

PUBLIC

**THE LEGISLATIVE COUNCIL GOVERNMENT ADMINISTRATION
COMMITTEE B MET IN COMMITTEE ROOM 1, PARLIAMENT HOUSE,
HOBART ON MONDAY 23 SEPTEMBER 2013**

INQUIRY INTO THE ABORIGINAL LANDS AMENDMENT BILL 2012

Ms CASSY O'CONNOR, MP, MINISTER FOR ABORIGINAL AFFAIRS, WAS CALLED AND EXAMINED AND **Mr NICHOLAS EVANS**, DIRECTOR COMMUNITY DEVELOPMENT, DEPARTMENT OF PREMIER AND CABINET, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR - First of all, minister, we appreciate very much you making yourself available because it does not always happen that the minister avails themselves of the opportunity so we appreciate that you have been able to come today.

Ms O'CONNOR - Thank you.

CHAIR - We appreciate, Nick, that you are able to join us. I might point out Jess Wilson is here but will not be giving evidence at this stage but here to assist the minister with any tricky bits.

Nick, you might explain your role.

Mr EVANS - I am the Director of the Community Department Division in DPAC. The Office of Aboriginal Affairs is part of the Community Development Division in DPAC and I am the director of that.

CHAIR - Minister, I invite you to address the committee and make some opening statements.

Ms O'CONNOR - Thank you for accepting my offer to come and give evidence today on the return of larapuna and Rebecca Creek. I know it is somewhat unusual for a minister to present to an Upper House committee but I feel so strongly about the return of these parcels of land that I appreciate the opportunity to give evidence before you.

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

Under the Aboriginal Lands Act the land is returned to the Aboriginal Land Council of Tasmania to manage on behalf of all of the palawa people of this state. Land is essential to the continuation and practice of Aboriginal culture and this return is an opportunity for the community to strengthen their cultural identity and their deep connection to country.

Since I became minister, I have been reading a number of books which I recommend to members of the committee: *The Fate of a Free People*, by Professor Henry Reynolds,

PUBLIC

The Aboriginal Tasmanians, by Lindall Ryan, and at the moment I am half way through *Van Diemen's Land*, by James Boyce. All of those are excellent books and they all have a consistent theme of land that was taken from the first people at the point of a gun. There was no treaty with the Aboriginal people of Tasmania and I do not believe that adequate reparation has been made for what was taken away.

As descendants of the European settlers, or as people who have come here since, we can say now, 'It is not our fault', but we have a responsibility as a community to acknowledge that there has been inadequate reparation for what was taken away. As a community, we have committed to reconciliation and land returns are a really important part of reconciliation.

We are talking about a comparatively small area of land, in total 158.4 hectares. Larapuna, as members would be aware, is subject to a 40-year lease with the Aboriginal Land Council of Tasmania. There are 32 years left to run on that lease. Rebecca Creek is an area that has been identified as the oldest stone quarry in Tasmania. It has deep cultural significance to the Aboriginal community. It is now a matter of record that it is eight years since the Tasmanian Parliament returned any lands to the Aboriginal people. The Tasmania Together target was that 90 000 hectares be returned by 2010 and we really are only just passed 55 000 hectares returned in Tasmania. The bill passed in June 2012 with overwhelming bipartisan support as I was reading my folder over the weekend. It was really warming to hear comments made by a number of members from minister Wightman through to the shadow spokesperson for community development, Elise Archer, to shadow environment spokesperson, Mathew Groom. All of those statements recognised the deep meaning of these places to the Aboriginal community and the importance of land returns in the reconciliation process.

To close, I believe that only good and no harm can come from the return of these lands.

CHAIR - Thank you very much, minister. I might point out that we have had a good response in respect of carrying out this investigation into the bill and the people we have talked to have appreciated the opportunity to have further input into this situation. That is not including what potential they had for people of the Lower House to make their representations but we have had a good response in our investigations.

If I could ask the first question, minister: why were those two sites chosen over other sites that might become an opportunity for that reconciliation process.

Ms O'CONNOR - The end result of a conversation with the Aboriginal community on the part of the state government. Larapuna and the Bay of Fires has long been an area of that the Aboriginal community wanted to have returned to them and that was the basis for the 40-year lease. Rebecca Creek was part of the conversation of the Aboriginal community and members will recall that originally it was set aside for forestry but, because of the Aboriginal cultural significance of that area, the state government purchased the land from Britton brothers a number of years ago. At the moment Rebecca Creek is sitting there as the property of the crown and the crown has a very strong desire to return it.

Mrs TAYLOR - Minister, thank you for coming because it is lovely to have you. I do not disagree with anything you said. Most people who have spoken to us have not disagreed with that in principle.

PUBLIC

In terms of Rebecca Creek, we have heard from representatives in the north-west about whether the land should go to the Aboriginal Land Council of Tasmania. I don't think there is any choice about that, is there?

Ms O'CONNOR - No. Under the act, both Houses of parliament passed the Aboriginal Lands Act prescribing the Aboriginal Land Council of Tasmania as the statutory manager of the returned lands on behalf of all the Aboriginal people of Tasmania. It was the will of the parliament that ALCT be the statutory manager. It is in the act. There is no way around this other than through changes to the act. That is the situation that we are dealing with now, that ALCT, which currently manages all returned lands, is the statutory manager.

Mrs TAYLOR - That was certainly the feeling I got in the north-west, that people were not unhappy for Rebecca Creek to be given back to the Aboriginal people. Who it should go to and what conditions there should be was the issue that was raised with us significantly. It is clear that there are people who recognise themselves as Aboriginal but are not recognised by TAC as being Aboriginal. Many of them said that 'Yes, we want the land returned but it should be returned to local Aboriginal groups rather than ALCT'. As you have just said, there is no way that can happen under the current act. I do not see a way to resolve that problem and it seems to me that the problem is for the Aboriginal community to be resolved and it is none of our business. I do not know whether you have a view on where that might go.

Ms O'CONNOR - I believe that is a very astute observation, Mrs Taylor. We all know the history of sometimes fractured relationships between members of the Aboriginal community and I recognise that. I have read some of the testimony to the committee around reasons that people have given for not returning these lands under the legislative framework that we have. I do not accept them because ALCT is the statutory manager to manage lands on behalf of the Aboriginal community of Tasmania and I believe we enter very dangerous territory when we start telling the Aboriginal community how to run its affairs.

There is provision within the act for ALCT to engage and, in fact, it must engage with other local communities in the area around land management and would hope that there would be those conversations. But it would be a matter of great concern to the Aboriginal community, and also to the government, if those concerns about recognition within the Aboriginal community were used as an excuse not to return lands that are the original property of the palawa people. We have a legislative framework in place and I would, of course, encourage ALCT, should these lands return, to have that conversation with the Circular Head Aboriginal Corporation but I am not going to tell anyone to do that.

The foundational premise here is that we are dealing with an area of enormous spiritual and cultural significance to the broader Aboriginal community of Tasmania. We have a mechanism through the act that both Houses of parliament have passed to return that land - one small restorative justice step forward - and I don't think we should be using tensions outside this room as an excuse not to return that area of Rebecca Creek.

PUBLIC

Ms FORREST - Minister, thanks, this is obviously my patch and there are a lot of hurting people in my patch who clearly identify as Aboriginal and are recognised by the commonwealth as Aboriginal. Because of the current structure of the way the elections happen, to get onto the electoral role, they are basically excluded at every attempt to get on it, so they have no capacity to influence, directly, the decisions made around the care of the land or the management of the land or anything else.

This committee was denied access to preminghana. We have requested to visit preminghana and we were denied access, as are the Circular Head Aboriginal community in Circular Head.

So, yes, it is a major issue and I am not here to tell any Aboriginal people how to manage their business as far as getting on with it, but this is a huge issue for the Circular Head community broadly, as well as the Circular Head Aboriginal community.

You said that the act would need changing to enable another Aboriginal community to be involved other than as provided for under the act. Has any consideration been given to that? It is a huge issue in the minds of everyone in Circular Head, not just the Aboriginal community but particularly for the Aboriginal community.

Ms O'CONNOR - Certainly the government has not given consideration to changing the provisions within the act, in my time as minister, that prescribe ALCT as the land manager. This is a question that goes to one of the most profoundly vexed issues within the Aboriginal community in Tasmania because I, too, have spoken to people who identify very strongly as of palawa origin. It is unfortunate that the committee was denied access to preminghana.

Ms FORREST - So do I.

Ms O'CONNOR - But at the end of the day, that is the private property of the Aboriginal people. I do not know how many committee members have been to the Northern Territory – it is a very different framework up there. Lands are returned to the original owners and it is private property. It is like my home boundaries. I mean, I will choose who I have come into my house or onto my property. In the Northern Territory there is no automatic right of public access as there is for many of the areas that have been returned in Tasmania.

The ALCT electoral role and the processes were upheld by the Supreme Court of Tasmania. I cannot elaborate on that other than that there have been processes in place around eligibility which have been upheld in the Supreme Court of Tasmania.

Ms FORREST - So where does that then leave the people who have been recognised by the commonwealth as Aboriginal? Circular Head Aboriginal Corporation receives state funding and predominantly federal funding to fund their operations but they are not recognised as Aboriginal people in Tasmania.

Ms O'CONNOR - I understand that, and I understand that the TAC has its own views on Aboriginality. It is not for me to enter into the finer politics of the broader Aboriginal community in Tasmania. These are matters that need to be resolved within the community.

PUBLIC

I understand there are people who represent Circular Head Aboriginal Corporation who feel very strongly about this and who identify very strongly as descendants of the palawa, but I do not think that the return of lands bill that we are talking about today is going to resolve that issue. This is deep-seated; it goes back a long time. It has been tested in the court.

Ms FORREST - When you talk about becoming private land, that is a bit of an Australian thing. In many European countries you might own the land but people can walk through it any time they like -

Ms O'CONNOR - Yes.

Ms FORREST - So that is a cultural thing, if you like. In Australia we tend to put up fences and keep people out when we own the land. However, as you have just said, there are many people in Circular Head who identify very strongly as Aboriginal who are currently being denied access to preminghana and there is a fear they will also be denied access from Rebecca Creek. Now, personally, I do not have any issue with handing land back in an appropriate way, but that is not the issue. This is about access for the people there, the Aboriginal people more than anyone else, because it is hugely historically significant. You can see my conundrum here, surely.

Ms O'CONNOR - Yes, I understand your conundrum and accept the pain that is felt by members of the Circular Head Aboriginal Corporation, but again, I do not think we are going to resolve that through this process. We can express a collective desire that the Aboriginal Land Council of Tasmania engage in conversation with the Circular Head Aboriginal Corporation - and there are provisions within the act for them to do that - but we cannot demand it and I do not think we can be using it as a reason for not returning this land for the Tasmanian Aboriginal community, which had their land taken from them at the point of a gun with no treaty and there has been manifestly inadequate reparation for that.

Mrs TAYLOR - It was not only Circular Head; a regional committee has been talking to the council as well and most of the members of the council were there and would have seen that. As the other member has said, we did not get to preminghana so we do not know this for ourselves - although Ruth has probably been there and has seen it but I certainly have not - but it was certainly expressed to us that they felt preminghana had not been well managed and that therefore any future land handovers could possibly have conditions on them as to management.

Minister, I want to ask your opinion about whether that is possible under the act because, as you say, when we hand land back it becomes the property of the Aboriginal people. People are asking if there can be appropriate conditions put on it, such as, for instance, the way the land ought to be managed, or time scale, or access, or any of those kinds of things.

Ms O'CONNOR - I am certain there would be ratepayers in the Circular Head municipality who have some questions of their own about the Circular Head Council's management of its roadside verges and other areas that fall within its responsibility. I read the testimony of the mayor, Mr Quillam, and I do not accept it. At the moment the grass on my lawn is

PUBLIC

mid-shin because it has been a long winter and we just have not got around to mowing the lawns, but who should judge me about that?

CHAIR - The neighbours will.

Ms O'CONNOR - It is actually incredibly insulting. It is all right, we have done the bits that they can see. I have commissioned my 17-year-old son to do it.

Laughter.

Ms O'CONNOR - My point remains that it is patronising for the council to question the management of privately-held lands. I do not accept that the lands are being mismanaged. I have been up to -

Mrs TAYLOR - I think weed management in particular was an issue.

Ms O'CONNOR - Weed management is an issue for local government, for the Parks and Wildlife Service and for private property owners. Weed management right across the state is an issue and I do not think we should be singling out the statutory land managers of preminghana, wybalenna or any other area that has been returned to the Aboriginal people. I have been to a number of places that are now vested under the act with the Aboriginal community and while there was a time there when wybalenna particularly was left to run down, I have seen no evidence of mismanagement of Aboriginal lands that have been returned. With respect, I think the council needs to have a look at its own operations before it starts casting judgement on the statutory owners of preminghana.

Mrs TAYLOR - The question was, really, can there be conditions put on the handover?

Ms O'CONNOR - ALCT is required to manage the lands; that is what the act states. Management of lands requires you to take certain steps to look after the lands and sometimes put management plans in place. I do not know if you wanted to add to that, Mr Evans, but that is my understanding.

Mr EVANS - In relation to access, there are already provisions in the act around other bits of land that have previously been handed back that put conditions in relation to access arrangements to those aspects of land. So, yes, there is a capacity to put conditions on access issues if that is required but it is done by a mechanism by amending the act. There is provision in the act for management plans to be drawn up by the Aboriginal Lands Council of Tasmania and there are a couple of occasions where that has occurred. In our discussions with the ALCT there has never been any issue with them being unwilling to codify, if necessary, how they are going to go about managing particular issues.

Ms FORREST - Who can be involved?

Mr EVANS - I am not sure who can be involved in managing the land. From a strictly legal point of view of the interpretation of the act, there would be no restriction on who could be involved, but again, that is a matter for the parties themselves to talk about together. There is nothing in the act that would prevent that happening.

PUBLIC

Mrs TAYLOR - This bill does not put any conditions on either of these two, does it?

Mr EVANS - No.

Mr VALENTINE - I have been reading the second reading speech and it talks about the lack of access being consistent with professional advice that limiting access is currently the best way to preserve Aboriginal heritage at Rebecca Creek. I guess the question is, with concern about the broader community still wanting access to things like the lighthouse, that particular area, how do you intend to draw that up with the Aboriginal community? Is it that there will be stipulations to access? I know there is access except for specific ceremonies or times but I am just wondering about the Aboriginal heritage at Rebecca Creek. I would have thought the best way to preserve it is to limit the access. If indeed there is an interest in terms of tourism or whatever to be able to display these items and this area, how do you intend to draw that up with the Aboriginal community?

Ms O'CONNOR - There has never been any automatic right of public access to Rebecca Creek.

Mr VALENTINE - No, not to this point, I appreciate that, but I am interested in how you might work with the Aboriginal community to allow public access through tourism ventures and the like that the Aboriginal community themselves may indeed run. Is there going to be any stipulation about who can and cannot access that area for that purpose?

Ms O'CONNOR - If the lands are returned, that is a matter for the statutory managers of that land. I know there is a strong desire within the Aboriginal community of Tasmania to build an Aboriginal tourism cultural heritage industry in Tasmania and I strongly support and encourage that.

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

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

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

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

Mr VALENTINE - The boat ramp is not incorporated in the land that is going across.

Ms O'CONNOR - That is right and that was specifically to recognise that the boat ramp has reasonably consistent public use, that it is of value to the wider community and it is not necessary for the integrity of the return of larapuna to put the boat ramp in there.

PUBLIC

Mr VALENTINE - But presumably, because of the leasing arrangements with AMSA, they still need access as a result of this going ahead and that will be incorporated for larapuna?

Ms O'CONNOR - That is right. Also, the difference with larapuna is that it is a place that has a wonderful merging of old history and European history. It is a place that many of us have visited, both Tasmanian Aboriginals and non-Aboriginal Tasmanians. It is a privilege to see that merging of European and Aboriginal history. I know the Aboriginal Land Council, through its lease arrangement and its future planning for the site, wants to be part of telling the story of that merging of history which is so much the history of Tasmania.

Mr VALENTINE - They are two distinct, different sites, but there seems to be a bit of inconsistency between the statements made in the second reading speech about limiting access and the circumstances of larapuna, where access by the public will be encouraged because of its European heritage.

Ms O'CONNOR - There has long been a right of public access to larapuna - to the Eddystone Point Lighthouse. There has never been, to my knowledge, and certainly not in recent times, an automatic right of public access to Rebecca Creek. If we follow the advice of heritage consultants, we need to be very careful about what sort of public access is allowed there. Ultimately, that is the responsibility of the owners and the managers, should we do the right thing and pass this bill.

Ms RATTRAY - Thank you, minister, for the opportunity to put some of this on the public record because we have had a conversation previously. What you have said this morning is exactly what you told me about there being no restrictions on ongoing management, or no expectations, if you like -

Ms O'CONNOR - There are expectations in the act about ongoing management and that is why the Aboriginal Land Council of Tasmania is appointed as statutory manager. That is why the state government funds ALCT to manage these lands. It is not true to say there are no expectations.

Ms RATTRAY - But there is certainly nothing to direct the Aboriginal Land Council to do certain things with the land in the future.

Ms O'CONNOR - But there is nothing to direct you, as a private property owner, to do certain things within your patch either.

Ms RATTRAY - I appreciate that, but this is public land right now. I am interested in the access issue with Rebecca Creek and preminghana because I heard about a person being charged with trespass and convicted in the past. I asked Mr Mansell, when we visited Eddystone Point, about that issue - what if that happened here in the future? He indicated then that you would only need to phone him or Mr Gardner and access would be authorised. I do not see that as being very practical, with all due respect - people attempting to get access to that area with a phone call.

