to the history, the loss of records and the complete dispossession from country?

Mr ROWE - Yes, it is, very much so. Back in the 1820s, 1830s or the 1840s even, before the official documentation of births, deaths and marriages and so on, Aboriginal people were not usually recorded at birth. They certainly were not recorded at death, so it was very hard to have that non-stop documentation.

Ms O'CONNOR - Were not a lot of Aboriginal people recorded as white at birth?

Mr ROWE - There are a lot of documents that register a person as a 'native of Van Diemen's Land'. That seems to be fairly common phrasing in those early documents. It is a very large group and it is usually from Aboriginal people who were working for the early settlers. So they did not get rounded up and they were not defined as Aboriginal people.

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Ms OGILVIE - Peter, thank you so much for coming in. I have a deep respect to your third career as Honorary Special Counsel to your people. That is a very august role to hold. I am very familiar with the Aboriginal issues in the Army as well and those things. For me, that does all go back to this question of constitutional recognition and change because that is the document from which all our laws flow. You are obviously a lawyer and understand these things.

I, too, had a bit of a go at thinking what the language would look like. I read the other states' and territories' acts, and we have come to a very similar sort of conclusion, but maybe we have taken a more conservative approach and others may have different words. In that context, I think there are some merging issues around culture, relics and intellectual property rights that my heart would like to see acknowledged as well in the Constitution. It is not just the physical stuff that was lost. Just by way of floating that with you, I wonder if you have given any thought to those sorts of things. Is it appropriate perhaps to include something now or maybe as a later thing in any amendments we may make?

Mr ROWE - I have not thought of anything for now. I would see this as a first step. One example of another step, which I see down the track, which I have not mentioned -

Ms OGILVIE - This is where I am headed, absolutely.

Mr ROWE - was that in the Army we have just appointed the first Aboriginal Elder. It is an Army appointment.

Ms O'CONNOR - In Tasmania or nationally?

Mr ROWE - No, nationally.

Ms OGILVIE - So it is a formal role?

Mr ROWE - It is. Navy has already done it and Air Force has already done it. Their role seems to be to advise the chief of that service.

Ms O'CONNOR - Perhaps we'll have peace?

Mr ROWE - I thought it was great.

Ms O'CONNOR - Maybe we will stop arguing and fighting if we have elders advising the armed forces.

Mr ROWE - Wouldn't it be amazing? I see things like that as perhaps coming about later on, but not from the essence of constitutional preamble, which is all I have really concentrated on.

Ms OGILVIE - You are happy with that limitation to take that first step to look at the preamble and then other elements that might flow from that can be looked at over time as they emerge? Is that where you are at?

Mr ROWE - Definitely.

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

Mr ROWE - Yes.

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

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

Ms OGILVIE - The paragraph.

Mr ROWE - Separate paragraph, yes.

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

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

Ms OGILVIE - It becomes more integrated.

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

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

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

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

CHAIR - Keep the questions to the witness and witness responding accordingly.

Mr ROWE - That was my favourite.

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Mr JAENSCH - In the preamble that you have tabled for us, the sub-points A and C talk about the unique spiritual, social, cultural and economic relationship with their traditional lands and waters and then make reference later to dispossession which has interrupted that relationship. Is there a need to reconcile that a little bit more? I have lived and worked in places where there has been far more continuous association with place for Aboriginal people. Here I have been learning about the disruption and dispossession and there is some tension there that somehow we have a special situation we need to deal with where there is relationship but it is interrupted, but it does not make it less valid. It gives us a challenge of re-threading that to honour and preserve it. To me it seems that we haven't closed the loop on that just yet. Your preamble says there is a special relationship with land and then the relationship with land is being interrupted and there needs to be something else.

Mr ROWE - The C was added. That was my most recent thought following from South Australia where they had that. I also thought it balanced the two major groups within Tasmania where we did have some that were nice, clear documentary evidence, removed completely. There is your dispossession.

The others, the Lia Pootah, in particular, were removed subtly - more like a stolen generation but not as stolen as putting a group on an island. We have two major groups and two major historical facts and the way Aboriginal people were treated back in the 1830s to 1840s in particular. I think the C covers more the groups that were taken from the land completely and put on Flinders Island and so on.

Mr JAENSCH - It is an interesting one, isn't it?

Mr ROWE - It is an unusual blend that we have.

Mr JAENSCH - It is. I don't think we can resolve it today but it is good to open it.

CHAIR - I will finish with a couple of questions Michael Mansell has put to us in his submission and in evidence today. I am not sure if you heard when you came in of the recommendation for three members in the state Parliament. Do you have a view on that?

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

CHAIR - In your submission you made it very clear that you have some serious issues about the definition of an Aboriginal person in Tasmania and about the identity issue because Lia Pootah is not recognised. You made that clear in the last paragraph of your submission. How important is this issue of identity because, if we are looking at recognising indigenous people as the first people in the Constitution, who exactly are we recognising?

Mr ROWE - I don't think for the preamble it has any impact at all. For implementation of Government policies it has major impact. The changes in Aboriginal legal aid, for example, are just the classic example there. Apart from two of the side issues, I will concentrate on the third issue that was changed. That was because of the definition of an Aboriginal person.

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CHAIR - Finally, we have had a number of submissions putting the view that by introducing this into the Constitution, we are introducing racism into the Constitution. What is your response to that?

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

CHAIR - I have a request for one further brief question, so we will go to Cassy O'Connor for a final question.

Ms O'CONNOR - It is two questions actually because we do have 15 more minutes with this witness.

CHAIR - Excuse me, we don't. I am not sure what you are reading, but we don't.

Ms O'CONNOR - Sorry. Peter, my question is, do you identify as an Aboriginal Tasmanian? Are you a member of the Lia Pootah people? Can you tell us from a personal point of view, not as a spokesperson for the Lia Pootah but as a person who identifies as a Tasmanian Aboriginal person, what that journey is like for you and how it feels not to be recognised?

Seeing as I am only to ask one question, I am going to back it up with the second question for you to think about. It is the eligibility question, which is about identity or determining who is Aboriginal for the purposes of receiving government programs and things like that. Is it only about someone who identifies as an Aboriginal person? How do you make sure that as a state and as a community and particularly for Aboriginal Tasmanians, we get this right and we do it respectfully and properly?

Mr ROWE - In terms of the implementation of government policy, the rest of Australia has a pretty good track record. Just like any form of government assistance, there are always people who will say certain people should not be eligible. It happens in every category of government assistance. I don't think there is a big issue in the rest of Australia, except here there is.

Ms O'CONNOR - We talked about it before. It is probably because of the history and lack of recognition.

Mr ROWE - It is. That is part of that big development.

Ms O'CONNOR - What does it mean for you personally?

Mr ROWE - For me personally, it is a significant step forward to have some sort of constitutional recognition in the preamble. My own history goes back to my mother who is from Sandy Bay saying things like, 'We used to go and play with our Aboriginal cousins'.