Ms O'CONNOR - Larapuna or Rebecca Creek?

PUBLIC

Ms RATTRAY - Any of those areas, if that is how it works - gaining access through a phone call. You might decide on a Saturday morning to go for a drive to either one of those areas if you were in the vicinity. How does that work, in practice?

Ms O'CONNOR - With respect, Ms Rattray, this is technically private property. Once lands are returned to the ownership of the Aboriginal community, access is a question for them. But it is very clear in the amendment act, with respect to access to larapuna, that public access rights are maintained other than on days where there are significant, cultural events.

Ms RATTRAY - I understand that.

Ms O'CONNOR - I think Mr Gardner and Mr Mansell were simply being friendly in saying that you do not have to go through a formal process to seek access, just make a call.

Ms RATTRAY - But I am asking you how you see that being practical - needing to call to get permission to access the site - if this bill proceeds and there is a formal land transfer?

Ms O'CONNOR - My understanding is that it has been operating in that same way for the past eight years under the lease.

Ms RATTRAY - I understand that - under a lease arrangement. But when there is a formal ownership arrangement it may be difficult to gain access, particularly since we were informed when we visited the site that there are significant plans in place for utilising that site in the future. Do you believe that sort of process is appropriate?

Ms O'CONNOR - The access rights are prescribed in the amendment act. It makes it really clear about the public's right of access to larapuna - to Eddystone Point. But it raises a bigger question. Members would be aware that incredible sites of archaeological and spiritual significance on the north-west and the west coast have been damaged by members of the public who have gone there, destroyed petroglyphs, destroyed middens, and undertaken reckless, sacrilegious activities on sites which are of the deepest importance to the Aboriginal people of Tasmania.

We need to vest in the statutory land manager a capacity to control access, because not everyone in the Aboriginal community has as much respect for Aboriginal cultural heritage as the people around this table.

Tasmania lost an absolute champion for Aboriginal heritage last week with the death of Geoff King who was a one-man warrior to protect Aboriginal heritage along the Arthur-Pieman coast. Some of the stories that Geoff told of people taking four-wheel drives and quad bikes through that area and trashing middens are shocking stories. If we had a community where every member was always respectful of Aboriginal cultural heritage maybe we would be having a different conversation but we do not. There are some people in our community who do not respect that cultural heritage and so much of it has been lost.

We need to recognise that the Aboriginal people of Tasmania have a right to protect their cultural heritage and to have a say in who accesses their land.

PUBLIC

Ms FORREST - Geoff was not an Aboriginal, as far as I understand.

Ms O'CONNOR - No, he was not Aboriginal but he was very passionate about protecting that area.

Ms RATTRAY - I appreciate that but a number of people that I represent have some concerns about the European history, particularly in the Eddystone Point area. I know you talked about joining and looking at the full history there but there is a number of concerns around what happens to that European history under the ownership of the Aboriginal community. My understanding - and you would have read the transcripts from St Helens - is that there is significantly more Aboriginal history either side of that particular site. I am wondering if there was any thought given to other areas either side of the Eddystone Point patch that was marked out, that has apparently significant Aboriginal history to transfer to the Aboriginal community rather than that particular site?

Ms O'CONNOR - I would argue that right across Tasmania there are areas of rich Aboriginal cultural history containing relics that date back 40 000 years or more. We are seeking to return larapuna at the request of the Aboriginal community.

Ms RATTRAY - I understand that and the Aboriginal community will know that there is this deeper history either side at the gravel pit area and on the other side at Deep Creek. So I am interested to know whether either one of those two sites, or both of them, were looked at rather than the one with significant European history that is going to potentially cause some friction in the community? There are a couple of significant areas either side and I understand the lease arrangements but, with all due respect, I think that is a lot different than a complete transfer of land to ownership.

Ms O'CONNOR - There is an area to the north of larapuna - wukalina, Mount William, which the Aboriginal community has expressed a very deep connection to and a strong desire to have returned - Rocky Cape. There are other places in Tasmania that have that deep, rich Aboriginal heritage that evoke a sense of community and belonging amongst the palawa people. Larapuna is the area around Eddystone Point that is the subject of the amendment bill and is the 10.4 hectares that we are talking about returning at the request of the Aboriginal community which has been managing that area for the past eight years and, I would argue, has been managing it well.

I have seen some of the photos that have been sent into the committee and I genuinely cannot see what the problem is. There is a bit of grass growing up around a grave site but the grave site looks intact and undisturbed. I fail to see what the point of these images are because they do not make the point that the area is being mismanaged.

I note that the return of these lands has the support of the Break O'Day Council. We have heard testimony from Mayor Sarah Schmerl who made it clear that in her view many of the concerns that were being expressed were from people who were not permanent residents in the area - and I have read a number of submissions from people in Rosevale and Launceston who have expressed a desire not to see these lands returned to the Aboriginal people. I respectfully say that if this has the support of the Aboriginal community, the state government, the three parties in the lower House, the majority of

PUBLIC

residents and the Break O'Day Council, while we must listen to the voice of those who have concerns, in my mind they are the minority.

Ms RATTRAY - For the record, I think it is important to note that the mayor of the Break O'Day Council came in a personal capacity. There seemed to be some misunderstanding of her representation of the Break O'Day Council and hence the Break O'Day Council is putting together a formal submission on behalf of the council because it felt that representation was not entirely accurate on behalf of the community. On a personal perspective the mayor supported the transfer. The committee is awaiting that submission from the council.

Ms O'CONNOR - My understanding is that at the moment it is potentially one member of the Break O'Day Council who has put forward a motion to council questioning the validity of the land returns, which has now been sent to a workshop. I was talking to one of the councillors, Hannah Rubenach, on the weekend about it. She is a very strong supporter of the return of larapuna and she indicated to me there are a number of members of the Break O'Day council who support the return of this land.

Ms RATTRAY - It is probably a line-ball result but my understanding is that the committee has agreed to accept that submission at a later time.

Ms O'CONNOR - I accept you need to take evidence from interested stakeholders, but this bill was passed in June last year. That is now some 19 months ago and we are talking about 158.4 hectares. I know members of the upper House had a very weighty body of work on their hands in dealing with the Tasmanian Forests Agreement Bill and it took up a lot of time, and ultimately the result was very good.

I understand the Legislative Council has had a lot to deal with but for process reasons, to further delay the Legislative Council's consideration of this bill, concerns me very much. I know it concerns the Aboriginal communities of Tasmania, given that in the lower House in June last year there was strong tripartite support for the return of these lands and a recognition it is an important part of the reconciliation journey that we are still a long way from finishing in Tasmania.

CHAIR - Minister, on behalf of the committee, I think it is better for all concerned that we take our time and give people the opportunity to make their representations so that the way forward can be unquestioned, that people have had the opportunity to make their representations and have their opinions heard. That is the process we undertake, although it has taken quite a period of time.

Ms O'CONNOR - I do understand that, Chair, but I would argue that stakeholders have now had some 16 months to make representations. The government announced its intention to return these lands in March/April 2012. I received representations, as did other members of parliament, and for this to come in at the eleventh hour when you have very few sitting weeks left of this parliament is a concern to me. It is an attempt by some in the community to delay the return of these lands to the point of no return. If it does not happen this year, I hold grave concerns for our capacity to return these lands to the original owners.

CHAIR - Minister, we are moving forward.

PUBLIC

Ms O'CONNOR - That is very encouraging, Mr Finch.

Mr DEAN - On that supplementary, you mention the other area near Eddystone Point that is of significant value to the Aboriginal community. What other areas in Tasmania are currently on the list for Aboriginal interest and land returned to the Aboriginals?

Ms O'CONNOR - There is no list that is held by government. There have certainly been conversations with leaders from within the Aboriginal community. These conversations go back many years. Mount William National Park, wukalena, was promised to be returned by the former premiers Paul Lennon and David Bartlett and that has not happened.

So certainly Mount William, wukalena, is an area that the Aboriginal community feels very strongly that it would wish to have returned. There are a number of models from other jurisdictions of reserved lands that have been returned to the original owners and one of the finest is Uluru. There is also the return of the national park on Stradbroke Island in Queensland to the Quandamooka people where the lands and the management are returned to the ownership of the first people but they are still places that hold their reserve status and are managed by the Quandamooka people in cooperation at times with Parks.

In fact, that is the arrangement at larapuna. There is a relationship between the Aboriginal Land Council of Tasmania and the Parks and Wildlife Service around the management of larapuna. But, as we know, the Parks and Wildlife Service, itself, has challenges managing the vast lands under its stewardship.

CHAIR - Members of the committee, I have spoken to Clyde and Graeme. They are quite comfortable if we extend overtime with the minister. So I think we will continue until questions are exhausted and then we will go to Graeme and Clyde.

Mr MULDER - Thank you, Chair. You have acknowledged the fact that land transfer is an important part of reconciliation between the Aboriginal community and the wider Tasmanian community. How do you see the transfer of land assisting that sort of reconciliation?

Ms O'CONNOR - It is as much about the wider Tasmanian community recognising that land was taken at the point of a gun and that there was no treaty put in place. It is also about the Aboriginal community feeling that there has been recognition of what was taken, and an attempt at reparation.

Both Ray Groom and Paul Lennon as premiers talked about that the central importance to reconciliation of returning lands to the Aboriginal community in Tasmania, so it is not an idea that has just popped into my head. The narrative here goes back to previous premiers and to previous governments. It is felt very strongly by the Aboriginal community of Tasmania and by the majority of Tasmanians because the Tasmanian Together process was one of the most broad-reaching and inclusive public engagement processes Tasmania has ever seen. Through Tasmanian Together, the Tasmanian people expressed a desire to have 90 000 hectares of land returned to the first people by 2010 and we are way off that mark now.

PUBLIC

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

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

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

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

Mr MULDER - May be so, but if you do not see government as having a role in reconciling within the Aboriginal community, it then does not question why you would see a role in reconciling between one group of the Aboriginal community and the Tasmanian community at large. It is a role of government to attend reconciliation between differing perspectives in the community - that is what democracy is about, getting that reconciliation moving so that we move forward together. The answer to my original question seems to be that we have done nothing about resolving the issue because we think it is none of our business.

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

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

PUBLIC

Mr MULDER - I will try to avoid drawing parallels with the recent forestry debate. The other issue I wish to pursue a little bit more is that you have just said that there is no list, there are only general conversations. Yet the Tasmanian Together project, as you rightly pointed out, identified 90 000 hectares to be transferred to the Aboriginal community by the year 2010. Quite clearly, we have missed that target. When these two parcels are added in to what has already been transferred, what is the total we have then?

Ms O'CONNOR - It will be something close to 55 158.4 hectares.

Mr VALENTINE - That is pretty close.

Mr MULDER - One of the boundaries is obviously a creek that changes its course from year to year, therefore you can't be accurate.

Ms O'CONNOR - I am sure there is an absolutely hectare-inch accurate -

Mr MULDER - To the nearest 100 hectares, how much is in there?

Ms O'CONNOR - To the nearest 100 hectares I think we can confidently say 58 158.4 hectares.

Mr MULDER - So we are still significantly short of the Tasmania Together guidelines.

Ms O'CONNOR - Yes.

Mr MULDER - What plan is there to get the rest of it?

Ms O'CONNOR - There is certainly an ongoing conversation between government and the Aboriginal community about areas of land the community has identified are of deep cultural and spiritual significance to them. Given that it has taken more than a year-and-a-half to develop this legislation, to get it through the lower House and take it through a committee process in Tasmania, the government determined that an important first step was the return of Irapuna and Rebecca Creek but we are very aware that promises have been made by previous premiers and previous governments to return Wukalina to the Aboriginal people. Certainly there are a number of models you can look at around that but there is no list the government has. We are aware that the community wishes to have returned to its ownership and management Wukalina and Rocky Cape but they are not directly on the government's agenda now. What we would like to see is these areas returned and the conversation continue.

Mr MULDER - So is there an agreement or some plan you are working to with the Aboriginal Land Council in relation to identifying future parcels of land?

Ms O'CONNOR - I know Mr Madison is giving evidence shortly and he will no doubt detail to you some of those areas of land that have been identified by the Aboriginal community as being of importance, but at this stage in terms of the formal process it really does come down to an ongoing conversation between government and the community.

Mr MULDER - So we can't look forward to a signatories agreement?

PUBLIC

Ms O'CONNOR - My personal view is that we should have a treaty with the Aboriginal people of Tasmania but that doesn't seem to be anywhere.

Mr MULDER - Funny you should say that because when I asked you the original question in terms of reconciliation I was actually thinking of using the words 'treaty' or 'Bob Hawke's compact' as being evidence of such a treaty existing.

Ms O'CONNOR - My personal view is I don't think we will be at the end of the reconciliation journey possibly ever but certainly not until we undertake some process such as the development of a treaty with the Aboriginal people and certainly not until we have returned areas like this to the Aboriginal people. The history here is so bleak for the palawa people and their interaction with the first Europeans and the pain is still very raw because the reconciliation process has been inadequate to date. There have been some fantastic steps forward through this process of land returns through, for example, the Aboriginal dual naming policy where we recognise that deep connection to country of the first people, but we are a long way off. Anyone here who has spent some time within the Aboriginal community would recognise the pain is very real and unresolved and, as the non-Aboriginal community and many of us the descendants of European settlers, we have not yet been forgiven.

Mr MULDER - Minister, I don't think there are too many people around this table who are not aware and haven't heard that pain. Our issue is that we have heard the pain from both sides and for one side of the debate this stuff isn't helping ease that pain and, in fact, it is exacerbating it to some extent. That is the issue I am talking about when I talk about reconciliation with the Aboriginal community. We don't have to go down the path of examining history. We all acknowledge it and, if anyone around this table doesn't think this is a problem or an issue, you are entitled to come back at it. It's not that we don't recognise the pain or recognise it as an issue, we are trying to get a more comprehensive solution so we can move forward together, not move forward and dispossess another section of the community.

Ms O'CONNOR - By 'solution', I presume you mean have a broader, more united voice within the Aboriginal community?

Mr MULDER - That's right. That was my question about what steps were being taken because it is up to the committee to find whether we think those steps you outlined are adequate. Do you see an end game to the reconciliation process?

Ms O'CONNOR - That is an interesting question. Nationally the reconciliation process is still in train. We have seen some very profound steps on that path such as the apology to the Stolen Generation.

Mr MULDER - When will you be satisfied that the Tasmanian community is reconciled and there is no more need for government intervention?

Ms O'CONNOR - When the Aboriginal community is satisfied.

Mr VALENTINE - I have a question that arises out of the second reading speech, which I can't put my hands on at the moment. It says there is a potential issue under

PUBLIC

section 35(1) of the National Parks and Reserves Management Act. For the record, could you outline what that issue might be?

Ms O'CONNOR - Under section 35 of the National Parks and Reserves Management Act ALCT could not be regarded as the statutory manager of those lands. We are proposing to amend the act to allow ALCT to be the statutory managers because it is a reserved land and a place of enormous European cultural heritage significance. Do members have the fact sheets that have been provided along with the amendment to the bill?

CHAIR - It has been circulated.

Ms O'CONNOR - It is about a potential issue that arose under section 35 of the National Parks and Reserves Management Act. Given that the reserved status of the land was to remain in place, section 35(1) will operate to prevent the exercise of statutory powers under other legislation, including the Aboriginal Lands Act 1995. We are proposing that to overcome this issue a further amendment to the Aboriginal Lands Act is required which will remove the restriction imposed by section 35(1) of the previously detailed act. It will currently only apply to the Eddystone Point land but would also apply in future to any other reserved land that may be transferred.

Mr DEAN - My questions are on the reconciliation path as well. Minister, when we dealt with the return of Cape Barren Island we were told right throughout that process that it was all about reconciliation and would go a long way to reconciling the Aboriginal and European communities. It was pushed down our throats that we needed to do it for that purpose. What did that do for reconciliation? If it did anything, I am missing it and so are the rest of the Tasmanian community that have spoken to me about it.

Ms O'CONNOR - As I said in my opening statement, I believe that reconciliation is a journey of many steps, large and small. The return of truwana, Cape Barren, to the original owners has been of great significance to the Aboriginal community of Tasmania. I am sure, Mr Dean, that you have visited Cape Barren, have you?

Mr DEAN - I have.

Ms O'CONNOR - It is a vibrant, dynamic Aboriginal community. There is a great sense of pride on that island and I think that was just one part of a move to true reconciliation. We need to recognise here that when you are moving down the path of reconciliation, you can take one step forward and two steps back. It's a bit like the feminist journey towards gender equality and women's rights. Progress can be made but then something will happen that stalls you on the path to the ultimate destination. The whole dispute, debate and angst over kutralayna and Brighton and the building of the Brighton Bypass, because of the way it was mismanaged by the previous government which didn't engage the first people until quite late in the approvals process and there wasn't, in my view, a genuine and respectful conversation there on the part of the previous government around kutralayna.

That set us a fair way back. It certainly soured the relationship between the Aboriginal communities and the state government. It led to bans on Aboriginal heritage officers undertaking work in the field on applications. If we hadn't returned truwana, we might be even further backwards on the road to reconciliation.

PUBLIC

It's about taking a number of steps. But at the same time you are returning lands, you have to be engaged as a whole community. It's not just the role of government, it's not just the role of parliament, but the whole community has to be engaged in respectful conversation within itself - Aboriginal and non-Aboriginal Tasmanians. Taking steps like instituting a dual naming policy in Tasmania, which opens the eyes of the non-Aboriginal community to the deep connection to country that the first people had and still have - I think it is about taking a number of steps.

Mr DEAN - This is not just about the Aboriginal people. This is about European people as well. I have had information from a number of people, and some fairly outspoken Tasmanians, who are saying that what this is doing is creating a greater division between the two groups, when we are one. That's what we should be working at, bringing together and getting that message through that we are one state and one people and we need to be together. Some people are saying the division is growing, it's not becoming smaller.

Ms O'CONNOR - We are one species. We are all human beings. I get that. But I think we need to remember that it wasn't much more than 200 years ago that the mouheneener and nuenonne people were here, exactly where we are sitting and talking today, this was their land. All that we have given back in a land mass of millions of square kilometres is 55 000 hectares. Until we returned truwana and those other parcels of land to the Aboriginal community, they had nothing in return for what was stolen from them.

Mr DEAN - Going down the same path, if you don't mind, Mr Chairman, if I can get onto another issue. The lighthouse at Eddystone Point is of significant value to the Europeans. It was built by Europeans. It is a heritage-listed site. It is the last working lighthouse in this state. It is of significant value to those people and that is where these people are coming from. A number of them have written to me saying that they want to be assured that they are going to have access to that lighthouse area whenever they want it and they should be able to have access to it. Because of it being built heritage it could be seen as having far more value to the European Tasmanians rather than the Aboriginal community, so how can they be assured - and that is the question they are asking me to ask - that they are going to have that continued access as they would want it and need it?

Ms O'CONNOR - The Aboriginal Land Council of Tasmania has, in the statements made to me and in formal representations, recognised the strong European history of larapuna/Eddystone Point and there is a strong desire on the part of the Aboriginal Land Council of Tasmania to respect that European history. It is on the Heritage Register so there are certain prescriptions in there, if you like, around that particular site.

But for people who are concerned about access if these lands are returned, are they being denied access now? They are not. That is under a lease arrangement and the act is really clear. Public access is enshrined within the act other than on those days where there are significant cultural events being held. I know that Mr Mansell is coming to speak to you and you might want to explore this further with him but, as I see it, the people who are interested in visiting the light should have nothing to be concerned about in the return of these lands.

PUBLIC

Mr DEAN - If I can explore the access again, and I don't know whether it has been satisfied, but there was concern originally with this bill that vehicle access would be cut off and that would then impact on people with disabilities who have difficulty in walking accessing that site. Has that part been satisfied?

Ms O'CONNOR - There is a right of pedestrian access enshrined in the legislation that we are debating today. There is obviously a right of access to the boat ramp by vehicles. As to an automatic right of vehicle access, I am unsure of that. It doesn't look like it is prescribed in the act and Mr Evans may wish to elaborate.

Mr EVANS - No, it isn't prescribed in the act but, again, this isn't a new situation. It has been the situation for the last eight years while this land has been under lease. I'm not aware of any circumstances of anyone wishing to have vehicle access to the lighthouse hasn't been able to have it and I don't see why that would change under these arrangements.

Ms RATTRAY - I would like some clarification, and I am not sure if this is in your bailiwick, minister, around the high watermark. I have just had an email from the fishermen. It says about the strip of land extending 15 metres from and above the high watermark as specified on the plan, so there is no issue around fishermen accessing the boat ramp and being able to get to the boat ramp with that stipulation in place, with the 15 metres of high watermark?

Mr EVANS - The boat ramp isn't in the management plan.

Ms RATTRAY - No, I know, but I am talking about accessing the boat ramp. With that 15 metres, it says, 'a strip of land extending' in the transfer 'from and above 15 metres of high watermark'. The fishermen have flagged that as a potential issue and I'm just asking for some clarification that there will be no issue with accessing the boat ramp at any time of the day or night if this proposal passes.

Mr EVANS - Again, from time to time there have been discussions that have need to be had - over the last eight years even - about where vehicles are parked, for example, inside the parcel of land from people wanting to park inside the land and access the boat ramp, which is outside the parcel of land but those issues have always been able to be resolved to everyone's satisfaction and I am sure that would be the case in relation to this. I do not think this changes that.

Ms RATTRAY - Okay. There is nothing in the legislation to give that right to people who are accessing the boat ramp in the future. It is only that you are expecting to do that.

Mr EVANS - You can access the boat ramp without entering the site so it is not necessary to have access to the boat ramp. Sometimes it can be convenient to do that but it is not necessary.

Ms RATTRAY - What about the Eddystone Point road going in? If people do not frequent that area as much as they do now, potentially in the future - and I do not know if that is a fact or not and it is a significant track of road off the main road in to the Eddystone Point area - what arrangements are there around looking after the road in the future?

PUBLIC

Mr EVANS - If there is more traffic?

Ms RATTRAY - More or less. If there is less, you are not doing as much work and with the Aboriginal community potentially owning that site, there might be less traffic going in. They are probably hoping there will be more if their ventures take off but they might not necessarily be coming in that way, they might be going out that way. Maybe you can take that on notice to have some more information around future access.

Mr EVANS - I will take it on notice.

Ms RATTRAY - Thank you.

CHAIR - Thank you members of the committee. Minister, thank you for your patience and your extra time. Are there some closing words that you would like to leave us with?

Ms O'CONNOR - The first thing I would like to say is thank you for the opportunity to present again to your committee and the respectful way we have engaged in some of the issues around these proposed land returns. I understand there are members of the committee who have an obligation to make representation on behalf of their constituents and the stakeholders who are involved, and some who are somewhat peripheral to the issues that we are discussing today and we need to hear them.

I understand the importance of genuinely hearing the concerns that have been expressed but at the same time, there would be representations made to this committee very strongly in support of the return of these lands.

It was 2005 the last time we returned land to the Aboriginal people of Tasmania, eight years ago, and we are talking about 158.4 hectares, 10.4 hectares which is under a 40-year lease which has another 32 years to run, and I would strongly argue that the ALCT has demonstrated that it is a responsible land manager of larapuna. We have another 158 hectares at Rebecca Creek which is an area that you could not argue has a European cultural heritage significance. It is a place deeply embedded in the psyche and the history of the Aboriginal people of Tasmania.

I understand what Mrs Forrest has been saying around the concerns of the Circular Head Aboriginal Corporation. I hear that and I know why you are saying it and I empathise. I know it is real but we are not going to resolve those sometimes currently intractable issues by stalling the return of these lands and all of us who have constituencies which include Aboriginal and non-Aboriginal Tasmanians, are part of the reconciliation process. Everyone has the responsibility, as members of parliament, to be a positive spokesperson for reconciliation and reconciliation has different definitions to different people and we all have a different understanding of what the steps are and what the imperatives are and what the value is of certain steps that are or are not taken.

I urge this committee to recognise these are very small parcels of land. We are a long way off the Tasmania Together target. It is the will of the broader Aboriginal community to have these lands retained. I hope that there are conversations, should we return Rebecca Creek, between ALT and the Circular Head Aboriginal Corporation and I would dearly hope that the committee resolves to do the right thing and pass the return of these lands.

PUBLIC

CHAIR - Minister, again, we thank you for appearing before our committee. You too, Mr Evans, thank you for your time.

THE WITNESSES WITHDREW.

PUBLIC

Mr CLYDE MANSELL, AND Mr GRAEME GARDNER, ABORIGINAL LAND COUNCIL OF TASMANIA, WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.

CHAIR - Thanks very much for joining us today. Apologies about the late start but I think you would understand we were lucky to have the minister join us and we were getting good information for our inquiry from her, and also to say how much we have appreciated the opportunity that you have shown us with the escorting of our inspection of the two sites, to see first-hand those areas of land.

Mr MANSELL - Our pleasure.

CHAIR - Thank you. I am wondering whether you would care to make a presentation to us before we start the questioning?

Mr MANSELL - Yes, I would. I look forward to talking to you this morning about the Lands Amendment Act 2012, albeit with mixed emotions. I make the following submission on behalf of the Aboriginal Land Council of Tasmania.

I want to start by giving you a brief history of what has happened in Tasmania in recent times in relation to Aboriginal land returns. The struggle for land return in Tasmania has a long history. It began way back in 1846 when Aborigines at Wybalena petitioned Queen Victoria demanding recognition of their rights in the cultural landscape. The struggle continued until final recognition and appreciation of our rights to land was achieved through the Aboriginal Lands Act. This historic piece of legislation came about in 1995 when the then premier, Mr Ray Groom, returned 12 parcels of land to Aboriginal communal ownership. To me, that is a very important factor.

When a majority of politicians from across the political spectrum voted to change the previously-held view that Aborigines had not survived the killing fields of Tasmania, the introduction of the Lands Act also recognised our communal ownership rights, not only by returning land but recognising our right to determine eligibility. In doing so, the parliament not only recognised Aboriginal place in the Tasmania landscape and history, it committed to a principle of land return as being a fundamental way of achieving meaningful and lasting reconciliation. They also acknowledge the need to address the injustices of the past and for this to take place the government had to provide a pathway of reconciliation. I urge the committee that this process is a continuation of that. They agreed that land was an important and appropriate process to encourage aborigines and the wider Tasmanian community to reconcile beyond the injustices of the past and overcome the dislocation of aborigines from our land, a dislocation we have suffered for more than 200 years.

I witnessed every land return made by the Tasmanian parliament since 1995. Now some 18 years later I feel the spirit and goodwill under which previous government have acted is diminishing. There seems to be an attempt to change the process. A change will not only discourage reconciliation, it allows petty and irrelevant comments or beliefs to determine the basis of how and why Aboriginal land should be returned. Having read the *Hansard* of the hearings at Smithton and attending the St Helens' hearings, I regrettably get the feeling that the process of land return is being sidetracked by a debate or argument about issues not necessarily connected to the task at hand. I never thought I

PUBLIC

would be sitting here in 2013 attempting to defend my people, our aspirations, our rights to have land returned or even defending reconciliation. To me, this requirement just raises the question about how far we have really come.

I want to talk to you about the key principles as I see them, why I believe the Tasmanian parliament voted in 1995 to return land to Tasmanian aborigines by the Aboriginal Lands Act. I will put to you reasons why Rebecca Creek and Irapuna should be returned to Aboriginal communal ownership. The Aboriginal Lands Act was the process deemed at that stage as the most appropriate way of returning land to the Aboriginal community. I suggest to you that this remains the case. Whether or not this process has the blessing of individual members of the Legislative Council today, land return has resulted in the Aboriginal community becoming proud and active owners of our land. I believe land return will continue to provide an opportunity for Tasmania to rectify the wrongs and injustices of the past. Land return under the Aboriginal Lands Act remains the most appropriate way for this parliament to achieve true and lasting reconciliation. If we are to achieve true reconciliation between our communities, you must vote for this amendment. Also, by voting for this amendment you will show your commitment and stand by the principles taken by our political leaders previously.

I suggest to you there have been few submissions to this committee and some of those received have voiced non-support for the return of Irapuna and Rebecca Creek. I believe the people making these submissions seek to allow narrow-mindedness and bias to creep into the debate. I believe some of the remarks that have been made, at best, are disparaging and judgmental, in fact, many of the comments have been disrespectful both to the Aboriginal Land Council of Tasmania and the Aboriginal leadership within the Aboriginal community.

I urge members to consider the fact that apart from a few non-supportive comments there has been no real groundswell against these lands being returned.

I suggest the submission and comments received fail to understand and recognise the fact that some of the land previously returned to Aboriginal ownership have been subject to mismanagement of the natural resources over a long period of time by previous management regimes and I refer particularly in relation to preminghana.

The people making comment about the lack of outcomes in management terms show little ability to appreciate that it takes time for our community to reconnect to our landscape and celebrate our place in the landscape. After 200 years of separation, I ask you is 18 years an appropriate time to renew that connection? I suggest not.

The arguments being used against land return on this occasion have no recognition and appreciation of Aboriginal views of land and how this in turn determines our relationship with that land. There are distinct cultural and social differences which govern the way Aboriginal people approach land ownership and management. I urge you to consider these factors when assessing our achievements to date.

I urge you to recognise and appreciate that land ownership and management for Aboriginal people is based on our relationship with each landscape. It is based on its relation to people, place and stories. I urge members to recognise and appreciate how

PUBLIC

they can support the need to protect and encourage continued land returns to the Aboriginal community as the basis of understanding these belief systems.

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

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

Not only will the venture be made available to the local and the national tourism market but also to the international and global market. We believe that the tourism venture of the type we propose for larapuna can offer a real gain for the broader community by providing a stronger opportunity of increasing the numbers of tourists into the area. It also will provide an opportunity for the Aboriginal community to become stronger in our desire to increase our cultural expression.

In fact, the ALCT has worked aggressively on the development of this culturally-based tourism venture. In doing so, I believe we have shown our intent to protect and maintain not only the Aboriginal heritage but the European heritage values which exist at Eddystone Point Lighthouse precinct.

Some people will have you believe that if the Eddystone Point Lighthouse precinct becomes Aboriginal land, these majestic granite stone buildings, including the lighthouse, will be mismanaged or will somehow disappear off the landscape. I can assure it will not happen.

I can assure you that the Aboriginal Land Council of Tasmania has gone out of its way to try and create a relationship with people who may have concerns about our management style. I can also assure you that as recent as Friday of last week I spoke with Diane Snowden, the chair of the Tasmanian Heritage Council. Our discussion centred around getting together to have a discussion about organising a process under which we can work together - that is, the Aboriginal Land Council of Tasmania and the Tasmanian Heritage Council - to appropriately manage lands where there is combined Aboriginal and European heritage.

That meeting will take place at 2.15 p.m. today and I think that is a further show of our intent in relation to protecting and managing larapuna.

PUBLIC

As for the tourism venture, funding was achieved to carry out a feasibility study. The study was completed by [inaudible] Consulting and the report was delivered in 2011. During the feasibility study, several meetings were undertaken across state and commonwealth government agencies. These include Tourism Tasmania, Indigenous Business Australia, the Indigenous Land Corporation, Parks and Wildlife Service, Regional Development, and Tourism Industry Council of Tasmania. Also there was a partnership of reconciliation established with the Break O'Day Council. Despite a proposed motion to the Break O'Day Council last week, that partnership still remains, to my knowledge.

We also developed a partnership with the state to progress the project to completion but have not been able, at this stage, to secure funding. The return of *Larapuna* will assist us of secure commonwealth grant monies to allow us to bring the buildings at the site up to a standard where it is acceptable to operate a tourism venture.

It is also important for members to be aware and recognise that ALCT has developed and maintained a working relationship with National Parks and Wildlife in the region. In particular, the Aboriginal training ranger program is a statewide training program. This partnership has seen regular land management activities and programs being undertaken by the trainees within the Eddystone Point Lighthouse precinct.

This initiative has proven very positive outcomes from both trainees and the Aboriginal community. It has provided an opportunity for the gaining of skills, including weed management controls, on-ground management planning and activities, as well as providing the trainees with an opportunity to work on country.

In addition to providing an opportunity for the trainees, the partnership with Parks has extended much broader to wukalena, Mount William, with involvement of the two Aboriginal field officers employed by Parks who have also been undertaking on-ground management activities in the greater park area.

These partnerships show the willingness of ALCT to develop opportunities to work with both the state and commonwealth government agencies to ensure proper management for all these activities that extend the community's land management skill base as well.

The return of *larapuna* will also greatly increase the ALCT's chances of accessing commonwealth funding to carry out the renovation work on the buildings, as I mentioned earlier.

The Legislative Council can play a key role in helping bring this project to realisation by voting for the return of *larapuna*. I urge members to vote for the return of this land. If the Aboriginal community is to achieve true and lasting outcomes, we need the Legislative Council to stand up and support the return of these landscapes, like *larapuna* and Rebecca Creek, because they provide a real opportunity for our community to regain its place in the pursuit of gaining meaningful and cultural understandings and expressions. We need you to stand up and be counted and vote to continue and build a genuine relationship with our communities. A vote against the Lands Amendment Bill 2012 will send a clear message to the Tasmanian community that the upper House has withdrawn its support for further land returns. A vote for the Lands Amendment Bill 2012 will send a clear message to the Tasmanian community that the upper House

PUBLIC

continues to support the return of land to the Aboriginal community. A vote for the Lands Amendment Act 2012 will also send a clear message that the upper House is committed to achieving meaningful and a lasting reconciliation.

CHAIR - Thanks, Mr Mansell. Mr Gardner, did you want to add anything to that?

Mr GARDNER - No, that's fine.

CHAIR - Before I get an indication from members in respect of questioning, I have always had a confusion with the Aboriginal Land Council of Tasmania, ALCT, and the other body, the Tasmanian Land and Sea Council.

Mr MANSELL - I will try to the best of my ability to distinguish the groups. The Aboriginal Land Council of Tasmania is a statutory body set up to hold the title in perpetuity for the Aboriginal community of Tasmania of any lands that are returned under the Aboriginal Lands Act. Our role is to ensure, to the best of our ability, that the lands are managed appropriately, as directed by the Aboriginal community. We then, in turn, went through the process of identifying to the Aboriginal community that those lands were available for management. As a process, we encouraged local organisations to apply for management roles, which they did. As a part of that process, the Tasmanian Aboriginal Sea and Land Council, which is a community-based organisation, applied for the management of the cave sites and preminghana. They have been the manager since 1995 of those areas.

The Tasmanian Aboriginal Centre, which is a community-based organisation, applied for the management of other areas of land including - Babel Island?

Mr GARDNER - Babel, Chappell, Dog, Badger, Clark, Risdon Cove, and Oyster Cove.