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When I first heard that in adulthood it was, 'What do you mean by Aboriginal cousins? I didn't know we had Aboriginal cousins.' She said that we used to go down to Lower Longley. She reeled off this long list of names of Aboriginal cousins. Then I have talked to other people and they have said, 'Yes, I can see that in certain lines of the family'.

It was a history that was really quite hidden. I think that was a historical development from, say, 1820 onwards in particular, or perhaps even earlier. As an individual I see this as being a really significant step to appease some of society's wrongs, if you could put it that way, for the past. I am not saying you could ever change it. I am not saying I am overly worried by it, but I see it as a great step forward. It would make me feel great to see that.

CHAIR - Thanks very much, Peter. We are out of time. I appreciate your evidence today, and thank you for coming before the committee.

Mr ROWE - Good luck with it.

CHAIR - Thank you.

THE WITNESS WITHDREW.

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Mr DAVID HOUGHTON WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR - Welcome, David. This is a hearing of the Parliament and allows for parliamentary privilege to apply to your statements and the interaction we have so we can have full and frank discussion and the best evidence available, but once you are outside this place that does not apply. Would you like to make some opening remarks?

Mr HOUGHTON - I have listened with interest to Michael and Peter. I think there would be very few people who don't recognise there have been significant injustices perpetrated on our indigenous population both here and on the mainland over the years. However, my proposition is different to other people. To some extent I think Michael and I have a minor agreement, and that is that we have to be very careful with a preamble providing recognition because it can be a patronising approach if we are not very careful. I maintain that the state Constitution sets out the rules by which the state is governed, and it is no more and no less than that. It makes no distinction between peoples of different race, their heritage, their ethnicity - we are all equal in the eyes of the law. That is a good thing.

The proposals to amend it, whilst they are historical facts, I don't believe historical facts should be in a constitution. I know there are good intentions and I understand the concerns but let us look at the proposals for a preamble. Some people argue strongly for a preamble. We have just had a preamble tabled with possible wording. Professor George Williams says:

Constitutions typically contain symbolic and aspirational texts that set out not only where a state is headed but how its community is constituted.

I look at what Sir Harry Gibbs, the former chief justice, says and he points out that those sorts of constitutions apply to countries where they have been formed, such as the USA or Ireland or where, for example, a society is being changed, as in South Africa. In Australia we have an independent nation and it has been so for a long time and that must surely apply therefore to Tasmania.

Another academic, Christopher Enright - you lawyers may well have read his textbook at some stage while you were studying law - says that today preambles are rarely found in statutes and that they normally state the background to and the reasons for a statute. Harry Gibbs says: 'The nature and functions of a preamble are well understood for legal purposes.' The Privy Council describes a preamble as 'an introduction to, and in a sense, a preparatory or explanatory note in regard to the sections which are to follow'. According to Quick and Garran, its proper function is to explain and recite certain facts. The idea that Professor Williams puts forward in his submission is not necessarily agreed to by other legal experts - and I think you would call Sir Harry Gibbs a fairly major player in that game. Indigenous recognition, according to Professor Williams, can be included without giving rise to fears about interpretation and application of such words. I think the previous speaker said the same. Again, this non-justiciability clause - an awful word to a non-lawyer - Professor Williams maintains, is not necessary. Sir Harry Gibbs writes that the courts may have or have held that a preamble may have wider effects than as an aide to interpretation, and a reference in a preamble to a matter will make evidence of that matter

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admissible. Recitals in a preamble are prima facie evidence of the facts recited. He also goes on, and this is in my submission, but it would be arguable that these rules were not excluded by a provision that the preamble has no legal force.

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

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

As to proposals for amendment to clauses within the body of the Constitution - some people want more substantive changes. I think Michael Mansell was saying that and Emma Lee also believes that a preamble, if I read her submission correctly, is not the way to proceed, but was thinking more in terms of words within the body of the Constitution to allow the right for Aboriginal peoples to, as she says, 'to practise our culture and have issues of state importance raised in parliament'.

Obviously moves such as those would be fairly major ones and have far-reaching effects than just a simple recognition process. In my reading of section 46 and understanding what religion is, section 46 deals with freedom of conscience and the free profession and practice of religion. I would have thought that under the definition of religion that allows the right to practice our culture. We have elected representatives - Michael doesn't feel that works - but elected representatives certainly are the way you can have issues of state importance raised in Parliament.

Aboriginal disadvantage we have heard a lot of, and nobody is arguing against that. We know that billions of dollars have been spent attempting to raise living standards and prospects for the indigenous population. It has worked well for many people, but it hasn't worked well for a heck of a lot. Alison Anderson, the Aboriginal representative in the Northern Territory, says:

Despite noble intentions, much of the efforts have not worked and they have resulted in the twin corruptions of welfarism and the belief that Aboriginal people should live forever in the cultural Stone Age.

They are her words. She proposes that it is education that is the answer. Indigenous schools do not provide the level of education that is commensurate or equal with what non-Aboriginal students are getting and that should be the way to go. Her words again:

I see people, not categories, divisions or races. I see people and the potential for us all to work together.

That is an important statement she made there. I refer to some words by Kerry Pholi. She argues strongly against the notion that because somebody is of Aboriginal heritage they are disadvantaged and should be compensated for historical injustices and says:

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In reality, some people experienced hardship in the past. I was not one of those people. Why should I be targeted to benefit from another's hardship simply because the person who suffered in the past happened to be Aboriginal and I happen to have an Aboriginal ancestor? It is not as though we consistently embrace this concept of redress for other historical marginalised groups in Australia. Chinese immigrants had a particularly hard time during the gold rush eras, yet there are no special benefits extended to Australians of Chinese background.

Is the Constitution the place that you go to try to make some people at least feel that they are doing something positive? Numerous Commonwealth statutes have been passed over the years: the Racial Discrimination Act 1975, Family Law Act 1975, Aboriginal and Torres Strait Islander Heritage Protection Act 1984, Human Rights and Equal Opportunity Commission Act 1986, Higher Education Funding Act 1988, and the Native Title Act 1993, and all of those make special provision for the protection of Indigenous rights and interests. There was another one in 2008 regarding evidentiary provisions, Indigenous Laws and Customs.

I submit that Aboriginal people can be and are catered for via statutes other than the Constitution. If it is to be purely symbolic that we are going to be putting something into a preamble, then, apart from possible dangers of interpretation, as I said earlier I think it could be regarded as patronising.

If we are going to create two groups in our society, Aboriginal and non-Aboriginal, with the former being granted special privileges not available to others, I think you are going to sow seeds of enormous discord and resentment.

I could not resist, but many years ago a law professor when he was asked to make a particular change in a college I was in, said, 'If I'm going to err, I will err on the side of caution.' I will suggest to the committee that you might err on the side of caution and not recommend change to the Constitution. Thank you.

CHAIR - Thank you very much indeed.

Mr JAENSCH - Thank you for your contribution. I have read it a few times and listened to what you have had to say. It is very thoughtful and it does question what the purpose of the Constitution is, and this issue of introducing racism or separateness, differentness, in that is a weighty thing for us to consider.

At the end of your introduction you referred to the fact that we have special provisions in many other statutes other than the Constitution. If the Constitution is setting out the purpose that those statutes serve overall, isn't the thing that you are concerned about introducing - racism - already there in statute, and would not maybe recognition in the Constitution provide a purpose for a thing we are already doing?

Mr HOUGHTON - I do not think so. The way I would see it is the Constitution sets out the rules by which a state is governed. It does that for all people so there is no race, heritage or ethnicity involved in that. Introducing a topic in a preamble, which recognises one group of people - and I am not debating the historical fact - but just doing that introduces

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race. The intent is probably a beneficial racism, but it is still a racist approach to a solution. That is why it seems to me if you want to have historical facts about injustices and how we want to do it, it should be done outside of the Constitution and not in it. I do not know if that answers what you are getting at.

Mr JAENSCH - I was just wondering at the inconsistency - if we have a Constitution that is silent and then other statutes addressing the issue of indigeneity in our community and the circumstances of Aboriginal people, and the history causal factors towards them, is there not inconsistency between our Constitution?

Mr HOUGHTON - If a constitution is raceless and it sets the rules of how you make statutes, statutes are then made outside of that constitution by a parliament. They can make whatever statutes they want.

Mr JAENSCH - Should they not also be racist then?

Mr HOUGHTON - Well, those statutes that are outside the Constitution may well be racist, if you like. They are for racial purposes, but that is not in the Constitution. The Constitution itself allows that. Whether a parliament passes laws - and I can see there is good value in passing various laws for Indigenous people outside of the Constitution; you are doing it - but the Constitution itself is not saying, 'You must do this.'

Mr JAENSCH - Does it provide for it?

Mr HOUGHTON - It provides for whatever parliament chooses to do. But that in itself does not make it racist because of subsequent statutes. I cannot see that. Maybe I am missing the point, but I do not see how that is inconsistent.

Mr JAENSCH - Interesting, thank you.

Ms OGILVIE - Thank you so much for coming. I am very impressed with your analysis of legislative drafting because you make a very fine point about how we do draft documents. From the back of my memory comes the phrase *exclusio unius*, which is a legal principle in drafting. It effectively means that by including one specifically, you exclude others. I think you raise a point that is very well taken by this committee when it comes to the drafting and how, by keeping it as a global statement without specifically specifying particular groups, that, in your sense, and I see where you are coming from, keeps the racism out.

I was reflecting during your commentary around other groups who may say, 'I should be specifically included as well. I come from a convict background and what if we say we have had a terrible time and I want a paragraph too about what was done to us, and particularly the women?'

My personal view - and I see you come with good heart and that you accept, as we all do, that we have not done things the best way over time - is that what has transpired with the Aboriginal population here has been particularly difficult. If we, with good human hearts say, this goes some way to bringing together - and we have seen some of that happen

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today - all of our peoples by this mere act of recognition, I personally would err on the side of wanting to do that.

I wanted to reflect back to you that I accept your arguments, and specifically Gibbs and co who take that view of drafting as something that we ought to look at very carefully here. Thank you very much for coming. If there is a response you would like make, I am happy to delve into it further.

Mr HOUGHTON - I still come back to the basic point that you are recognising that the injustice may have been very bad here, but I do not see the Constitution as the place in which you do that. My understanding of the Constitution is that it is not the place for that.

Ms OGILVIE - Do you have an alternative model in mind?

Mr HOUGHTON - Not really, unless you can write something outside of the Constitution as a preface, but then you are still going down the path of selecting a group over another group.

Ms OGILVIE - I absolutely understand your point, thank you.

Ms O'CONNOR - Thanks for presenting to us today, Mr Houghton.

When you talk about selecting a group and giving them preference within the Constitution or in government funding programs over another group, we are not just talking about a group, are we? We are talking about the original owners of this country. Is that not quite distinct from Chinese goldfield workers and how they may or may not have been treated? We are talking about a very different situation here. The Aboriginal nationally and in Tasmania talks about dispossession, invasion, theft of land. It is not just another group; it is the people who owned this country before the Europeans arrived.

Mr HOUGHTON - It was the people who occupied it, and different tribes looked after different areas.

Ms O'CONNOR - Ownership is an arguable point but this was their country -

CHAIR - Sorry, Cassy, we will just let the witness respond and then you can have another question.

Mr HOUGHTON - It is still a historical fact. Yes, they were here probably for many tens of thousands of years. That is an important historical fact. It is also an important historical fact that there were other people who were also here, maybe not in the same way, but certainly Chinese immigrants were mentioned - convicts, as well. What you are saying is that because they were here prior to white men arriving, therefore it has to be recognised in the Constitution. Is that what you are saying for that reason?

Ms O'CONNOR - No, I was simply taking your point about one group of people over another. I sensed that some of your concerns are mostly legal. I understand that. But we are not just talking about a group of people. We are talking about the first Australians. Other states have moved to change their constitutions in acknowledgement of prior possession

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or occupation - however you want to call it. I am just wondering whether other states have seen the sense in this move or have seen it as a just move. Why don't you think Tasmania should be in a position to acknowledge the fact that in this place there are archaeological records that go back tens of thousands of years? If you read Henry Reynold's book or Lyndall Ryan's book - the history of the first people here is deep in the landscape. It is not just another group of people.

Mr HOUGHTON - They were not my words that I used to talk about the Chinese. They were words from Kerry Foley, who is an Aboriginal heritage person. However, I put it there because I felt she had a point. I am certainly arguing that. In terms of how long people have been here, I do not know that we can ever be 100 per cent certain whether there were original other peoples in Australia. You go to the Bradshaw paintings in the Kimberley - whilst carbon dating doesn't easily give a date to it, for the wasp nest they found on one of them, they got at least 17 000 years ago. Those people were quite different - or those paintings are quite different to other Aboriginal paintings that people have -

Ms O'CONNOR - It is a big country, so you are likely to have all sorts of cultural differences.

Mr HOUGHTON - Yes. They were painted in different styles. They actually had headdresses in the paintings. They have tassels and so they are quite different. Mitochondrial DNA studies have been done of Aboriginals now. I know it is not Tasmania, but it would be useful to do that. At least 15 different racial groups, if you like, were identified in those mitochondrial DNA studies. I don't know that any longer they can decide whether there were pygmy tribes in Queensland, but there are certainly plenty of photographs to indicate that there were these distinct people of very small stature, but perfectly proportioned. There is lots of evidence -

Ms O'CONNOR - They weren't here when the Europeans arrived, necessarily, and took the country.

Mr HOUGHTON - They were here, yes.

Ms O'CONNOR - They are not Aboriginal people. Is that what you're saying?

Mr HOUGHTON - They were indigenous people.

Ms O'CONNOR - What happened to them?