Mr MANSELL - They are the managers of those areas. The Cape Barren Island Aboriginal Community Association, applied for the management, when Cape Barren came back, to manage Cape Barren Island. They are the managers of that area of land.

Mr VALENTINE - What was their name?

Mr MANSELL - Cape Barren Island Aboriginal Association. Council, we call them for short. We attempted to encourage the local organisation on Flinders, the Flinders Island Aboriginal Association, to assume the management of wybalenna. They have seen fit - and it is their decision, not ours - not to take up an offer. Currently, we have an individual on Flinders Island, Mr Ralph Purdon, who assists in managing wybalenna. Sometimes when the weather is not good and they can't get out to their other islands, the TAC, will go up to wybalenna and do some on-ground activity.

Treefall Island was returned to the Aboriginal Land Council by the Indigenous Land Corporation, which is a commonwealth body, and there is an existing lease which gives an individual the rights of management over that land. Larapuna is currently managed by the Aboriginal Land Council of Tasmania. That is all the land, pretty much. I don't know if it answered your question, but it was a long answer.

I try to give people a connection.

PUBLIC

Mr MULDER - Just to get some certainty - you were saying there is a peak statutory body, which holds the title in perpetuity and has the responsibility to manage. It then devolves particular parcels of that land to all the other groups?

Mr MANSELL - For on-ground activity.

Mr MULDER - But the title and the primary authority to manage reside with the Aboriginal Land Council of Tasmania?

Mr MANSELL - Yes.

CHAIR - Thanks.

Ms RATTRAY - Where does Thule fit into that?

Mr MANSELL - That is privately owned land. The Indigenous Land Corporation purchased that and they, through consultation with the Flinders Island Aboriginal Association, formed the management.

Ms RATTRAY - That is a property on Flinders Island by the way.

Mrs TAYLOR - And the land on Bruny?

Mr MANSELL - The land on Bruny is the same structure as the others - Aboriginal land. There is a local Aboriginal group on Bruny that manages that parcel of land.

Mrs TAYLOR - I have forgotten what it is called at the moment.

Mr MANSELL - Murrayfield. There is also the small parcel of land next to Murrayfield that was returned to the Aboriginal Land Council of Tasmania under the Aboriginal Lands Act, and that is managed by a group down on Bruny.

CHAIR - On this subject, Mr Valentine?

Mr VALENTINE - So ALCT and TALC are the same body but just -

Mr MANSELL - No.

Mr VALENTINE - TALC?

Mr MANSELL - TALC is the Tasmanian Aboriginal Sea and Land Council.

Mr VALENTINE - So it is really not TALC. It is just that some people say TALC and I think, are they are referring to the Tasmanian Aboriginal Land Council or the Aboriginal Land Council of Tasmania?

CHAIR - I am glad we cleared that up.

PUBLIC

Mr GARDNER - I will just explain that a bit further, because it is confusing. TALC - the Tasmanian Aboriginal Land Council - was set up in the early days to deal with heritage for the Aboriginal community because we didn't have an organisation to deal with those matters. In later times they added 'sea' to their name, becoming the Tasmanian Aboriginal Land and Sea Council. It sounds very similar to the Aboriginal Land Council.

CHAIR - I am just wondering about the membership, if you might please, Mr Mansell? Is the membership of ALCT different to TALSC?

Mr MANSELL - Yes, because of the way the act is structured. To be eligible to participate - and I suppose it depends what you mean by membership. Membership of ALCT is open to the Aboriginal community. In terms of actually participating and voting in the ALCT elections, you have to apply and be admitted to the electoral role set up purposely for that reason.

Mrs TAYLOR - And that is set up by?

Mr MANSELL - That is set up by the state electoral office under the Aboriginal Lands Act.

Mrs TAYLOR - And how does TAC fit into that?

Mr MANSELL - TAC is just a community organisation.

Mrs TAYLOR - Right.

Mr MANSELL - There is sometimes confusion between what represents community and what represents people. TAC represents the people of Tasmania.

Ms FORREST - A volunteer group basically.

CHAIR - And they are an elected body?

Mr MANSELL - No, they are elected. They get elected each year at an AGM and membership of the TAC is drawn from people in the community who care to participate and enrol, whereas the ALCT election is done through the processes of the State Electoral Act. People have to apply and they can be challenged, not only by the Aboriginal Community but by Joe Blow off the street. They go through a process of providing information about their Aboriginal ancestry, their identity and their communal links and that information is assessed according to the criteria set up by the Aboriginal Lands Act of Tasmania.

Mrs TAYLOR - What is the connection between the TAC and the Aboriginal Land Council?
Only that they are one of the groups that manage some of the lands for you?

Mr MANSELL - That, plus their members might also be enrolled under the Aboriginal Lands Act.

Mrs TAYLOR - I understand that, but they could be enrolled in any of the other bodies?

Mr MANSELL - Yes.

PUBLIC

CHAIR - And TALSC is an elected body?

Mr MANSELL - Yes. As far as I know, all community organisations are elected, either annually or bi-annually, by their communities. That is, as far as I know.

Ms FORREST - To follow up on a few of those points. To be elected to TAC - what is the process there?

Mr MANSELL - The TAC has its own process of members enrolling on its membership list. It mirrors the criteria that the ALCT has under the act. It is about self-identification, communal identification, and the key to this is the community's acceptance of that identification.

Ms FORREST - Which community?

Mr MANSELL - The Aboriginal community. Let us say, the membership of TAC would have a right to challenge somebody who might be a member of that organisation if they do not feel they are convinced by their statement of being Aboriginal.

Ms FORREST - People can be rejected?

Mr MANSELL - Yes. I know that over history people have been rejected.

Ms FORREST - On what basis have people been rejected?

Mr MANSELL - This is a matter you would have to ask the TAC about. I cannot speak for them in that regard, I can only speak for the land council in that regard.

Ms FORREST - Can we talk about the ALCT, and on what basis people are rejected for membership there - or election?

Mr MANSELL -The process with the Aboriginal Lands Act is that at the time of calling elections, the state electoral commissioner will call for people to enrol on a provisional roll for the ALCT elections. That roll will be made available to the public by being displayed in libraries in all the regions and it is available if somebody contacts the electoral office. They then go through the process of establishing a community group, which -

Ms FORREST - They being the Electoral Commission.

Mr MANSELL - The electoral commission then receives challenges to the right of somebody to go on the roll. The electoral commissioner then establishes an Aboriginal advisory group and in consultation, the advisory group gives advice to the electoral commissioner on the evidence provided by people who have enrolled on the provisional electoral roll.

Ms FORREST - How is the Aboriginal advisory group constituted?

PUBLIC

Mr MANSELL - It is constituted from the core and key family connections of the Aboriginal community, that is, members of the community who have family links both back to the islands and across Tasmania. Then it links into the family groupings that have been established as Aboriginal family structures in southern Tasmania - down the Channel - through Fanny Cochrane Smith, and then back to the north, north-west and west coast through Dolly Dalrymple. Those family structures and the connections are undisputed. The connections are there, and they become the advisers, nominated by community organisations, to the electoral commission.

Ms FORREST - So, where senior members of the Aboriginal community have show links with Dolly Dalrymple, or Fanny Cochrane Smith but have not been able to get on to the roll - they have been rejected - why would that be? They were identified in their communities, and recognised in their communities, and they self identify. They meet all those three tests.

Mr MANSELL - Yes. In fairness, when people are involved in that advisory role we look at all the evidence available to us - and I say this because I have been involved in that process. The evidence includes documentation provided by the individual which will show their family's links and documentation provided by archival records. We will assess those against what we have in front of us. If there is concern about the reality of those connections, we will then talk to the individuals concerned to seek more information and, if need be, seek out additional information from across the community.

Ms FORREST - The process you have described has seen a number of people rejected repeatedly, which means that people in that area have been unable to get on the board of TAC and thus cannot get on the roll for ALCT either.

Mr MANSELL - It has nothing to do with the TAC, nothing whatsoever. The TAC would be disgusted to hear the suggestion that decisions we make in relation to the Aboriginal electoral roll has anything to do with them.

Ms FORREST - Let us stick with ALCT then. The Aboriginal advisory group that advised the Electoral Commission is bound by the act that the Electoral Commission operates under. If these people are constantly rejected because, even though they are self-identified, they have the support of the community and documented links to the families, as you have described, how can that be a full representation if they are constantly rejected and cannot get on the roll and participate?

Mr MANSELL - I cannot answer that question directly because I do not know the individuals we are talking about. It would be unfair of me to sit before this committee and talk about people as individuals and families who may have applied to the ALCT and for whatever reason have not been able to be admitted to the roll.

Ms FORREST - Do you not think this is a bit of a difficulty, Clyde? You said in your closing statements, and put in your submission, that if the Aboriginal community is to achieve true reconciliation they need self-determination:

We need the Legislative Council to stand up and support the return of lands
Irapuna and Rebecca Creek. These landscapes provide an opportunity for

PUBLIC

the community to regain our place in an active cultural pursuit and expression.

I am not sure about your next statement, Clyde:

We need the members of the Legislative Council to relinquish whatever control they may assume they have over our community and build a genuine relationship with us, a relationship from which we can determine our cultural destiny and reconnection with important cultural landscapes.

Here am I, as one of those people you are referring to, as are the rest of the people at this table, suggesting we are standing in the way of reconciliation and engagement in this full process. What I am hearing is that there is a process that excludes people - and you told me they have been previously excluded so that is not in dispute. How can you say this is a separate issue? You are using this very argument as one of your core arguments.

Mr MANSELL - It is a question of self-determination. Surely, as part of reconciliation there must be an acknowledgement that self-determination is a key outcome for the Aboriginal community. If we cannot as a people determine who we are, what do we have?

Ms FORREST - So the Circular Head Aboriginal people clearly identify as Aboriginal. They self-identify, they have documentation and community acceptance. They have been recognised at a federal level - and I know that is a separate process for a separate purpose - so all those things have been met by these people but we are still saying you want self-determination.

Mr MANSELL - Surely that is self-determination.

Ms FORREST - So why are they not recognised by ACLT?

Mr MANSELL - They have not met the provisions of the Aboriginal Lands Act to be enrolled on the council. I do not know the individuals personally so I do not know, but there is no way the Aboriginal advisory body would give advice to the commissioner if there was an indication that the people applying to go on the roll had met all the criteria. It would not happen.

We have to remember that there have been challenges to the process that is used for the provisions of the establishment of the Aboriginal electoral roll. The Supreme Court in this state acknowledged that the process was an open and honest process, that it was justifiable that the Aboriginal community and the individuals concerned could look at all the evidence and make an informed decision.

CHAIR - The Electoral Commissioner then needs to approve the decision brought down by the review committee, so it is the Electoral Commissioner who has the say as to whether he or she accepts that decision or not?

Mr MANSELL - He has the role, within the provisions, to make the decision based on the evidence given by the advisory group and no-one could argue that over the years the membership of that advisory group has ever been questioned. People who sat in that

PUBLIC

function have been widely respected and acknowledged members of the Aboriginal community.

Ms FORREST - I absolutely agree with that, Clyde, but there is a closed shop that no-one else can get in and that is the problem isn't it?

Mr MANSELL - I think that is a very unfair statement. That gets back to the question of self-identification, Ruth, if you would not mind.

CHAIR - I think we can pursue that with the Electoral Commissioner. If you do not mind, I would like to go to Ivan.

Mr DEAN - I have a different matter altogether.

Ms FORREST - I have a question that is ongoing in this area. Clyde, you have made reference to a range of groups or organisations, beside TALC, that applied for managing the land. Did the Circular Head Aboriginal Corporation apply to manage the land at preminghana in 1995?

Mr MANSELL - They did not exist in 1995, to my knowledge.

Ms FORREST - Was there any representation by any group other than TALC at the time?

Mr MANSELL - No, there was not.

Ms FORREST - If the Circular Head Aboriginal Corporation was to apply to manage the lands at Rebecca Creek, if it was supported, what would the view of ALT be on that?

Mr MANSELL - They can apply. I would only give my personal view because I do not seek to speak for every voting member on the council, but if they wanted to apply then it is up to them. It is not a matter for me -

Ms FORREST - I am saying if they did, they are a recognised body that gets state and federal funding. They are recognised by the state in one way as being Aboriginal but not by ALT and they are recognised by the commonwealth as Aboriginal in every sense and thus get quite a bit of funding as a result of that. So if they were to apply how would that be viewed?

Mr MANSELL - They would have to wait and assess all the applications. It would be unfair for me to make a comment about that.

Ms FORREST - You were here when the minister presented to the committee and she said it is required under the act that there will be consultation. Would you consult with them? They are the local community.

Mr MANSELL - It comes down to, I suppose, the question of whether particular organisations are viewed by the broader Aboriginal community as being who they say they are. If somebody is incorporated under the commonwealth legislation there is no prerequisite that people even have to be Aboriginal to start up an Aboriginal corporation.

PUBLIC

But, at the end of the day, it will come down to a question of whether the core Aboriginal community acknowledges the group, I think.

Ms FORREST - Clyde, you made the point that you believe self-determination is very important.

Mr MANSELL - Yes.

Ms FORREST - For these people to be clearly self-determined, as Aboriginals.

Mr MANSELL - That's one part of it - yes, of course it is. They may do that but, as I said to you before, if we are saying that those people have applied for and wanted to be enrolled on the Aboriginal Lands Act and they have been denied that right, then as far as the Aboriginal Lands Act 1995 of Tasmania, they don't meet the criteria.

Ms RATTRAY - Is there a short answer to the difference between the Tasmanian application process to be identified as Aboriginal and the federal one, Clyde?

Mr MANSELL - There is a very clear difference. In terms of that, as I said previously, to be incorporated as an Aboriginal organisation under the commonwealth legislation -

Ms RATTRAY - I could do that.

Mr MANSELL - Anybody can do it - as long as you have five members, you can do it.

Ms RATTRAY - I probably wouldn't get away with it but I could try.

Mr MANSELL - I don't know, I would be questioning it.

Laughter.

Ms RATTRAY - What's the difference between a Tasmanian process of being identified and being eligible to be part of your organisation and the federal one? I struggle to understand that.

Mr MANSELL - Under the ALCT it's set out very clearly.

Ms RATTRAY - Yes, Ruth just went through and explained those three identification processes, and then there is an acceptance through the family links and the like, there is a process. What's the difference in the federal system then if you can identify under the federal system but you can't seem to get a gig under the Tasmanian one? I'm interested to know.

Mr MANSELL - Yes, in relation to the federal one, in the mid-1970s the federal government decided that they would develop criteria of eligibility and they consulted with the Aboriginal community throughout Australia, including Tasmania. It was very clear from our consultations that the Aboriginal community was saying to the commonwealth government: you have recognised that in being acknowledged by our group as a part of the Aboriginal community, you have to self-identify, you have to identify with your community and you have to be accepted by your community.

PUBLIC

Over the years, in its wisdom, those criteria became unmanageable from the point of view of the commonwealth handing out grants for whatever those grants may be. What the commonwealth tended to do was rely heavily on the self-identification part of the criteria and that became 'tick a box' and you became Aboriginal.

The Aboriginal community of Tasmania has always said and required that you have to be able to show the criteria - that is, self-identification, acknowledgement and acceptance. In this case, some people have been able to show two but not the third criterion and they haven't been accepted on that basis.

Ms RATTRAY - So the Circular Head Aboriginal community members qualify for two in Tasmania, in your -

Mr MANSELL - I don't think they do, personally.

Mrs TAYLOR - It's individuals, really.

Mr MANSELL - There are Aboriginal people living in Circular Head, don't get me wrong. Some of those people are relations of mine or come from the same community that I come from but if you look at what is being stated as being the number of people who are Aboriginal within that region, it suddenly jumps to 4 000 people. The concern there is that the majority of those people would not be able to establish their Aboriginal ancestry.

Ms RATTRAY - So you are saying that the community acceptance has to be from the Tasmanian Aboriginal land community, not their own, local community - is that the difference?

Mr MANSELL - It's part thereof, Tania. It comes from a problem that has been created by these different criteria that are used by the commonwealth and the state.

Ms RATTRAY - The feds got it wrong, in your view?

Mr MANSELL - I'm not saying the state has it right either but they are closer.

Ms RATTRAY - They can meet the federal criteria but they don't meet the Tasmanian Aboriginal criteria. They are not recognised by your group but they are recognised by their own community group, but that's not enough to satisfy your criteria?

Mr MANSELL - They created the 'tick the box' Aboriginal.

Mr VALENTINE - I was once told that it was the fact that in the federal court you had to prove that an individual wasn't Aboriginal rather than prove that they were.

Mr MANSELL - That's right.

Mr VALENTINE - Is that the difference?

Mr MANSELL - That's part of the difference also.

PUBLIC

Mr VALENTINE - They look at it, prove that person is not an Aboriginal rather than prove that person is.

Mr MANSELL - Yes.

CHAIR - I think we have explored that enough, if you don't mind. Ivan Dean has been waiting for a question.

Mr DEAN - I want to go down the same path that I did with the minister in relation to reconciliation and you have talked about that today. When we spoke about the return of Cape Barren Island, we were told then, very clearly, it was all about reconciliation and returning and that it will have a marked impact on reconciliation between the European and the Aboriginal community. Can you demonstrate to me where that did change the position in relation to reconciliation, that it had a stronger impact on bringing together the two communities?