Mr HOUGHTON - It is not exactly certain. The person who recorded it in the various photos believed it was due to white intervention by and large. They moved people out into different groups and gradually the tribes were just broken down. All I say there is that with regard to who were the first occupiers, it is always going to be a moot point. We know there is not an argument about the Aborigines in Tasmania being here for tens of thousands of years. Were there people prior to that? Just to be pedantic, is 'first' the right term? Or is it 'occupiers prior to white man arriving'?

CHAIR - Thank you. You mention in your submission that there was a succession of waves of incoming inhabitants to the continent over the past 50 000 years and you have said there is substantial evidence that there may have been others. Can you just point to others?

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Mr HOUGHTON - That was what I was talking about with the Bradshaw paintings and the mitochondrial DNA studies, and the pygmy tribes in Queensland.

CHAIR - That is the evidence you are referring to?

Mr HOUGHTON - Yes, that is the evidence that I have.

CHAIR - Good. I have no further questions. The committee is out of time, but I appreciate and the committee appreciates your submission and your evidence to the inquiry.

Mr HOUGHTON - Thank you for listening.

CHAIR - Thank you so much.

THE WITNESS WITHDREW.

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Ms EMMA LEE, MELYTHINA TIAKANA WARRANA ABORIGINAL CORPORATION, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR - Thanks very much for that. We are a committee of the Parliament and I would like to check if you received the guidelines?

Ms LEE - I did, yes.

CHAIR - And you understand those. We are a proceeding of the Parliament, so there is full and frank discussion across the table. The evidence you give is provided parliamentary privilege, which is much appreciated and helps us to get the best information on the table. Once you are outside of the Parliament, it is a whole new ball game and that privilege does not apply. I just draw that to your attention. We much appreciate you being here, so I will pass over for some opening remarks and then we will have some questions.

Ms LEE - Could I stand up to read this?

CHAIR - Yes. If you would like to table anything then we would formally receive a document.

Ms LEE - To the Chair, may I table my opening speech to you?

CHAIR - Thank you. If there is no objection, that is accepted. Thank you.

Ms LEE - Yah pulingina! I am Emma Lee, a senior Trawulwuy woman of Tebrakunna country now known as Cape Portland, north-east Tasmania. I am an apprentice shell stringer, spokesperson for Melythina Tiakana Warrana Aboriginal Corporation, which I will refer to here in the English translation as 'Heart of Country'. It is located in the Tebrakunna country of our grandfather, Mannalargenna. I am a PhD candidate of the Institute of Regional Development, University of Tasmania.

I feel privileged to appear here today and I bring a community-consulted and board-approved model for constitutional reform. I also bring the good wishes of our beloved Auntie Patsy Cameron, Chair of Heart of Country. Auntie Patsy was born at Flinders Island. The diverse family groups of the Furneaux Islands form one of three distinct First People families and communities in Tasmania. The others are the Fanny Cochrane-Smith family and my own Dalrymple Briggs family. All three family kinship groups are members of our corporation and represent the good governance structure of Heart of Country, which promotes fair and equitable participation. I pay tribute to the old people, our elders, and the country we speak to.

In January, the Tasmanian Premier stated that it was time to reset the relationship with the state's First Peoples. He specifically cited the Tasmanian Wilderness World Heritage Area First People's engagement with constitutional reform. The members of Heart of Country agree with the Premier's statement. The current draft of the World Heritage areas was the first time that we, as Tasmanian First Peoples, have been invited to jointly manage the public estate - our country. The premise of the draft plan is recognition that we are a cultural people who have the right to continue our practices in our country and to contribute to economic and regional development.

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Why do we need constitutional reform? The peoples with connection to Tebrakunna country have a particular interest in this question. Our country is where Robinson and Mannalargenna negotiated what we call 'the promise'. That is, if we First Peoples acknowledge the rights of the settlers to be here, then we could hunt, fish and walk across country unfettered, but only when things got safer. Things are safer now and the World Heritage area is one vehicle by which that promise can be delivered.

However, for our members to recognise the rights of others to be part of Tasmania, there must be a formal acknowledgment from us to you. It is in the state's Constitution that we should find our leadership to recognise the rights of all peoples to belong to Tasmania. We must have the choice to recognise our potential shared futures to welcome all peoples to our country.

It is this essential element that is missing from our current legal and political landscape. The Constitution was created without reference to our agreement, yet we will be a richer, fairer and more equitable state when we have the assent of all peoples, and in particular those of the First Peoples.

Therefore, as an opening and essential gesture, Heart of Country assents to the Westminster system and the rights of all people to live in our country.

In September this year, Australia will be one of 193 countries to sign the Millennium Declaration, a UN-backed, intergovernmental agreement on sustainable development. Under these provisions paragraph 34, which is about peace and security, states:

We call for further effective measures and actions to be taken in conformity with international law to remove the obstacles to the full realisation of the rights of self-determination of peoples living under colonial and foreign occupation which continue to adversely affect their economic and social development as well as their environment.

Our first peoples are healthy, resourceful, cultural peoples on country. This is what Heart of Country wishes for all Tasmanians. We are different in the expression of our world views and knowledge systems, our cultural self, our millennia of caring for country, and the right to continue our practices.

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

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

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The role of governor is very important to us. In 1846 the first land rights petition was written at Wybalenna and sent to the Queen. There could be no higher authority and no more immediate a representative than the authority of the governor. Within this land rights document we remember the agreement made between Robinson and Mannalargenna on behalf of the Governor and 'how we have made our part of it good'.

From one foundational document to another, that is the Tasmanian State Constitution, it is now the moment we render true the intent to make good the whole of this agreement. A recognition of a cultural first peoples, not political first peoples, is called for in the Constitution. A cultural recognition has both a symbolic and active function. We must have a standing partnership with the highest office and be ceremonially acknowledged as sitting equipoise with the governor as a bipartisan peoples. This status under the Constitution would not require a preamble because recognition of our first peoples' culturally-based legitimacy is already enacted through sitting alongside the governor.

This is an important place to recognise first peoples. Since our Constitution states that the Crown will have continuance if Parliament were to dissolve, our cultural status and recognition cannot be dissolved. Our connection and stewardship of country has survived tremendous climactic and colonial events and must be secured and guaranteed in the Constitution. Again, no preamble is required because our cultural status is recognised, has continuance and is enshrined. Our place as first peoples is then made explicit. Our sovereignty is not a matter of treaty within the Tasmanian Constitution. First peoples are a sovereign peoples regardless of the non-indigenous parliamentary framework. This fact, states the Wybalenna petition, 'we have not lost from our mind.' Members of Heart of Country do not support onerous and narrow definitions of cultural rights and benefits under the terms of a treaty. The Constitution should be an enduring and durable mode of flexibility to negotiate our rights across time and space. Importing treaty models based on private property rights, such as New Zealand's Waitangi Treaty, cannot capture the heart of jointly managing the public estate across the commonality of being Tasmanian. Private rights, such as entailed through a treaty, cannot be the catalyst for entry into constitutional reform.

I outline the specific instrument with which we believe Tasmania can achieve a new equilibrium. The model is not competitive but collaborative and apolitical, to be incorporated into the transparent and quality governance processes around our democratic government. Our sovereignty rests with our governance and our rights to negotiate, not bargain. The space to negotiate those rights is through neither treaty nor generalised assertions of good faith and a preamble. We believe that an act of parliament is a more practical solution, creating a statutory authority feeding directly into the democratic process by tabling reports, concerns, engagement methodologies and regional development to the Parliament.

This first peoples' council, or whatever name might be chosen, would embody the vital governance of the three family groups, place-based, regional, culturally and historically promulgated. The council would work with the government of the day to provide the nurturing role of continuance for our cultural wellbeing. This would embed in the Westminster system what we have never achieved: a practical discourse at the highest level of society directly through sitting with the Governor.

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If Tasmania makes good that historical promise that we struck more than a century and a half ago with a systemic modification that lets us survive as healthy economic and social peoples in our country, it will be shown to implement UN ethical practices in real and meaningful ways. We are about to do this and are doing it in the Tasmanian Wilderness World Heritage Area, so why not across all aspects of our shared country?

It will be my pleasure to answer your questions today, thank you.

CHAIR - Thanks very much for your evidence today.

Mr JAENSCH - Congratulations on your very proud, respectful and sophisticated contribution to this inquiry. I feel very privileged to have received your address in person. Well done.

I was struck by a couple of things and I have a specific question for you. As with the previous contribution we had here, there is a starting point which David said was about the 'blind to race' purity of our Constitution as the rules for everyone, the same. What I think you are introducing is the idea that the precedence, if that is the right word, of our first people is something that should be assumed, not assigned through this. It is already there as a starting point and beyond that, there is the 'all people to our land' stuff, which is important.

The distinction between cultural and political first people, I would like to hear a little bit more on. That is an important distinction and I would also like to understand a little bit more about the promise itself - that point that you hinge the argument you approach on. Cultural versus political first people and then, time permitting, if you could open up a little more to the promise itself as that moment that you want to build on.

Ms LEE - I will start with the promise, Roger. This is the core and key to understanding the constitutional reform debate. In 1831, at the very location of our Tebrakunna Visitor Centre at Little Musselroe Bay, Mannalargenna and Robinson came together and Robinson said to Mannalargenna that he was there under the auspices of the Governor, George Arthur at that time, to make an agreement with our peoples. This was on the basis that we would be exiled both for our protection and also for the time for the settler population to settle. This agreement was made on the basis of recognition that we had rights across our country, we were acknowledged as the owners of our country, so is centred to the agreement that we would be exiled on the basis that we would be able to come back when things were safer. About 15 years later the Wybalenna Mannalargenna petition called and remembered on that agreement. If the Constitution had been written at that time in 1803, I do not think we would in a situation where we would be questioning whether First Peoples have a place in this Constitution because it was already acknowledged under colonial operations.

In terms of the cultural versus the political, this is a very political decision that Mannalargenna made. But the politics cannot reflect our connections to country, that we are people of song and dance and poetry. We are people of the sea; we are people of the land; and we have very particular and specific connections that are outside a process that I would say is purely political.

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I think the issue of three seats in parliament, which Mr Mansell referred to, is very separate from who we are and why we want to be acknowledged. We are cultural peoples. Our politics are within our governance - how we govern ourselves through a body of elders, through being senior, through teaching our young ones. That is our politics, which is very different from the Westminster system, and it is important to make that distinction.

Ms O'CONNOR - I think the word you were looking for before, Roger, when you were talking about Emma's presentation, was 'mighty'. That was a mighty presentation that you gave, Emma, and thank you very much. I felt very privileged to listen to it.

I am interested in exploring with you the idea of how the council you propose to establish could work for all Aboriginal peoples of Tasmania. You go back to the three families and the known histories, as much as they can be known and what is recorded. You have heard testimony - and I know you have spoken to people within your community, about this - that there are Tasmanians who identify very strongly as being of Aboriginal descent. We heard from the Lia Pootah people today.

How do you as a cultural people acknowledge that perhaps there are more than the three families' descendants here in Tasmania who identify very strongly as Aboriginal people? How do you propose a model that would bring together all peoples and not create division within division? So, if you have a council that has three families leading it, we would end up with the same situation in a way that we have today where there is resentment within groups in the Aboriginal community about one group assuming to speak for another.

Ms LEE - I have made the point about three family groups because that is who we have on our Heart of Country board and circle of elders. That is not to state that does not need to be changed as to a First Peoples' council. I believe we have a once-in-a-generational opportunity to flatten out the structures of privileged elitism, both black and white, in discussing, arranging, reallocating First People's rights. I for one welcome those other mobs who have been marginalised. I believe it is up to our leadership to define the cultural competencies that would allow those Elders or other individuals to sit on that council. The Office of Registrar Indigenous Corporations - 27 organisations - put together what they think of the cultural competencies to be tested as to who sits on this. I think there is a fair and equitable spread of optimal consultation.

The Wilderness World Heritage Area plan is the very first free, prior and informed consent World Heritage Area plan because we asked people if they would like to be consulted and to what extent. I do not believe we should force consultation on anyone. Some people may not want to get involved in this. But if they do, we have a range of organisations, and those people will have their own ideas about what those competencies are. Those can then be tested as to who has the rights to sit on that council.

Ms O'CONNOR - This is the challenge for us. I feel very white sitting at this table. I feel I am part of the elite that you describe because I am a member of parliament, and here we are in parliament making laws and decisions about people who are not represented in the parliament. That is something that personally sits awkwardly with me.

This is your people's business - how this is resolved and how we move forward as a state and actually make reconciliation real, whatever the term means to various people - but how

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do you bring all those parts of Aboriginal identity together in Tasmania? How do you make sure that in the future we are not in a situation where it is whities mostly making laws that impact on the First People of Tasmania in the absence of a First People's council? If we remove the proposal - we are dealing with the here-and-now and the real world right now - how do you bring together the Aboriginal people and make sure - and I think this is your community's role - that laws are not being imposed and that there is a genuine voice and input from the First People?

Ms LEE - I do not necessarily agree from your perspective that is just up to us alone because what I am talking about here in our proposal is that we are working together. Yes, there are issues regarding identity, but I genuinely believe we are at this moment moving away from state-based organisations having the only say to regional organisations being legitimated in their own places. These things get sifted out in terms of the strength of that community's belief in their own families and their own rights within their own regions.

It is actually not my role to state how that mob is going to sort that out. It is up to my mob to state what our governance is, what our issues are and how we then will work with other Tasmanians to ensure that those issues are heard and acted upon. Again, that perspective puts a homogeneity on us that I am saying that we need to bust open in terms of regional development.