Mr MANSELL - You look at it from the point of view of what happened at the local level. What we have seen since Cape Barren was returned to the Aboriginal community is that the local community there has become a vibrant community involved in managing their own affairs, involved in undertaking land management activities on the island, road construction and all that sort of stuff. All work that was done from outside the community is now being done from within the community. It has been a very big gain for the community which I think then has flowed on to the relationship between Aboriginal and non-Aboriginal people on Cape Barren Island. Of course there is going to be different times when there will be ups and downs. It's the same as any community. But, overall, I think the relationship between Aboriginal people and non-Aboriginal people on Cape Barren Island has greatly improved since Cape Barren Island was returned.

In terms of the broader Tasmanian community, reconciliation - and I don't want to re-quote what the minister said - has its ups and its downs also. If you talk to people out there in the community, and I talk to people across the community in Tasmania, people are happy and content that Cape Barren Island came back because it recognised the relationship of Aboriginal people to that landscape. In that sense, in reconciliation, it has been a great gain.

Mr DEAN - That's the position we are in, isn't it, that there will never be reconciliation and that's what the people out there are saying, there will never be reconciliation. How far are we going to take that? I think the minister said reconciliation won't be achieved until the Aboriginal community accept that. I think she made a comment to that effect. It's a huge question.

Mr MANSELL - I don't have a crystal ball in front of me, Ivan.

Mr DEAN - I know you don't. But that's what many of the people out there who are making contact with me are saying: where is the proof, where is the demonstration that it is improving at all? They are saying that there is no evidence to show that the relationship between the two has changed at all. What they are saying is, all of this is driving a wedge between the two. They are saying it's about bringing the groups together. We are

PUBLIC

one people. We are one state and we live together and that's the critical issue. Splitting up the land, some to you, some to us and so on, is just continually dividing it.

Mr MANSELL - I'll partly answer that one but if Graeme Gardiner wants to comment on that one I'd appreciate him doing that. It's not about how long is the piece of string, it's about how we get to an outcome which satisfies, as I see it, the need to overcome the injustices of the past. I mentioned it in my comments. Tasmanian Aborigines have been dislocated from their landscape for over 200 years. Tasmanian Aborigines have been denied their right of identity for the biggest part of 200 years. Tasmanian Aborigines have been divorced from their right to maintain their cultural pursuits and activities for 200 years. Surely, 18 years down the track is not enough. Don't say we have to have the outcomes now - it might be 50 years, it might be 20 years or it might be 40 years. It is the unknown, I am afraid.

Mr GARDNER - There are always going to be different perceptions of reconciliation. In the case of Cape Barren Island, since 2005 the Cape Barren Island Aboriginal Association has represented not only the Aboriginal community on the island, but all the people on the island. There are only 80-odd people there and about 50 or so are Aborigines, and all the private owners rely on the Aboriginal association to take care of their affairs. The Aboriginal association looks after the roads, runs the shop, the post office, and the community centre, and looks after general rubbish, and the health service. It is an Aboriginal association taking a broad view.

You also have the Flinders Council, which represents everyone in the municipality who has joined together in a MOU. That is an indication that reconciliation is about putting our interests together for the better good, and I think it is a very positive view. It is a distinct change from 2004 when all the alarmists were saying, 'This won't work, this will happen and we can't do this any more'. But then we have seen two of the main representative groups come together and put things in place so that individual people in the area benefit from it.

Ms RATTRAY - The council was very supportive in 2004, though, of the transfer.

Mr GARDNER - Yes, they were. It took a bit of realisation, but it has worked.

Ms RATTRAY - They were, and they certainly benefited the island in general. Flinders Island benefited significantly from that transfer. I have a small question. Clyde, when we visited the Eddystone/Irapuna site, we talked about needing to make a phone call to gain access. I have some concerns about that particular method of gaining access, particularly if you have people who come at short notice and want to visit. Is there any other way that access approval or permission can be granted other than needing to make a call? Can there be a longer lead time? Have you thought about that at all since I posed that question?

Mr MANSELL - Yes. I suppose access has to be looked at from two perspectives. Under the current agreement, or the lease that we have with the state government over the Irapuna/Eddystone Point precinct, there are provisions which allow the public a right of access along the formed road up to the lighthouse and back.

Ms RATTRAY - Other than at those significant cultural activity times?

PUBLIC

Mr MANSELL - Yes. There has not been any occasion, that I am aware of, where people have not been able to use that access. In fact, the notice put up at the gate welcomes people to come. I have, in fact, sat on the verandah of one of the buildings and waved to people as they have driven past. I notice that was mentioned during the evidence in St Helens.

Then you need to consider access in terms of whether access is allowed to the lighthouse. The current, and continuing, situation will be that's it not. The lighthouse is managed by AMSA and they maintain the right to keep that. The Aboriginal community, as part of its endeavour to try to develop a tourism venture at larapuna, has negotiated access with AMSA to conduct tours up and down the lighthouse. This is another indication of our desire to make larapuna a site of reconciliation. The question of access, to me, is already catered for.

As I understand it, the amendment sets out similar provisions: the public will have a right of access up and down the formed roads to the lighthouse and back. Over and above all this, the Aboriginal community has not denied people the right of access across the landscape at larapuna - that is, off the formed road. We have a working relationship with one of the tour operators that does walks in the vicinity. They walk up the roads and across the landscape to get across to the Bay of Fires and down to the Bay of Fires Lodge and we have never denied access to them. As for other access, I don't know what access would be required, Tania.

Ms RATTRAY - You mentioned that if I wanted to take some visitors, I would need to give somebody a call. I would need to make a formal request.

Mr MANSELL - If I did that, I did it wrongly. I didn't mean that. That's not the case.

Ms RATTRAY - Does your association have a policy on never selling properties once they are transferred?

Mr MANSELL - They can't be transferred.

Ms RATTRAY - Is that something set in stone? You can't sell property once it's been transferred?

Mr MANSELL - No, once land is declared Aboriginal land, it can never be mortgaged under the act. The Aboriginal community wouldn't want to do it anyway.

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

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

Mr VALENTINE - Unless there is a tourism venture, perhaps, that the Aboriginals might run?

PUBLIC

Mr MANSELL - That may be something that is planned in the future, but I can't speak for that.

Ms FORREST - Just to clarify that point. Even local Aboriginal people will not be able to access it?

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

Ms RATTRAY - Is that why that person was prosecuted?

Mr MANSELL - Yes.

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

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

Ms FORREST - I need to clarify some points in your submission, Clyde. In reference to some comments made the former premier, Paul Lennon, in 2005, you said:

[TBC] The members for Murchison's and Apsley's attitude showed no understanding of the sentiments or intent expressed by premiers Groom and Lennon, however they showed little ability or desire to grasp ???12.30.00?? of land to the community. [TBC]

You selectively quote parts of my speech which are a quote that I was making and not my own words, and which you do not acknowledge in your submission.

Mr MANSELL - I apologise.

Ms FORREST - Assuming you read my time contribution, you would have known that I have repeatedly and consistently said that I do not oppose in any way land handback and all your comments in here totally misrepresent that fact.

In view of your comment, do you want to correct the record in any way on that point?

Mr MANSELL - In looking at your comments it came clear to me, in my perception, right or wrong, you agreed with land [handback] but under conditions that were far overriding to Aboriginal people. It was making us look like we did not have the ability to make serious considered decisions ourselves. On that basis, what I wrote in my submission was what I felt and I have had nothing to make me change my feeling on that.

CHAIR - You have apologised for the -

Mr MANSELL - I apologise for the inaccuracy. I apologise for that.

PUBLIC

Ms FORREST - You did tell the ABC and other media outlets that I opposed land handback on a number of occasions, publicly.

Mr MANSELL - That was my perception though.

Ms FORREST - But you did read my contributions at that time?

Mr MANSELL - I may have misread it. It was my perception from what you were saying, I am afraid.

Mr MULDER - Clyde, you have referenced to the commonwealth being a 'tick the box Aboriginals' - apart from the obvious thing of saying, 'Is there no room for both people?' - but you said Tasmania's was a better system but it could be improved. Would you like to explain -

Mr MANSELL - I do not think any system is going to 100 per cent foolproof, Tony.

Mr MULDER - My question is what does Tasmania need to change to make it better, not absolutely perfect, and why would those changes be needed?

Mr MANSELL - Changing any criteria about Aboriginality demands the recognition that it is the right of the people to make the decision, whether outside accept that or not.

Mr MULDER - This is the thing that keeps coming back - it is a chicken and an egg argument, isn't it?

Mr MANSELL - It is the fundamental issue.

Mr MULDER - 'I am Aboriginal because I decide to be an Aboriginal but to be accepted as an Aboriginal I have to be an Aboriginal'.

Mr MANSELL - I beg to differ. I do not think it is that at all. It is about, 'I am an Aboriginal because, as an individual, I have an ancestral link to the original inhabitants of this land. I am not an Aboriginal because I can see a gain in any way or form.'.

Mr MULDER - What needs to change about the Tasmanian criteria?

Mr MANSELL - It gives the right of making a decision of self-determination to Aborigines.

Mr MULDER - The appeal to the Electoral Commission to decide who is on the roll, that should be taken away - is that what you are suggesting - because, in the end, it is the Electoral Commissioner who makes that final determination, not you. Is that the change you wanted to make?

Mr MANSELL - I am suggesting it could be replaced.

Mr MULDER - Okay. The other area is -

CHAIR - The last question please, Mr Mulder.

PUBLIC

Mr MULDER - I accept your judgment but, seriously, this is the main peak body. I have not asked a question through the entire presentation. Other members have had several goes.

CHAIR - You did not let me know earlier either, Mr Mulder, or I would have come to you earlier and we could have pursued a line of questioning.

Mr MULDER - That is fine, I will withdraw my questions.

CHAIR - Thank you.

Mrs TAYLOR - It is a follow-up question, Clyde. We have talked already about access to larapuna but a couple of things have been mentioned, in particular one about the fishermen who were concerned. You were listening, I am sure, so I wondered whether you would address that and also about people with disabilities and whether there is only going to be pedestrian access although I think I heard you say the road is going to be open so people will be able to park. Would you address those concerns?

Mr MANSELL - Adriana, we have people in our Aboriginal community who have disabilities too and we would not have a different opinion. In terms of access, I thought about this. Tania, were you talking about the provisions around the coastline?

Ms RATTRAY - Yes.

Mr MANSELL - No, it is my understanding that they will remain as per all other land returned.

Ms RATTRAY - There was some concern that they might potentially lose some access particularly after daylight hours because that is what is says in the -

Mr MANSELL - In terms of land access, the gate is never shut at larapuna. In terms of sea access, and in daylight or not, anybody can access the shore from around larapuna if they like because it would not be a very safe activity.

Ms RATTRAY - They would know how to access that. They have the skills and the expertise.

Mr MANSELL - There is no issue with that provision.

Ms RATTRAY - It is in their interest to get those things clarified.

CHAIR - Thanks very much members. Is there a closing you would like to make, Mr Mansell?

Mr MANSELL - We are talking about small parcels of land but they have significance. Rebecca Creek, about its link to the traditional activities of our old people and also larapuna. But larapuna also gives an opportunity for the Aboriginal community to seek opportunity in terms of cultural expression and tourism activities. I would ask members to be considerate of that.

PUBLIC

I brought along a booklet for members to peruse at their own leisure and it will give you a bit of a pictorial rundown of some of the stuff that we have been doing at larapuna in the main. When you have a look at that booklet, some comments that are made about the Aboriginal Land Council are not totally accurate in that we are being very open in welcoming groups outside the Aboriginal community to enjoy larapuna.

CHAIR - Thanks very much for appearing before and I am sure we have done that very often.

Mr MANSELL - Thank you.

THE WITNESS WITHDREW.

PUBLIC

Mr PETER MOONEY, DEPUTY SECRETARY, PARKS AND WILDLIFE SERVICES, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR - First, our apologies that we have brought you in early and we are running late. However, we have had a couple of very compelling presentations and we will remain here until you feel comfortable that you have concluded what you wish to say. Is there something you would like to say in respect of the bill that we are exploring?

Mr MOONEY - Not in particular. As the manager of the Parks and Wildlife Service, I think there would be a tremendous way forward if the Aboriginal community had ownership of the Eddystone Point Historic Site.

CHAIR - We had a question before that I thought might be pertaining to your department and that was the maintenance of the road into larapuna. Do you have an understanding of the responsibilities you have if the agreement comes about to hand over the land, what the circumstance will be then?

Mr MOONEY - The road through the Mount William National Park from the entrance, right through to the beginning of the historic site, is state government responsibility for us, the Parks and Wildlife Service. Then there is very short section of road in the historic site itself which at the moment is the responsibility of the leaseholder to maintain that road.

CHAIR - How is that done? Have they called upon the state government to give support for the maintenance of that road so far?

Mr MOONEY - We have a working relationship on many fronts and, in fact, we have two staff that we co-badge, basically; we have two Aboriginal staff who work for ALCT and the Parks and Wildlife Service. They are on our wage as the Parks and Wildlife Service but they have work programs where they work on ALCT land and on our land. It could very well be that part of that program is that they de-pothole the road inside the historic site.

Mrs TAYLOR - I have a gravel road myself and I am about to de-pothole again. Peter, in a previous presentation - and I think it was Clyde who talked about the partnership in the larapuna venture, the tourism venture that they are proposing and the fact that they need ownership so that they can get grants from elsewhere. How do you feel about that partnership with ALCT in the larapuna venture, the camp that they are proposing further up the beach because that is Parks and Wildlife land?

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

We certainly believe that another similar type of arrangement, an overnight standing camp could occur, more towards the sense that in Tasmania there are very few overnight cultural walks available, and it's just a big gap. We get regular requests from operators and tourism wholesalers internationally that they want to have an overnight cultural

PUBLIC

experience and there is not one available at the moment in Tasmania. That's another reason, and also because they are a leaseholder of the historic site now at Eddystone Point. It's a natural fit because you could leave at a certain point and then have a camp experience and then go on and have a building experience at the historic site itself. We are very comfortable -

Mrs TAYLOR - You would be aware of that sort of cultural experience that is happening on the mainland. Someone has just come back from Port Douglas and said there were fantastic values -

Mr MOONEY - There are tens of tens of them scattered around Australia.

Mrs TAYLOR - There are models that -

Mr MOONEY - Obviously, ALCT have done their research with indigenous people in mainland Australia and they have found some very good products over there that they could gain some good ideas from.

Mrs TAYLOR - So you don't have any real concern about that being potentially a viable and an attractive -

Mr MOONEY - It has to meet environmental standards and we have done that environmental assessment and obviously the business case is ALCT's domain and they have to put that together with an intention to have a sustainable business. We have looked at one draft business plan that they have put together and commented on that. I am sure it will get better refined as they gain more knowledge and information about what works in that type of tourism product.

Ms RATTRAY - Peter, can you explain to me how the management of that particular standing camp is going to be undertaken given that they were looking for a large accommodation/cultural area plus small camp site-type -

Mr MOONEY - It would be very similar to the standing camps that we have operating now in the Mount William National Park with the Bay of Fires walk and in Maria Island National Park with the Maria Island walk and also, to a lesser extent, the Cradle Hut walk along the Overland Track and basically you would segment a portion of land -

Ms RATTRAY - What sort of footprint size are you looking at there?

Mr MOONEY - I can't remember the latest drawings but it would be very -

Ms RATTRAY - A hectare or something?

Mr MOONEY - It would be less than that. The way the leases work for those standing camps is that they basically have the footprint of the building structure itself, any walkways in between and one metre around the edge. That is the lease area so it's actually quite minimal. They need that as security for insurance and their liability arrangements, to have that area segmented and marked so that they can have a formal [demarcation] of where they are public land or on their lease land.

PUBLIC

Ms RATTRAY - In what time frame would a lease like that be undertaken?

Mr MOONEY - They vary. It's all upon negotiation. There is a capacity to go 99 years but generally the state government doesn't do that these days.

Ms RATTRAY - You can't even get a 40 out of them at the moment.

Mr MOONEY - No, we are pretty good - it depends who you talk to. The longest one we have for that type of adventure at the moment is 45 years, and we have two of those out of perhaps five standing camp arrangements.

Ms RATTRAY - So the Aboriginal community could expect to be able to gain around a 45-year lease?

Mr MOONEY - A lot of it comes down to commonsense in a financial business world of what return it would be expected to gain and then that you have enough capital built up to renew and rejuvenate whatever you have in there. You don't want to give a lifelong expectation, therefore there's not the incentive to renew and rejuvenate, so 40-50 years is usually the standard benchmark we use now. It's the sort of benchmark that the banks and lending institutions are quite happy with.

Ms RATTRAY - Would the Aboriginal community be able to use the ownership of the other area - the Eddystone Point/lalapuna area - to generate a loan-type thing or get funds and have that lease?

Mr MOONEY - I'm not sure what their business arrangements are. It is like any normal business; in general terms, private title or ownership is stronger than leasehold, which is stronger than no leasehold. That's just the way it works.

Ms RATTRAY - The boat ramp, the small building beside the boat ramp and the car park - which could probably do with a bit of de-potholing, I might add - that will remain under PWS?

Mr MOONEY - That will remain part of the Mount William National Park and is full open public access.

Ms RATTRAY - That will have a management plan put in place? I know you don't really have management plans, that it's on a needs basis.

Mr MOONEY - We don't have a formal management plan for Mount William but we have what we call site plans. They are plans or works programs for the high-use areas - the camp grounds and the day use areas. The boat ramp has had a reasonable amount of money spent with MAST recently to allow a safer access for vessels. For example, it has a formal ramp now.