Ms O'CONNOR - To correct the record slightly, I have never seen the Aboriginal people of Tasmania as a homogenous group, which is part of the reason that when we were developing the Heritage Act in the last term of government, we sought to make sure that the language of the act acknowledged the various different groups and communities. at significant personal cost to me, and fair enough too. My point is for the various different groups in the Aboriginal community in Tasmania, how do we as a committee and how does the Parliament make sure that we are listening to the widest possible cross-section of people and really heeding what we learn there?

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

It is not for me to predicate what our elders might suggest. That is a very important issue as well. Campbell Town may have a whole different view on this because we have never had that right to meet as regional bodies previously. In the work that we have done with the Wilderness World Heritage area, the Aboriginal Liaison Officer has created culturally safe conditions for our smaller regional voices to stand up and be proud of our cultural

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contribution to this state. We see today as part of that progression. This is an ongoing issue. There is no easy solution. I do not want an easy solution where I think that we might all stand up and agree.

Ms O'CONNOR - That's highly unlikely anyway.

Ms LEE - Absolutely.

Ms OGILVIE - Emma, thank you so much for coming. You brought a tear to my eye and you saw that. It was a very emotional moment and I, too, feel that today we are at a point in history where things can turn in a new direction. I am very aware of the Campbell Town meeting and I am very impressed with what you have been able to do to bring people together in that regard. I wanted to highlight to you in the most respectful way that I recognised when you were speaking of your acceptance of Westminster what a large thing that is to say. I feel truly humbled by that because it is an acceptance of what we would like to try to do. Also, I would like to say that I am personally deeply sorry about the broken promise, no matter how long ago that was. I accept that. I hope that we can move towards fulfilling the promise and that it is never too late to do that. That is where I come from on this.

My question is this, and I am very taken with the idea of the seniority and the elders' council and the status of your senior people being in parallel with the Governor, speaking for nations, and speaking for peoples. Could you talk to me a little bit more about that and what that might look like in practice? How would that would work? I am very interested in that.

Ms LEE - The Governor, as a representative of the Queen, is really important to us. And it is interesting, I was having a conversation and someone was saying, 'You could be seen as monarchists for this' - absolutely! In some ways, I don't have a huge issue with that because, historically, our people - not just in Tasmania - were called kings and queens. Queen Truganini. The Duke of Edinburgh came to Tasmania and nodded at her in complete and utter recognition of her status and where she sat. The Governor is the ceremonial role that fits within our cultural view of ourselves.

There are not too many other avenues under the Westminster system where we can sit without devolving into quarantining seats. If we are going to make this genuine, what we are doing has to be of the highest order. But it cannot interfere with the fabric or materiality of the Constitution too much. I don't think any Tasmanian would be happy under those circumstances. That is where we see that under section 6 that give rise to the powers of the Governor, we could also see it give rise to the power of an elders group to sit alongside.

I would love to see an Indigenous person sitting equipoise with the Governor as our Governor-in-residence because of the ceremonial nature of that role. That is highly appropriate and it is highly reflective of how we see ourselves as cultural peoples. That is different from a body that represents those views. Yes, there is a political element of that because we are working with peoples about economic, social and environmental issues, but it has to be across the board.

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What we say is that what is good for us must be good for all Tasmanians - it has to be. We know this country; we have cared for it and we continue to do so. We want people to walk with us on that journey. Through that body is how we can do that. It will be a constant reminder but without delving into historical miscarriages of justice. I see this council as a shared futures body, not a shared past - it is a future. Even though our promise stems from our past, it is a forward-looking agreement. It is about the rights to walk across our country unfettered and take other Tasmanians with us.

Ms COURTNEY - My question follows on a lot from that question we had from Madeleine. I am deeply practical type of person and I think of things from that mechanism. I would like to hear a bit more from you about this idea of the First People, the Collective, or however we call it, sitting beside the Governor. The role of Governor is often seen as ceremonial, although there are a lot of legal implications with it. I want to understand, when you are talking about the first people looking after the culture, whether by that you mean that this body, however it is formed, looks after the cultural identity of people in Tasmania who recognise themselves as being Aboriginal and then the Governor looks after everyone else. The Governor is appointed and is for the whole of the community so I wouldn't have thought that he/she was for a section. I am trying to work out how those two roles intermingle and also are separate. I am a bit confused on this and that is why I am trying to ask you.

Ms O'CONNOR - So how does it work practically, is that what you're saying?

Ms COURTNEY - Yes, how does it work practically? It is a very interesting idea and that is why I am asking you about how it works. Do I have a Governor for me because I am not Aboriginal -

Ms LEE - No, no.

Ms COURTNEY - or do the people there then help impart Aboriginal cultural heritage and knowledge on us? I am confused, sorry.

Ms LEE - It is this perspective of the separation - blacks are just for blacks - and we don't see that at all.

Ms COURTNEY - I don't like that concept, personally.

Ms LEE - Neither do we. I can't hide the fact I have non-Indigenous heritage. To survive, Mannalargenna made agreement for his daughters to marry Straitsmen so that they would be protected. He relied on non-Indigenous peoples to ensure the continuity of safety of our women. I see this siloing time and again that Aboriginal people are only for Aboriginal people, and that is not the case. We live next-door, we shop in the same places, we are related to each other. So when it comes down to this perspective of 'just between us' but the Governor is expected to cut across the whole of the population, there has to be a regard that Aboriginal people - first peoples - can do the same. If it is good enough for another Tasmanian to have that role, why is it not good enough for first peoples to also have that role?

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Ms COURTNEY - That's what I am getting at. I think it is appropriate it is not segregated and that's not what I would want. I was trying to get that understanding from you whether a cultural ceremonial perspective is inclusive for all people who are Tasmanian, whether they moved here last week, have lived here their entire lives or are Tasmania's First People.

Ms LEE - Absolutely. Mick Gooda, who is the Commissioner for Human Rights, in June this year at the Native Title Conference in Queensland was talking about constitutional reform at the Commonwealth level. Mr Mansell asked him a question as to what the benefits were out of that and Mr Gooda responded that he wasn't there to talk about a job, a house, an education; that what he was there to talk about was us moving forward together, that there is a greater social framework at stake here, that we have a dignity and a right to express ourselves under our own governance systems and have that recognised, enjoined and enjoyed by society. I think that is that ceremonial role that we see this body as having carriage of.

Of course there is a practical element to make regard to specific First Peoples' issues. As Mr Mansell said, things such as land returns have been held up. Why is that? Who is parliament turning to to have good, authentic, proper, forward-looking advice? We need for your mob to have a comfort and a security in the decisions that you make that you will never have to second-guess yourselves over this. That is the assent for us assenting to the Westminster system. Make your decisions and make them well, without having to look back. I think that is a leadership position that we can offer your mob.

I know I haven't quite answered your question. This can work. We already have an Elders Council. Our organisation has a board of directors and an Elders Council. Again, this is under the Office of Registrar of Indigenous Corporations. It is a western governance system to begin with that we have made work. Our elders' and my experience of genuine, proper and true eldership is not demands. You know your law and you follow it. If you make that choice not to, that is your choice and your responsibility and your consequences. Our elders have never, not once, a true and genuine elder, made any demands in that sense. It is a nourishing and nurturing form of governance that I think is missing from our political and economic landscape in Tasmania.

CHAIR - Thank you for your powerful submission. As a committee we have received a range of submissions for and against different proposals to recognise our indigenous people as the First People in Tasmania. We have received a diversity of views from within the Indigenous communities. You have mentioned the Campbell Town meeting today and it has been referred to during evidence this morning, so can you appreciate that as a committee it is not easy when there is a diversity of opinion across Indigenous communities in Tasmania and we haven't received a submission from the peak body - or at least the statewide body, using your language - so can you appreciate it is problematic, at least to some degree, to proceed when there is such diversity of views and opinions and some that are not even on the table?

Ms LEE - I can't speak about opinions that haven't been voiced here or in submissions made, I can only speak to those submissions that have been made. What I see is a genuineness to make this work. I don't believe that any of the submissions of First Peoples - we're not talking about the details, we're not talking about the intent and the intent here is to make that change.

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The diversity of opinions links to it, and this is one avenue where they are being tested. I don't believe that after these hearings magically some bill is going to be put forward that will change this by next year. I think that we have time to consider what this committee comes up with as the best option that they see to fit our Westminster system. We can respond to that and we can demonstrate leadership as to whether that works for us.

Just like state and federal parliaments, you may be of the same, but you will have different opinions and bodies over that. The state body, I think, is becoming much more irrelevant because the vacuum in regional areas - and we are talking about regional development under this inquiry - is being filled and that is starting now. We are going to hear a lot stronger opinions coming out to support particularly our model, because we have tested this. I must reiterate that it is a community-consulted and board approved model, which no one else has brought to the table here.

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

The flexibility comes out of that. I am looking at that long-distance future from where we are sitting here and I am looking towards this parliamentary committee to provide a leadership on what they think suits our systems. We can come up with all this; we love our model, but in the end we understand that we are going to rely on the goodwill of non-Indigenous people to get this through because we do not have Aboriginal people sitting in parliament. So make it a good one, is all I can say. I can guarantee you our support to road-test any model that you come up with, and feedback into it because this is about working together. It is apolitical, and it is collaborative and does not end here.

Ms O'CONNOR - You have talked about models you might be able to accept or work with, and that they need to be nimble and simple. The model you propose has the governor sitting as an equal alongside a body of, probably, elders, because they are the wisest. I am very aware - and I think this is something the committee is probably very aware of too - of the potential flow-on legal effects of creating that sort of structure within the clunky Westminster system we have, which is the only one we have.

In terms of having a direct line of advice, to be able to provide guidance to the state, the parliament, to the governor, have you thought about a model where the governor has an elders' council where they discusses matters of importance to all Tasmanians and to the First People? Where you would have that capacity for advice that does not potentially terrify parliaments because of the massive legal flow-on effects that might happen. The power is the issue, I guess.

Ms LEE - There are two parts to that. If there is not going to be a legal flow-on, this is not genuine because our constitution is our legal document and it must do. It is in the back of my mind that we will constitutional reform before the Aboriginal heritage legislation changes.

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Ms O'CONNOR - That is true.

Ms LEE - And why? Because we are missing the regional element. State bodies do not work anymore in terms of having one voice, one opinion. So there will be legal flow-on effects, but I see them as a positive benefit. I can understand people saying, 'First People's land' and whatever else. I do not believe that; I believe the legal ramifications are about giving us the rights to jointly manage the public estate to fulfil that promise. I believe this is about benefiting our regions and our development. There would be tourism, education, whatever else. I see those kinds of legal issues.

Let us look at marine rights. We are fairly restricted in terms of our rights to fish. I think it is a good idea that the constitution changes so that we can then enable those changes to reflect our cultural practices, because anything else is just a preamble and wafty statement. Legal changes must come out of this, but they will not be straightaway; they will not be made independently. Because we are not voted in, they must of course be negotiated around the parliamentary table, like anyone else's concerns.

It is the genuineness and the level of engagement of our concerns that has not worked down here. That cannot continue any more. Yes, if that is going to work and our members agree to that, fine. But I do not see it as being of the highest order in terms of its genuineness to enact the good will and empower our peoples to be part of Tasmania.

Ms O'CONNOR - You do not feel that at the moment you are?

Ms LEE - I know I am from this country. This is my country. These are my people, but I do not feel adequately recognised as a cultural person with something to contribute.

Ms O'CONNOR - You are here.

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

I have been stopped from undertaking cultural activities in the wilderness World Heritage area. I don't think that any Tasmanian would want to really see that. I think they would encourage us to be those cultural peoples and welcome them in. You become an exile in your own country. Here is the thing - what does not work for me, I see beyond that, because this model ensures that future generations will never have to go through this. That is what I love about this. This is setting up - you have to dig deep foundations to build skyscrapers. I think we will have the strongest form of working together out of any state and territory if we take away this wafty preamble and put in some hard, solid recognition and cultural positioning. Sorry, I have gone over time. I am so sorry.

CHAIR - No, thank you for your evidence today. It is much appreciated. I know it is a special and momentous event for you, and I know for others as well. Thank you.

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Ms LEE - Thank you. I appreciate that.

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Mr MARK BROWN, AUSTRALIAN CHRISTIAN LOBBY, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR - Mark, just to check if you have seen the guide for parliamentary hearings -

Mr BROWN - I give my name and my address now -

CHAIR - No, you don't need to do that. Just to check that you have read the guide and understand it.

Mr BROWN - Yes.

CHAIR - Thank you. We are a parliamentary committee. It is a proceeding of the parliament, so the evidence you give will be subject to parliamentary privilege. That allows us to have a full exchange and discussion. What you say does allow for that protection of parliamentary privilege. Once you leave here, all bets are off and you are subject to the usual defamation laws and other laws relevant to what you say. I am just checking you understand that.

We thank you for your submission. We have had quite a deal of evidence today. I know you have been busy in other respects, which we appreciate, and we would like to hear from you now with some introductory and opening remarks and then we will have some questions.

Mr BROWN - Judging by the size of our submission, there is a not a lot that we have to contribute. I confess that I feel out of depth in this sphere and after hearing that, it only makes me feel even more out of depth.

Ms OGILVIE - We are all getting very emotional.

Mr BROWN - The Australian Christian Lobby supports the recognition of Australia's indigenous peoples in the Tasmanian Constitution. This is not only a powerful symbolic step toward reconciliation but also remedies the real oversight in not honouring the state's first people in its foundational document but also sends a strong message of affirmation for seeing similar amendments made to the Federal Constitution. That is the context of what we are seeing.