Mr DEAN - Peter, in relation to the Eddystone Point and the lighthouse in particular that was raised previously here today, the continued access to that lighthouse with the arrangements under this bill, there were concerns raised by people that they are not likely to have continued access. When will they know whether they have access? In other words, I think it said when cultural events are occurring and there is a right to close it

PUBLIC

off. How will people know under this bill that that is occurring? Do they rock up there to go to the Eddystone Point lighthouse and suddenly find there is a cultural event occurring there and they now have no right of access?

Mr MOONEY - That would be a question for the new owners. I would expect under those types of arrangements a cultural event would be an advertised event and would be a marketed event so that all the community knows exactly what's going on. Generally speaking, the easiest way we have found those to work is that they are done on the same date or day every year, so there is a common knowledge the event is happening - whether it is a certain celebratory day or time of the year that the community want to have an event. In general terms, also, it is not as if the whole place is closed 24/7 when they have an event. Often it is for distinct parts of an event. It might be for a particular ceremony they want to just have amongst themselves for a set period per day, and there might be another part of the day when access is quite welcome. The traditional owners would have to work out that process. We would certainly work with them because it is important for us to advise all visitors to the park about those types of activities - if it is an exclusive use for a set period of time.

Mr VALENTINE - You would put that on your website?

Mr MOONEY - Yes, that would be the easiest thing to do, to be honest. Social media websites and stuff.

CHAIR - And you are not overly concerned about that aspect of the hand over - that a cultural event could occur too regularly, or it might be confusing for people who want to access the site?

Mr MOONEY - My history working with the Tasmanian Aboriginal community is that they certainly don't have events every weekend, and every second night. They are quite rare and they are usually for a hallmark reason. For example, it might be the date that they receive the title in their possession, and they might have a day a year for that. There might also be a mourning period for an Aboriginal elder who wishes to have that mourning at Eddystone Point. That is certainly fair enough, and it is something you cannot preplan. But, again, it is not as if they crop up every week. I imagine they would be quite infrequent.

CHAIR - Aboriginal cultural experiences in Tasmania - we don't have any at this stage?

Mr MOONEY - There are a few Aboriginals who provide cultural experiences in Tasmania, as a business, but, in general terms, they are not ongoing active. They have spurts of activity but, you are right. If you punched it in on Google you would find it very difficult to find a business operating continually with an Aboriginal experience.

CHAIR - What would think of the future of something like that - something that is established, regular and available?

Mr MOONEY - We know it is an enormous gap in the tourism marketplace. All the surveys we do with departing tourists explain to us that is the one biggest gap they have found in Tasmania - that there is no indigenous experience. They can go to the museums and get

PUBLIC

an indigenous experience. They can get information from certain publications and books but they don't get a live experience.

In the summer, we have our Discovery Ranger Program and now and again we are lucky enough to get indigenous employees. They are often one of our most popular events in the summer ranger program. There is a really big thirst for engagement and contact with the cultural history of the indigenous people of Tasmania, because it is one of the richest in the world. They are basically the longest surviving population that never went to war, for 30 000 years. They had such a sustainable society and meanwhile everyone else is busy trying to kill each other.

CHAIR - They didn't understand the plot.

Laughter.

CHAIR - What you are saying, Mr Mooney, is that if a tourism opportunity were developed around larapuna, you get a sense that there would be a thirst for that type of experience, and it has every chance of being successful?

Mr MOONEY - The other message we get clearly from the successful overnight walking operators, such as the Bay of Fires and Cradle walks, is that they would love to connect with such an experience and have it as a tangent to a current operation. They get a lot of feedback from their clients that they would really like a cultural experience.

CHAIR - Does Parks and Wildlife have any connection with Rebecca Creek at all?

Mr MOONEY - Not directly. At the moment, Rebecca Creek is unallocated crown land in, I suppose, caretaker mode for a potential transfer to the Aboriginal community but it has been private land in the past. The government bought it from Britton Brothers a number of years ago and has been holding on to it in anticipation of a handover. We haven't put a reserve status on it, because we are leaving it totally up to the Aboriginal community to decide, in their own right, what they do with that land. I have been to the site and it is an amazing site. The quarry site is well noted and recorded as the only location in Tasmania where that particular geology-type exists. There are examples of it all over Tasmania, so the Aboriginals have obviously used it as a trading tool over thousands of years in their daily activity. Culturally, it would be quite significant there.

CHAIR - How do you think that could be utilised? When you welcome people into a site is there going to be some sort of damage? There needs to be some concern about how we deal with it.

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

CHAIR - Do you have any concerns about any of the detail contained in this bill?

PUBLIC

Mr MOONEY - No. I have read the bill several times. People can always have minor suggestions but I think the fundamental foundation is there. The intent and purpose are quite clear, and it is up to us to work with the Aboriginal community and make it work long term. It is like anything - you can have a thousand prescriptions in a bill but at the end of the day it comes down to the workability of the people on the ground, whether it is going to be achievable. We have a really good working relationship with the Aboriginal community and with the local community in the north-east part of the state. They are quite receptive to the bill. I don't know how much feedback you have, but a lot of the apprehension would be about issues that will never be a problem - will never occur. It is the 'what if' all the time, I suppose.

Mr VALENTINE - In relation to that, with the need for AMSA to have continued access to the tower - you don't see any potential issues, technical or otherwise, in the way that is all handled? They would deal directly with the Aboriginal community?

Mr MOONEY - At the moment, the Aboriginal community have a 10-year business licence to run tours in the tower and for them to get that licence we had to get approval from AMSA. AMSA had to review the planned practices of the Aboriginal community in running a tour there, and if they could not prove a credible level of practice, AMSA wouldn't have agreed with them having that licence. AMSA always has the authority of approval at the end of the day.

Mr VALENTINE - You don't see any potential issues with AMSA when the Aboriginal community takes over the role of the state government?

Mr MOONEY - No, because there have been no issues. This business licence has been in place for over 12 months and not one issue has come up. We are in regular contact with AMSA because we have a lot of light stations in towers and they have never brought up any issues. The only real issue that came up was the mutton bird strike on the light and that was rectified by AMSA anyway, and it was an external thing. It was not internal - in the tower.

CHAIR - Any other questions of Mr Mooney.

Mr MOONEY - This is the shortest time I have ever been here.

Mr VALENTINE - Don't tempt us.

Ms RATTRAY - Run while you can.

CHAIR - Is there anything else you would like to add before you go?

Mr MOONEY - No.

CHAIR - Thanks, Mr Mooney.

THE WITNESS WITHDREW.

PUBLIC

Mr PETER SMITH, DIRECTOR, HERITAGE TASMANIA, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR (Mr Finch) - Peter, welcome. Thank you very much for joining us. You are under parliamentary privilege while you are in the committee but if you go outside and talk about this be very careful of what you say because you aren't protected then by parliamentary privilege. Would you like to give us an opening statement about how this Lands Amendment Bill sits with the Heritage Council?

Mr SMITH - I cannot speak on behalf of the Heritage Council. As the Director of Heritage Tasmania, a business unit of the Department of Primary Industries, Parks, Water and the Environment, I can offer some perspectives from Heritage Tasmania and our obligations under the Historic Cultural Heritage Act, if that is useful.

We acknowledge that the lighthouse and the associated features - the houses and the grave - are an important part of Tasmania's historic cultural heritage. It was recognised, being permanently entered on the Tasmanian Heritage Register in March 1998, which is very early on in those listings. It is important for us to acknowledge that the ownership of places of historic cultural heritage significance is not a factor that Heritage Tasmania nor the Heritage Council would normally take into account. We have statutory responsibilities under our legislation to ensure that historic heritage values are recognised and protected. The main way in which that protection is afforded is through works management. So, if Adriana owned a heritage listed property and she was interested in undertaking certain works to restore, to do conservation works, to extend an existing property, what we normally do is encourage the owner to engage with us proactively about those works, try to iron out any difficulties through that process to ease the statutory process that then follows.

There have been a number of works that have occurred in recent times and a number of those have been exempt because they have not been perceived as requiring works approval by the heritage council. One observation I would make is that our staff in recent years, and I understand with ALC since 2006, have had quite positive and proactive engagement with the leaseholders of the site and from my perspective, things seem to have gone very smoothly. There has been positive and proactive engagement and Break O'Day Council has been involved in some of those discussions. From our perspective things have gone quite smoothly and issues of access and the like are not a statutory consideration but it is encouraging to see the reassurances of the minister in relation to continuing to ensure an appropriate level of public access to the site.

CHAIR - The link with Heritage Tasmania with the Irapuna site, is there any day-to-day or constant link with that site with your organisation?

Mr SMITH - There is no formal link in that there is no formal government structural project management involvement. That is not how we would normally operate. What we would normally do is that if the owners or managers of a particular site had a need to call on our services, or particularly planning on doing certain works, whether it be installing interpretation, undertaking conservation works as has recently been done on some of the cottages, I believe, or doing more detailed work to adapt the site for other uses, that is the point in which normally we would trigger involvement so, it is usually based on

PUBLIC

invitation. However, there can be circumstances where a member of the public might raise concerns about a particular place and how it is being managed and sometimes we will proactively arrange to view a site or to monitor the works on a particular site to ensure that statutory obligations are being met. That is quite rare but it is one of the things that we would do should the need arise.

CHAIR - Members, if you want to ask a question.

Mrs Taylor - I do.

CHAIR - I do not want to steal anybody's thunder but I am wondering how would you view, Pete, and I am hoping that this is an appropriate question to ask you, when we talk about Heritage Tasmania and here we have ALCT when they take out over the site, but if they take over the site -

Ms FORREST - Ownership of the site.

CHAIR - Ownership of the land, they are looking to develop opportunity for that Aboriginal cultural experience so, would you have a comment to make on that aspect of what they may try to achieve?

Mr SMITH - I could make some personal observations, if that is appropriate. My comment would be to reinforce the fact that our experience with the leaseholders since 2006 has been quite positive; they have engaged with us and they have engaged with the local planning authority to discuss their consideration to the site. That is very positive and I expect that to continue.

Mrs TAYLOR - Is that qualified, Pete, when you say, quite positive? Do you mean positive or do you mean,

Mr SMITH - I mean positive. I have not been directly involved in the discussions where we have a field office based in Launceston and I know firsthand that it would have regular contact over the years, especially in recent years. In relation to the issue of shared heritage and I think it is a vexed issue for Tasmania and it is one that we are not doing as well as we could. There is a tremendous amount of scope for us to better present a shared understanding of heritage in terms of cultural heritage or Aboriginal historic heritage and if there are opportunities to do that at this site then that would be a very positive thing. The Aboriginal story is not well told in Tasmania and there are some areas where we do that better than others. I think sites such as this have a potential to bring that forward both for locals, for school groups and for the broader visitor experience, to recognise that we have a shared heritage and that is part where we need to go in the future.

CHAIR - Do you say that because it is exemplified by the lighthouse and the cottages that are there, that European link to the site?

Mr SMITH - That is the particular interest that we have but given the proposed arrangements in terms of ownership of the site, that gives a lot more scope for that to be revealed in the future than presently might be the case.

PUBLIC

Ms RATTRAY - Pete, I am not sure if you are aware or not, but on this site there is a child's grave. When we visited the site recently it was pointed out to me that the Aboriginal community's expectation around what is appropriate management and what some others in the community, particularly with the European history of that, there is a different expectation from both groups about what is expected. From your perspective, is there a general standard for how something should be maintained when it has significant European history, but in this case it could potentially belong to an Aboriginal heritage focus? How we share the history and the heritage and responsibility and still keep both aspects in focus. Is that a good question to ask?

Mr SMITH - I think it is an important question. In Tasmania we do not have minimum standards of maintenance for heritage listed properties. Some other jurisdictions have gone down that path. It is difficult for a state like Tasmania with the wealth of historic heritage places and the variety of forms of historic heritage places we have, to set up something of that order. What we do is that, where there is an opportunity, where works are being proposed, for us to get in proactively and talk through the process in terms of the proposed works and what that might entail and if there is a concern, get in as early as we can, involve the parties in some discussions and try to find a way forward between us.

As recently as last month, members of ALTC and, I gather, the Anson's Bay Progress and Planning Association, had some discussions onsite about that particular grave because there is recognition that from a European perspective, that is very much a part of the story of the site and it is one of the features that has been identified in terms of heritage listings and the like. One of the things that we had given some advice on is about the specific measures that might be employed in that instance to ensure that the grave can be preserved and conserved in a way that is appropriate, but also does not, hopefully, detract from the original features of the grave. By doing something new, that you do not destroy heritage values by replacing those features.

There have been some proactive discussions. They seemed to have been very positive. Given the point you made about shared heritage sometimes being a little bit of a challenge, we have to dig in and work through those issues on a case-by-case basis and a side-by-side basis. It does not necessarily mean that we should step away from the thought of, in this instance, transfer of land, but it is about continuing to work at it together. Eddystone Point, as we know it, is one of those sites where things have been very positive in terms of the workings of the site from our perspective.

Mrs TAYLOR - When we were there, visiting, and it is not on record because it was not an official hearing, but Clyde Mansell said to us that they were very happy for people who were concerned about a particular standard for the grave, to be allowed to come in and look after it. He gave me the impressions that he did not think that it was the responsibility of the Aboriginal community to do more than make sure the legislation stayed clear around that. They said if you wanted the fencing around the grave replaced or more formal maintenance done to the grave, they would be very happy for people who were concerned about that and they seemed to think there might be a descendent somewhere in Tasmania who had some interest in it.

PUBLIC

Where does that stand? If they are willing to say yes, but then it would be up to somebody else to do? The owners do not have an obligation to do more than minimum maintenance?

Mr SMITH - Our act is not prescriptive in terms of defining a certain level of maintenance but, as you highlighted, there are some sites where it is very clear the owner of land or land managed on behalf of the Crown, such as the Port Arthur Historic Site Management Authority, will take on that responsibility. There are other instances where members of a community may take certain responsibility within that management framework.

Ms FORREST - Even though it is private land at that point? That is the point the minister made.

Mrs TAYLOR - With the permission of, I guess. They were clearly saying to us that if there were descendents who wanted to do things they would be very happy for them to come in and do it.

Mr SMITH - That offers a good solution because it maintains the European connection with the land and exists within the management framework that has been prescribed for the site.

Mrs TAYLOR - Does Heritage Tasmania or any other body you know have some capacity to bring those sides together?

Mr SMITH - As recently as 23 August, there was a meeting on site involving a couple of the parties specifically to discuss the grave. I am not sure of their timing in relation to a new visit at the site but it sounds as though there have been some positive steps forward in that regard. Those steps even included suggestions about opportunities to pursue funding and the offer for letters of support to be provided. That has often been the case, where we have provided supportive letters to secure funding for private graves. It is surprising how many graves, tombstones, memorials and the like, are scattered throughout Tasmania that are not part of defined cemeteries and recognised memorial gardens.

Mrs TAYLOR - It sounded like there was a no-man's land on both sides. The Aboriginal community saying, 'We are very happy for it to be looked after but it is not our heritage, if the people whose heritage it is, we would be happy to cooperate but we do not see it as our responsibility to look after it'. There has to be someone else who is willing to do it and not say, 'You own it, therefore you should look after it'. I wondered if there was some way of bringing those sides together, but maybe that is happening.

Mr SMITH - I believe there is some scope for that. There seems to be some positive and proactive discussions occurring in the local community with the owners but also involving my staff. If the proposed long-term owners of the particular site we are talking about had indicated a willingness to maintain clear access to that site and clear away the vegetation, that is a very good start. There are a lot of sites that do not have anyone taking that sort of responsibility for cultural heritage in Tasmania.

CHAIR - With Rebecca Creek, which is part of the investigation we are doing, there is no link with Heritage Tasmania to what is going on with that area?

PUBLIC

Mr SMITH - Not that I am aware of. Eddystone Point is a site that is particularly known to us as being a place entered on the heritage register. Rebecca Creek does not fall into that same status.

Ms RATTRAY - What about previous land transfer - for instance, wybalena? Do you have a role in wybalena at all?

Mr SMITH - My understanding is that wybalena is not on the Tasmanian heritage register. It is one of those sites we are hoping to have some further discussion on with the interim Aboriginal Heritage Council in the future. The issue of shared heritage is one where some time and effort needs to be put into establishing some policy in relation to that. It is a body of work that the Tasmanian Heritage Council has earmarked for the next 6-12 months now that the interim Aboriginal Heritage Council has been formed.

Ms RATTRAY - So there are no other sites with buildings that have been included in land transfer in the past that Heritage Tasmania has any auspice over?

Mr SMITH - There are some. For instance, Risdon Cove is one site that was a former Parks reserve site that is on the Tasmanian Heritage Register and we have had active involvement with the Tasmanian Aboriginal Centre. The new - I am not sure of its current title but the early learning centre - required approval from the Tasmanian Heritage Council and that has occurred. There has been more recent works approval given to the buildings known as the pyramids on that site because of some works and modifications that were done there. So there have been works undertaken with the approval and consent of the Heritage Council, as is required by the legislation. That is the main site that I can think of, where shared values are recognised.

Ms RATTRAY - Happy to share the questioning, Chair. I have asked enough for now.

CHAIR - Okay. Any other questions?

Mrs TAYLOR - This morning Clyde also mentioned that there was a meeting this afternoon between Dianne Snowden and himself or the land council? I suppose I was asking about those relationships. They were talking about the partnership stuff. Do you know whether they are looking at some sort of formal MOU or partnership?

Mr SMITH - There is a series of discussions occurring at the moment. Dianne and I have both had some discussions recently about the desirability of establishing heritage policy of the Heritage Council and doing that in conjunction with the interim Aboriginal Heritage Council. I think there is quite a high level of interest in doing some work in that space. It is long overdue. The fact that we have an interim Aboriginal Heritage Council is a very positive move and it gives the two bodies the opportunity to get together and work through some of those issues that at times may have not received the attention they deserved.