Recommendations. The Tasmanian Aboriginal community must be thoroughly consulted in the process. The Tasmanian Aboriginal community should clearly understand the symbolic nature rather than the practical nature of this amendment. It is contrary to some of the things I have just heard but that is how we see it. This is the first step in a process of recognition and therefore expectations surrounding the change need to be realistic. This is going to be an incremental change and it is an important one with a foundational document needing to be cemented in terms of what is decided to go in there.

Consultation from other jurisdictions around Australia that have already gone there in terms of constitutional recognition - we have to look at those.

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The text should be simple, straightforward and clear to achieve the single aim of recognising Aboriginal people without inserting rights-type provisions. It the first of many steps.

The other thing I wanted to add is that I am a New Zealander. I have been here for over 20 years and seeing the difference in the way the indigenous communities are viewed, treated and valued is like chalk and cheese.

Ms O'CONNOR - Sorry to interrupt, but could you elaborate a bit on the difference?

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

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

Ms OGILVIE - Mark, thank you so much for coming. Your concise and intelligent contribution is very welcome. One of the issues that we will be grappling with as a community is the spectrum of change. I think you used the words I liked very much about the 'incrementalism of change'. Reflecting on Emma's very emotional dialogue with us, which was deeply appreciated, in my own mind I see a future where there is a flourishing of other things that happen. I would like us to take a first step. I would like to share that with you. I know we've had conversations previously around these things, but to have somebody from your sector to come and support this is very welcome and I wanted to thank you for that.

Mr BROWN - Thank you.

Ms O'CONNOR - No question?

CHAIR - We will take that as a comment or a statement?

Ms OGILVIE - Unless you would like to respond.

Mr BROWN - Well, it is important to us and I have a number of Aboriginal friends whom I haven't had the opportunity to discuss this with - I would like to, but the whole consultation aspect is so vital.

Ms O'CONNOR - Mark, I am curious that you talk about the symbolism of changing the Constitution; you advise us to be mindful of not raising expectations. If we want to talk about what practical recommendations we can make so that we are moving beyond

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symbolism, I would be interested in hearing your observations on some of the practical steps that we need to take as Tasmanians.

Mr BROWN - I cannot speak on behalf of ACL on this because I'm not going to say this, this and this. I think in terms of the remit of what has been asked, we've put that forward. It is important that there is something in there and that the Aboriginal community have a lot of say in what that looks like. As to the practical outworking of further steps down the track, I really cannot say. I suppose in New Zealand they have had representation in parliament right from the beginning, in the late 1800s. That is a decision that they have made. I am not saying that would be good or not here, but all I am saying is that is one aspect.

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

Ms O'CONNOR - This is a question that goes to that spiritual conundrum. In your observation as a humanist, how does Tasmania suffer as a community because we have this history that is so terrible and because such insufficient redress has been made? What are your observations on how that affects us as a community and where we need to be in terms of our connection as people?

Mr BROWN - I suppose forgiveness is something which is an essential tenet in the Christian faith. I'm aware of a reconciliation movement. It was a church-founded initiative and I think it was around maybe 2010, from memory. There was a group that visited different aspects of the state, different Aboriginal communities. I think they came from England representing the colonialists and heard the stories and brought a sense of forgiveness on behalf of the Europeans. I do not know how far that went as to the response of the Aboriginal community, whether they thought it was helpful or not, but if there are still hurts there from the past, from what we have seen here today this is a step which is helping to say, 'We need to put some of these things right'. As we have said, the fact it is not even there in the founding document - when was it written? - says something.

CHAIR - The current act is from 1934 but it started way back in the 1860s.

Mr BROWN - If there are issues that haven't been addressed in terms of forgiveness and things that have happened in the past, that is important.

Ms O'CONNOR - We are poorer, aren't we, as Tasmanians until we resolve this relationship we have with ourselves.

Mr BROWN - Yes. It is the family, isn't it. If there is someone in your family who has something out of joint and they haven't put it right, we all suffer.

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Mr JAENSCH - Mark, thank you for your contribution. Most Kiwis I meet are proud of their Maori part of their culture - non-Maori people are mainly the ones I know - and it is something they wear with pride. It is internalised and is part of your identity. I suspect, regardless of whether that is prescribed in your country's constitution, or if it was rubbed out tomorrow, the pride would still be there. Is it too late for us to get that here? What role does modifying our Constitution play in getting there?

Mr BROWN - No, I don't think it is too late. If we had that mindset, we wouldn't be here. Even just sitting here for 15 minutes I can see it has already played an important role. Putting a symbolic change is starting the ball rolling. What that looks like further down the track, I don't know, but the fact the discussion has started and people are talking together is the vital part of that. I have been doing a bit of reading around the interplay between constitutions and treaties and how that impinges on the legal outworkings. The term that came out from one article was 'the sense of moral trust'. I like that; it conveys that we have an obligation to treat each other in a way that is human and that we should be able to enshrine that in some form. If this is the start of that, then I think it is only positive.

CHAIR - Mark, thanks for being here today and for your submission and evidence now, particularly your reflections on your New Zealand history. That is much appreciated. I wanted to note that and Roger's observations in particular, which is appreciated. You said in your submission and your evidence that this is a symbolic step forward if we move in this direction. We have received evidence from some quarters that that is not good enough, that there have to be practical steps and measures undertaken. How do you respond to those observations by others?

Mr BROWN - The terms of reference are focused in this particular document. Some may like to put some more practical aspects in there, but we don't believe that is the best way forward. I don't think it's the right document to be putting those sorts of things into but, as I have said, it starts the ball rolling and it starts the conversation. These sorts of meetings are all part of that incremental change. I am sorry, I cannot tell you probably what you wanted me to say, but -

CHAIR - No, you have answered it fairly and reasonably and straightforward. I appreciate that. The second question relates to your observation that the consultation should be meaningful, particularly with the indigenous communities around Tasmania, and in your submission you have made it very clear. And yet, we as a committee have received a good deal of evidence from many indigenous communities and groups and regional organisations, but not all. In fact, one of the key groups is not here at the table. How do you reflect on that and whether we can achieve progress without that full, comprehensive, meaningful consultation?

Mr BROWN - I suppose the obvious question is, why haven't they felt they could put a submission in?

Ms OGILVIE - Yes, exactly.

Mr BROWN - I am sure that there is freedom outside of this particular avenue that you have created to have discourse with them and find out exactly what the issues are. As we said,

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in a family, if someone is missing, then there is a reason for that and something needs to be perhaps talked through to bring it to the table. Relationships are the key to everything, aren't they? If we can build relationships and if we can build moral trust, then I think people may feel more likely to want to have a say.

CHAIR - Thank you for your evidence. We appreciate your observations regarding the family. That brings us all down to earth and helps us relate in a special way to what you have shared in your evidence.

We will conclude, unless there is further evidence for the committee and there are further questions. Our next hearing is on Friday 14 August in Hobart, starting at 10.30 a.m. The committee will meet at 10.25 a.m. for a committee meeting prior to that.

Mr BROWN - Thank you.

CHAIR - To all those that appeared, thank you.

THE WITNESS WITHDREW.