Mrs TAYLOR - I hope it is not a leading question, but you have found the Aboriginal Land Council to be cooperative and positive in those discussions?

Mr SMITH - Those discussions have not progressed beyond some internal discussions at this point. I think there is a willingness to pick up the phone and have those discussions.

PUBLIC

Mrs TAYLOR - Thank you, that is all.

Ms RATTRAY - In relation to the previous works, you said they were exempt at that time. When they were substantial, like around \$400 000, why would they have been exempt?

Mr SMITH - I am not sure of the nature of the works that you are referring to but, for instance, my understanding is that there was some concrete that was removed recently surrounding some of the cottage buildings and those are the works that were exempt. One of the things that happens is that if you have concrete up against concrete rather than stone it can lead to the significant deterioration of the heritage fabric. I believe there are some works that have been exempt in recent times. Other works were to do with access and safety issues and the works were deemed to be irreversible in that instance. Those works I believe were also exempt. Major works would not normally be exempt, they would be subject to advertisement, public submissions, representations and full scrutiny by the Heritage Council.

Mrs TAYLOR - And I would expect significant restoration of the houses, for instance, in the last few years.

Ms RATTRAY - Restoration, yes.

Mr SMITH - We have a provision - it is built into our bill but at the moment we operate it as a policy position - which is, if works are deemed to not impact adversely on historic cultural heritage significance they can be deemed to be exempt and we will issue a certificate accordingly once that has been assessed. What that means is it gives us some ability to focus on those sorts of major works that are more likely to have an adverse impact, more likely to require scrutiny and potentially conditions.

Ms RATTRAY - Now moving to the lighthouse. When we visited the site recently the Australian Maritime Safety Authority, AMSA, had their representatives doing significant work. Can I have some understanding of how the relationship between your organisation and AMSA and, potentially, the new owners might pan out in the future? Or will there not be -

CHAIR - I will get your crystal ball from under here.

Laughter.

Ms RATTRAY - Sorry, will there be a relationship, maybe that is the first question.

Mr SMITH - It depends, again on the nature of the works. My understanding is that the lighthouse is still identified as being something on the commonwealth heritage list. The lighthouse has a certain status because it continues to be an asset that the commonwealth has some responsibility for.

Normally we would not have a direct relationship with commonwealth assets, such as Anglesea Barracks, because the protocols that exist between the commonwealth and state mean that we do not have authority to act.

PUBLIC

I mentioned recently that certain works related to access and safety at the lighthouse were given scrutiny by staff. One of the things we often do, as is the case with Anglesea Barracks, is that even if works approval is not formally required under our legislation, often there is engagement between the consultants and the site managers and our staff to ensure we are all heading in the right direction in terms of maximising the outcome for heritage, rather than creating something that will be a problem in the future.

So a number of those discussions that have occurred in recent years have involved the parties in the same way that we talked about the Aboriginal lease holders having positive engagement with us. AMSA has been in a similar situation, I believe.

Ms RATTRAY - So if there is a decision made to put a glass lift on the side of the lighthouse, you would have a role in that, but until it was something substantial there would not be any -

Mr SMITH - Mainly for major works and, to be honest, lighthouses are very distinct structures, as we know. There are very few major works that would ever be contemplated for a lighthouse that would jeopardise the integrity of a lighthouse structure. The only thing I could think of is modifications to a lighthouse that allow it to continue to operate. In that case, you could potentially argue that it is part of the evolution of a lighthouse because it is continuing to fulfil its original purpose, using more modern technology. It needs to evolve in some way, but that introduces a new layer to its heritage. So if the works are justified, if they are reasonable, and if there is proactive discussion beforehand, there can only be a good outcome.

CHAIR - Peter, how do you feel about the lighthouse at Eddystone Point? How significant is it, in the scheme of things, with respect of our future and the built heritage we want to retain?

Mr SMITH - As an island state, made of 360 or so islands, our shipwrecks, our lighthouses, and our island communities are all very much part of the heritage picture. We have some very iconic lighthouses scattered throughout Tasmania and its islands, and Eddystone Point is one that I am reasonably familiar with personally. It is certainly striking in the landscape. It is one of a number of lighthouses that stand out to me as being accessible to the public, that are notable features on the landscape - they are very striking -

Ms RATTRAY - The inside is not accessible to the public.

Mr SMITH - Unfortunately, no, and even Table Cape's lighthouse is not accessible in that way. The local council up there has struggled to ensure continued access to the visitor experience, and there has been an offer in recent years -

Ms FORREST - They had tours there but they cannot get an operator. That is the only problem - it is lacking an operator.

Mr SMITH - Yes, they have had some difficulties but it is a very striking site and the fact that people can now, and will continue in the future to, gain access to the site is incredibly important. As I said, that is my personal opinion rather than a statutory requirement from our end.

PUBLIC

CHAIR - Peter, is there anything you would like to wrap up with?

Mr SMITH - No, thank you.

CHAIR - We very much appreciate you coming along and clarifying a couple of those points and giving us a perspective from Heritage Tasmania on where we are going with this bill, and larapuna and Rebecca Creek. We appreciate your time.

Mr SMITH - Thank you very much and, Adriana, I will follow-up matters to do with the ???2.29.30???

Mrs TAYLOR - Good, it seemed to me that both sides seemed willing and there was some connection between them.

Mr VALENTINE - Chair, there is still one other question. It may have been asked while I was out of the room but with respect to the International Heritage -

CHAIR - Dateline, is it?

Mr SMITH - The World Heritage Committee in UNESCO - ICAMOS.

Mr VALENTINE - Sorry, it's gone from me. It's in relation to rejuvenating or restoring grave sites. In your mind is there any restriction on what can and can't be done with that little grave site? The Burra Charter - that's what I'm trying to think of.

Ms RATTRAY - Oh, well done.

Mr SMITH - One of the principles of the Burra Charter is to do as much as is necessary and as little as possible, the idea being to do as much as you need to, but don't overdo it. Essentially with the grave site, one of the discussions we have had on site as recently as last month was about recognising that a number of features of the grave site are in quite a state of disrepair. For example, part of the earlier fence - rather than removing it completely and replacing it with something new, part of the discussion has been about preserving what we can intact, but still doing something to represent the marker of the grave, in terms of boundaries that would normally be defined by a fence.

Mr VALENTINE - I know there are issues about people, for instance, with sandstone headstones not being able to re-carve the names if they are of a certain age. I am not quite sure whether this falls into that category. I think it is quite a significant age.

Mr SMITH - There is the issue of age, but it also tells a very particular story about a remote and isolated location where a family was based. There is a story of the son being returned to that land and still being there and that grave needs to be respected.

THE WITNESS WITHDREW.

PUBLIC

Mr GREGORY LEHMAN, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR (Mr Finch) - Greg, thanks very much for joining us. While you are in this committee you are protected by parliamentary privilege but if you venture opinions outside in respect of this, be it on your own head. Would you like to give us a rundown of your interest in this bill and some of your background, please?

Mr LEHMAN - First of all, I did not intend putting in a submission to this committee or appearing before it. The invitation to make a contribution came to me when I was participating in the Tasmanian Leaders Program in Launceston a few weeks ago. I was introduced to Ms Forrest afterwards and we talked a bit about some of my previous experience and we talked about some of the issues and ideas. Ruth suggested that it might be useful for me to come along. I am here in the hope that I might be able to offer some useful perspectives.

My interest is to ensure that we continue to have the Aboriginal Lands Act as an asset for Tasmania and for the people of Tasmania and particularly an asset to support the community development for Aboriginal people. I was involved in the drafting and negotiations leading up to the Aboriginal Lands Bill being presented to parliament in 1995, working with Ray Groom and Tony Fletcher and a working group of other Aboriginal people and senior public servants at the time.

Prior to that, as the secretary of the Aboriginal Land Council of Tasmania in about 1992, I was also involved in the development of the Aboriginal Lands Bill which was the first to pass through the House of Assembly. That was back in the days of the Labor, Greens accord. It was historic in that it was first Aboriginal Lands Bill presented by the government to succeed in the lower House. From memory, Ray Groom had introduced the private members bill that related to Oyster Cove some years before and that early bill fell over in the Legislative Council which made the passage of the 1995 bill through both Houses with unanimous support and without amendment, all the more notable as an achievement.

I was involved with the establishment of the Aboriginal Land Council of Tasmania, which these days is called the Tasmanian Aboriginal Land and Sea Council, TALSC, you have probably heard people refer to it.

Ms RATTRAY - We had a bit of a history lesson this morning.

Mr LEHMAN - Good. I hope from a competent informant.

Ms RATTRAY - From Clyde Mansell.

Mr LEHMAN - I have had very little to do with the Statutory Land Council. My involvement was with what I refer to as the community land council and we formed that body in 1990 with the objective of supporting the return of land to the Aboriginal community but, most importantly, to facilitate the training and participation of Aboriginal people in heritage management. I have been involved in various capacities in

PUBLIC

either Aboriginal heritage management or Aboriginal education since about May in 1984. I was the inaugural secretary of TALSC. I have also worked as program manager at the Tasmanian Aboriginal Centre in 1995 and spent a couple of terms on their state committee. I worked at the University of Tasmania from 1992 through to 2000, heading up [inaudible] for Aboriginal education. Just after the passage of the Aboriginal Lands Act in 1995 we developed, in cooperation with the Parks and Wildlife Service, a training program for rangers in Aboriginal heritage management which is probably one of the more rewarding and significant things that I have been involved with, particularly in that it was supporting people on the ground with hands-on involvement in heritage management protection.

The other relevant things that I have been involved with are, I left the University of Tasmania and worked with the Parks and Wildlife Service for several years developing a joint management strategy for the Tasmanian wilderness World Heritage area and also an Aboriginal interpretation strategy for the World Heritage area. That left me with a very strong belief in the importance of values-based management and hence most of my concerns and criticisms these days about the state of Aboriginal heritage protection in Tasmania relate to the implications of values management which is about engaging people in a meaningful way, ensuring that people understand the thing that needs protecting has an active role in their lives as part of the culture of their place and their heritage.

I have worked for many years trying to demystify Aboriginal heritage, to interpret Aboriginal heritage to a broader audience with a view that, first, that it is extremely important for young people to understand that Tasmania has a deep history that extends well beyond 200 years and, second, that all Tasmanians have, not just the responsibility but should have an active role in contributing to the protection of Tasmania's heritage which significantly includes Aboriginal heritage. To do that, getting back to values management, you cannot expect people to proactively participate in the protection of Aboriginal heritage, unless they feel they have a stake.

In 2007 I spent a couple of years working with the department of tourism, parks, heritage and the arts, as it was called at that time, in the early stages of the development of what has now become this bill, researching approaches in other states and developing a website, running public forums and managing a stakeholder process which included various key industry stakeholders including the Tasmanian Minerals Council, FIAT, TFGA, and government agencies, so I had an active interest for a while.

Mrs TAYLOR - Greg, do you have an opinion on these two particular sites? Part of the reason that we are having hearings is because, they are very different but, in the Rebecca Creek site in particular, we have had a fair amount of concern from people living in the local area, whether technically accepted as Aboriginal or not, and there are some of both. There is a councillor, or whatever, concerned about ownership of this going to, well, do you have an opinion on either of these sites?

Mr LEHMAN - An opinion in relation to their management or the return?

Mrs TAYLOR - Whether they should be returned.

PUBLIC

Mr LEHMAN - I have been a long-term supporter of return of land to the Aboriginal community, I have been a contributor to processes that have generated those outcomes and I will continue to support that as a principle because the simplest and most direct way to facilitate community development is by the provision of a number of key things. A couple of those are social justice, which is one of the things that is addressed by the return of the land and the other is to provide an economic base. There are a lot of other interests that are served by the return of land - enhanced opportunity for cultural practice, educational opportunities, cultural education opportunities for young people in the community.

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

Those opportunities are really important and when land is returned and those opportunities are not realised, then that almost inevitably starts to reflect negatively on that other opportunity, which is to build social cohesion and social capital. That is particularly important because I am sure all of you will agree that Tasmania, over the last 200 years, has had quite fraught history and there is plenty for the Aboriginal community to be unhappy about.

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

PUBLIC

CHAIR - That naive understanding you have mentioned; is there anything in particular that you might care to elaborate on?

Mr LEHMAN - It was a few weeks ago that I read through the minutes and I thought before I came here about going back over them and making some notes to correct particular things. I am a bit wary of picking out one or two things and then not picking up on other things. I would rather not do that. All I really want to say is that I really encourage you to be critical in your considerations, as I am sure it is one of your objectives to be. The subject of Aboriginal history, particularly local history on the north-west coast, is a difficult one. There has been very little published, some recent work notwithstanding.

The other problem that we have is that there is so little quality information available for schools for teachers to use in schools. In the years that I have worked with the education department, I lost count of the number of times that teachers have said to me, 'What we really need is to be confident about teaching in schools because we don't want to get it wrong' - and do not forget the teachers have voices from local communities. Many teachers have lived in our communities for many years and they understand this issue very well.

Ms FORREST - You have been involved for quite a number of years now and there are a couple of comments about the history being difficult to track, particularly up in the north-west, as there have been various recollections and accounts of history. Some would suggest there was no one up there who was Aboriginal.

You talk about recent publications and people who take on the work of the role of historians. Is there any reasonably accurate account, do you believe, that you could refer the committee to in that area?

Mr LEHMAN - Graham Calder's book was on the north-west coast. What I would be happy to do is to perhaps send you some references. There are a couple of books that have been published in the last few years. One of them dealt with the east coast and one with the north-west. I think the author is Graham Calder - I will need to check on that - and I cannot recall the name of the book. One of the standard historical texts is by Henry Reynolds: *Fate of a Free People*. Lyndall Ryan's *Aboriginal Tasmanians* has recently been published in a new edition.

While those historians have come in for criticism from people like Keith Windschuttle, putting political agendas aside, it amounted to a fair bit of nit-picking around the edges. I do not think that any serious historian in Australia would agree that Windschuttle's contribution demolished in any way the scholarly work of Lyndall Ryan and Henry Reynolds. Those two books are usually the ones that I initially refer people to. Graham Calder, as I recall, focuses particularly on the north-west coast.

One of your correspondents - I cannot remember his name - provided you with a reproduction of a map which showed that a large part of the hinterland of the north-west coast and the west coast was practically unoccupied. That map was put together by Reece Jones in around 1966 and this is a good example of information that is not quality information. That was the state of the art of ethnographic knowledge in Tasmania in 1966 but it is certainly not the case now.

PUBLIC

One of the first projects that the Land Council took on in 1991 was to undertake the King River archaeological survey of the area that was going to be inundated with the completion of the Darwin Dam. We discovered over 300-400 Aboriginal sites including occupied rock shelves in an area that was right in the middle of this zone that was assumed unoccupied.

So we need to be very wary about how current information is. The other problem with Tasmania, particularly on the north-west and west coast, is that the vegetation is so dense and litter layers in forests are so thick that you simply do not have visibility. I am not sure how, for example, the Rebecca Creek quarry was first discovered. I have been there myself and I visited a particular part where the rock strata is elevated out of them. If it had not have been sticking up like that, it probably would not have been rediscovered; so that was a lucky find.

Ms FORREST - Going on from there, a couple of things you mentioned, points around the management of the land if it is returned and who best to do that. Being involved for a number of years in the Aboriginal lands bill and act and the changes in 2005, and you were involved at that stage as well, do you have any comment about the changes in 2005 that changed the onus of proof of Aboriginality. This seems to be where the problems have become apparent in that people who clearly identify as Aboriginal who are recognised federally as Aboriginal, still have to identify they are recognised and respected by their local Aboriginal community. They have historical evidence that they produced for the federal process and are now unable to be recognised in Tasmania because of that change. Do you have any comment around that?

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

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

PUBLIC

Cassandra Pybus has published a very good book a few years ago, I cannot remember the title of it, sorry, which describes the cultural diversity in the early days of Van Diemen's Land colony. We sometimes tend to think that Van Diemen's Land was full of Irish convicts, that is far from the case. Sydney and Hobart town were the major ports in the South Pacific for British and American whaling fleets, the merchant fleets and the naval fleets and there were people from all over the empire back in those days when the sun never set on the British Empire. You had Afro-Caribbean, lascars, Mauritian, people from the African colonies. What I am getting at is that there are lots of families who have what used to be referred to as, 'a touch of the tar', various ways it was referred to, which may not necessarily refer to Tasmanian Aboriginal ancestry. There are lots of mainland Australian Aboriginal people circulating in polling who are descendants. On the other hand, this is where it gets complicated and requires an investment of research.

People often suggest that the Administrative Appeals Tribunal and the Federal Court confirmed their Aboriginality because those processes did not uphold the objections that were brought, to people being on an electoral roll. This is a misreading, to my understanding, in most cases. What it is, is these processes determining that there had been a failure to prove that this person was an Aboriginal. That is not the same as a process which conclusively confirms the person's Aboriginality. I only mention these to try to emphasise that there are a quite a few issues that cluster under this heading of Aboriginality.

There are some valid, historical arguments put that there were births to Aboriginal mothers in a colony, that were not recorded, and there will be families in Tasmania whose Aboriginality has not been documented to the extent that it has fathers. This is where the distinction between eligibility and Aboriginality becomes important. If somebody cannot produce documentation to satisfy what are still current requirements of the Office of Aboriginal Affairs and the government's policy, then you have a bureaucratic process that needs some structure in order to function.

CHAIR - Are you saying we do not have that, under the Election Commission review process?

Mr LEHMAN - The processes that I have participated in with relation to ATSIC elections and ALT elections - and I have been on reference groups for those electoral processes - were conducted very competently and did the best they could to satisfy the needs of the processes of the requirements of the act or the regulations in question.

Ms FORREST - It is also that reality that part of Aboriginal culture was more story telling and handing down of history verbally and so a lot of it is not recorded. Whereas the Europeans can be very anal about producing birth certificates and things like that. It is easy for me to track my European heritage, depending if you know who your father is, or your grandfather is, because that happens as well, but we have a better chance because we have such significant paper trails. Whereas, in Aboriginal culture that was not the way it was done.

Mr LEHMAN - I agree and I have great sympathy for families who have a belief that they have Aboriginal ancestry and they are unable to establish documentation. However, for the processes that we are discussing today and other process, such as selection of ATSIC regional councillors or ALT committee members, for very pragmatic reasons you have to

PUBLIC

draw a line. Maybe an analogy, perhaps a crude one is, if somebody presents themselves as a mother for a particular program of support, but is unable to establish that they had a child, then what do you do. If that person becomes ineligible because of that lack of documentation for a particular program run by the government and the government says, 'I'm sorry, they are our rules, we can't help you', then there should be alternative processes there to ensure that person gets the sort of social and/or medical support they are saying they need. There need to be some layers in these processes -

Ms FORREST - They may well have lost that child and that's why they haven't got them.

Mr LEHMAN - Yes, exactly.

Ms FORREST - I just want to go to another area.

Mr LEHMAN - Can I just add that I think one of our problems is that we've ended up with almost like a one-size-fits-all approach and if you don't fit then -

Ms FORREST - It's all over.

Mr LEHMAN - You are in a very difficult place. I have to repeat what I said before. It has been found that there are a couple - I won't mention names. There were a couple of very well known members of the Aboriginal community in the late seventies and early eighties who stepped down from their positions they held in organisations because they discovered that their ancestry was not Tasmanian Aboriginal. This does happen and the long-standing Aboriginal organisations like the Tasmanian Aboriginal Centre are aware that they have been affected by this and so that's, I suspect, why the TAC is quite cautious.

Ms FORREST - Back to that point you made briefly a while ago, about the management of the land to be returned, do you have a view on particularly the Rebecca Creek area as - and even Irapuna/Eddystone Point - there are people in that area who do identify themselves as Aboriginal are not recognised by ALCT but feel that they would be best placed to have direct input into that. The act doesn't prohibit that but there is no guarantee that it will happen. Do you have views on how best to manage that process with the land being handed back?

Mr LEHMAN - When we were drawing up the 1995 bill there was a very strong intention on the part of all the participants in the working group that emphasis should be provided to local management. Probably the cases in point that would have been foremost in people's minds would have been in the return of land on Cape Barren Island, where the Cape Barren Island organisation of course would have to be involved in that management. Flinders Island is another example.

Mrs TAYLOR - Where they are not.

Mr LEHMAN - But of course there are things that can always get in the way of that. Actually, it's good that you mention that because the disagreements that have occurred between ALCT and THEA[?] have been differences of opinion about a whole range of things, and certainly they would have been about Aboriginality or eligibility. But there have been differences of opinion that have got in the way of cooperation. In many ways

PUBLIC

the reluctance of the Tasmanian Aboriginal Centre to cooperate with the Circular Head Aboriginal Corporation can be seen in a similar light in that, in its very early days, CHAC was an active campaigner against the return of land. It was very difficult for a lot of people in the Aboriginal community who had been working for many years towards what was eventually, I think everybody would agree, a really positive and a very unifying outcome, to have people who - again, there are a couple of individuals who were doing mostly public relations at the time and people didn't know who they were and they couldn't place them in terms of coming from Aboriginal families, who were presenting themselves as Aboriginal in such a way that their position became politically very, very significant. These were Aboriginal people against land rights, which of course gave an opportunity for other people who were unhappy with land return to say, 'Well, this isn't even good for Aborigines, look what these people are saying'.

That hasn't been forgotten. The individuals who were involved with CHAC at that time are long gone. One of them went back to Western Australia and was never heard from again. I haven't had much to do with CHAC. I'm aware that they run some fairly well developed training and employment programs and I have no doubt that amongst their membership there would be people whom nobody would disagree are Aboriginal, and there would be some people about whom there might be differences of opinion or even an unwillingness on the part of Aboriginal Affairs to recognise them. But whether that discounts them from being involved in local land management I would have thought is another matter.

What I am saying is I don't think that their eruptions and issues of decades ago over quite specific issues at the time - one of them was access to Mount Cameron West, preminghana, another one was the boat ramp at West Point - that had a few four-wheel drives lined up on the road, I seem to recall.

Ms FORREST - They like to come out in their four-wheel drives up there when they need to.

CHAIR - Greg, we did not broach this with Clyde Mansell and Graeme Gardner but he suggested that people could make submissions in respect of management and that they would consider those. Could you give me your view of CHAC perhaps looking to have some reconciliation themselves with ALCT and perhaps putting in a submission to maybe have some management input into that Rebecca Creek site.

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

I'm sorry, that's probably not giving you a very satisfactory answer but unfortunately we are dealing with politics, with are dealing with a complex range of issues, not the least of which is our political differences as well as this broader problem of evidence of Aboriginality and eligibility to be involved in programs. It gives a lot of people very bad headaches and nightmares.

PUBLIC

CHAIR - But it may be that an olive branch could see a representative of CHAC being able to have some say, maybe on a subcommittee or part of the ALCT operation, to have some input into the way Rebecca Creek is managed.

Mr LEHMAN - I can't for a minute imagine that there aren't a number of people who can establish their bona fides as Aborigines under the requirements of both federal procedures and state policy. If they are Aboriginal people then I would like to think that the ALCT committee would sit down and have a conversation with them.

Mr DEAN - On that point, it seems that one of the sticking points there is the community acceptance. We were told this morning in the three criteria they have to meet, that would be one area that would seem to be impacting and some of that is the community acceptance of their Aboriginality.

Mr LEHMAN - It is a difficult one and that raises the issue of: is there a single Aboriginal community in Tasmania or are there a number of communities?

Mr DEAN - That was the point made by Tony or Ruth - where does the community acceptance come from.

Mr LEHMAN - My view is, and I have held this view for a long time, that if you are person who identifies as Aboriginal, you take pride in your heritage and your cultural identity and you are known by the people you live with and work with as Aboriginal, and you can establish unambiguous evidence of your descent then that should be all that is required. Unfortunately that's not all that is required in the eyes of some. There are some people who have said that if you haven't been involved with the Aboriginal community for three generations then your Aboriginality lapses. I think this is nonsense.

Mr DEAN - You are either Aboriginal or you are not, it does not matter how much you access.

Mr LEHMAN - That to me is a political position. It is a judgment.

Ms FORREST - The other thing about establishing your heritage unequivocally, it would be difficult if there are no paper records and some people tend to come up against this.

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

Ms RATTRAY - The interesting fact that I found when we went to the Circular Head community was that CHAC were funded by the State Government and running fantastic programs supported by the community and doing wonderful things and embracing their heritage and their culture and wanting to have land transferred but wanting to have some input into it. I found that interesting, that they were funded by state government for

PUBLIC

some of those good programs, not only to the Aboriginal community but providing for anyone in the community. If you had a community who were looking for that assistance, and yet they still could not be recognised by the wider Tasmanian Aboriginal community.

Mr LEHMAN - I am not sure whether there is any process that enables anyone to say that a person is not recognised by the wider Aboriginal community. Plebiscites or -

Ms RATTRAY - They cannot get on the electoral roll to have input in to the management of land transfer, either previous or future.

Mr LEHMAN - They are decisions made by groups of people who are attempting to implement sets of guidelines in the case of the reference groups that I have been involved with in terms of electoral eligibility or the ALT committee, who have their own, I would assume, sets of guidelines around which they administer the act. The other thing to keep in mind, reading through some of the submissions that you have received, this phrase that these areas should not be given to one group of people is a bit misleading.

Forget the fact that the Aboriginal Land Council is a statutory body under legislation and responsible to the minister, the appropriate minister. The Government of Tasmania holds the title and the Aboriginal Land Council of Tasmania administers that title, so it is not privately owned by Aboriginal people, it is not owned by the Tasmanian Aboriginal Centre or anybody else.

Ms FORREST - The minister said this morning that if this is successful and the land is handed back then it is then private land owned by the Aboriginal people.

Ms RATTRAY - That is absolutely right.

Ms FORREST - And we assume that at that point out, would own it and would have the title, but you are saying that that is not the case?

Mr LEHMAN - That is not my understanding. I am concerned that the minister might have said that. This does not provide private freehold title, it does not provide for a simple title. It is a title under the Aboriginal Lands Act 1995 and that title is not disposable except under provisions of that act. It cannot be sold, for example, so it is not private land.

Ms FORREST - On that point then, there is provisions in the act as it stands for consultation and engagement with groups of people, specifically local Aboriginal communities, whether it be Cape Barren or Flinders Island or anywhere. Would it be your understanding that because it is not private land as such, that under the act, the minister - and I will have a look at the act in its entirety to check myself - could direct or at least require engagement with certain groups because it is not private land that I cannot go on. We talked about this and in terms of Australia we tend to put fences around our own private property. That is the way we do things. In Europe it is different. If you own that batch of land over there, I have every right to go on your land. I cannot do certain things on it but I can go on it and I can pick mushrooms and things like that. Here I could be prosecuted for trespass.

PUBLIC

What I am hearing you say is that it is not private land as such, it is still held by the government, the people of Tasmania, in other words, still own it. But the Aboriginal Land Council has the right over it and the management of it. Is that right or am I getting confused?

Mr LEHMAN - That is my understanding, that the title is held on behalf of the Aboriginal community of Tasmania. I cannot remember the wording in the act, but it is not private land. The fact that public access is guaranteed under the act to all of the parcels - I might be wrong there - but I remember there were a lot of negotiations around providing -

Ms RATTRAY - Particularly not to Rebecca Creek.

Mr VALENTINE - Not the way it was described this morning.

Mr LEHMAN - I am not aware of the provisions.

Ms RATTRAY - The example was given that if it is my piece of land, owned by me, then the minister has no right to tell me what I can or cannot do with it.

Mr DEAN - Maybe I could help here - with the Land Council. Aboriginal land, a land referred to in schedule 3, 'is vested in the Council in trust for Aboriginal persons in perpetuity'.

Ms FORREST - It is not private land at all.

Mr DEAN - No.

Mr LEHMAN - It is held on behalf of, so in trust for. It is still land under the crown. It is still land owned by the people of Tasmania and a statutory body, set up by the government under an act, holds it in trust. The problem is that people feel excluded when they see maps which either have a very narrow corridor of public assets. Risdon Cove is a good example where there is a corridor of public access up to the flag pole at the top and to the Bowen Memorial. Those provisions are probably fairly crude management tools. That is the best that we came up with in 1995. They are there not to slap non-Aboriginal people in the face, but to protect cultural values. Whether we would do it the same way if we were looking at Risdon Cove today, I do not know. It was a bit of a different world in 1995.

Ms RATTRAY - Greg, you talked about opportunities and particularly in the instance of the Eddystone Point area where the Aboriginal community might explore those opportunities. It was very clear in 2004 that the Cape Barren Island land transfer was going to create these wonderful opportunities for the Cape Barren Island community to pretty much make a lot of money out of that land. To my knowledge, that has not happened. Yes, they do some management over there and they look after the Cape Barren Island community but they have not developed any of that land. Is there anywhere that you can cite to me that they have developed and used that opportunity to generate some income for themselves since the 1995 scenario?

Mr LEHMAN - Murrayfield is not land under the Lands Act, that was purchased, I think.

PUBLIC

Ms RATTRAY - I don't mean to put you on the spot but you talked about giving the Aboriginal community that opportunity to generate some funds. It was clearly identified back in 2004 that they would have this fantastic opportunity on Cape Barren because it is farmed over there significantly by private enterprise.

Mr LEHMAN - I think this points to the issue that I raised earlier about how return of land is important because it creates opportunities and then the challenge is to realise those opportunities if we are to maintain the potential for building social cohesion. People will get resentful if they see - and I have read some of the submissions that refer to land management at preminghana. So I think there are two responses I would make. One is there is an issue around community capacity; it is about the number and the availability of skilled people to undertake works. Preminghana is a very good example where in the early days the Land Council - TALC - put a huge amount of energy into tackling the gorse, thistles and preparing the fences and achieved quite a deal of success. I haven't been up there for quite a few years but I understand that there are issues now around land management.

Ms FORREST - There was also much more open access originally but now that has closed right down and things have changed but I don't know why that has occurred.

Mr LEHMAN - Community capacity is involved in these sorts of things - to take up positions as trainee Aboriginal rangers, for example, or to work as land management workers at preminghana or on the islands depends on people being available first. But it also depends on funding being available to support training programs. Funding availability waxes and wanes as a result of changing economic times and opportunities. For example, involvement in tourism initiatives will also be impacted on by things like the market and how successful a product is going to be. You can have a product that sounds really good on paper and you put it out there and after a couple of years really the proof of the pudding is in the eating. People have to pay the money and go on the tour and that means it has to stand up to the sort of expectations that are established elsewhere in the market. We have some fairly heavy competition nationally with indigenous cultural experience tourism.

I take your point but I think the land that is returned is there in perpetuity, as Ivan pointed out, and if we haven't managed to crack that opportunity of participation in land management since 2004 with Cape Barren Island or since 1995, then Rome wasn't built in a day. It will take time; you only have to look at the socioeconomics of the Aboriginal community to know we are talking about a community which is heavily over-represented in terms of poverty and all sorts of social indicators would say to anyone that this is not going to be easy to do. It will take time to build capacity so that the community can take advantage of opportunities that are offered.

Mr DEAN - In answer to my question I just want to make two other quotes from the act and the first one is subsection (2): 'The council must perform its functions for the benefit of all Aboriginal persons and in the interests of reconciliation with the broader Tasmanian community'. The other part is interesting and first Rebecca Creek in particular is that, 'In its use of the management of Aboriginal land and its natural resources the council is to have regard for the interests of local Aboriginal communities'.

Ms FORREST - They don't recognise [inaudible] you see.

PUBLIC

Mr DEAN - No, that is the problem. I had just a couple of quick ones, if I could, Mr Chairman. Where do you see this whole process heading in the long term; that is, of the gradual return of some lands and so on? Where do you see it progressing to? Have you any idea on that or any view on that as to how it is impacting on reconciliation?

Mr LEHMAN - What is the grand vision?

Mr DEAN - Yes. I know it is a wide question.

Mr LEHMAN - No, it is a very good question. When we were negotiating the 1995 act there were various options on the table for additional land transfers. The option that was eventually agreed upon was probably the most conservative one and that is that if there was a proposal for additional lands to be returned, it would have to go public and it would have to pass as an amendment to the act and receive the assent of both Houses. So that is a fairly conservative and pretty robust approach. Another alternative was that you could set up a process in the regulations and you could have some sort of tribunal process which would assess sites under certain criteria.

The first point that I would make is that I think if a question might be asked about how much land is this eventually going to involve the answer to that is that is up to the parliament of Tasmania in combination with the aspirations of the Aboriginal community. I think probably even Clyde would agree that ALCT is also probably keenly aware of the capacity issues. Are they going to put their hands up to take on more than they can take responsibility for? I am very pleased to read that Clyde is talking about a partnership with Parks and Wildlife. I think any consideration of Aboriginal management of the Mount William National Park, which has been touted in the past, to my mind would have to involve some really tight partnership relationships with Forestry Tasmania and the Parks and Wildlife Service. I think that has to be another part of the vision - that land returns also start, by necessity, to generate the need for firm partnerships and relationships with agencies such as Forestry and Parks and Wildlife.

Mr DEAN - This is an issue that the John Coulsons of this world continually raise - just how far is it going to go? He puts the position that if the people of Tasmania could be satisfied that there is a certain limit to it, it would be better accepted by the general overall community. But currently it is an open-ended thing and they keep seeing it as this grab for land all the time without the ability to properly manage and control it and so on.

Mr LEHMAN - This was a very big issue in 1995 and our response in 1995 was to take that most conservative option. You can say that the current act is open-ended but it requires the assent of both Houses of parliament and we are all in the business of knowing that that is not always easy to achieve as opposed to a process of base legislation where you could add land just by going through a tribunal. That certainly I think would fit the Coulson concern about an open-ended process. But, for me, it is in the hands of the Tasmanian parliament and that has to be considered a safe set of hands.

Mr DEAN - Could I ask one other quick question? I was rather confused from this morning. Whereabouts does this TAC sit in the context of the Tasmanian Aboriginal community?

PUBLIC

Where does it really sit in the context of the wider Tasmanian Aboriginal community? I am confused by all the questions and answers this morning on the position of where it is?

Mr LEHMAN - The Tasmanian Aboriginal Centre was amongst the first Aboriginal organisations that were established in the very early 1970s in Tasmania. It was first set up as the Aboriginal Information Service in 1970 or 1971 and then later became the Tasmanian Aboriginal Centre as it added a legal service because legal services were being funded in the early 1970s. I believe that Flinders Island Aboriginal Community Corporation which is now FIA and Cape Barren Island were also in those days the very earliest of organisations. The first thing that TFC did was establish branches in each part of the state in order to be able to be a state order representative organisation. People like??TBC3:35:33 West were involved for example in setting up the branch in Burnie, many years ago.

When ATSIC was established by the federal government there was a proliferation of aboriginal organisations because there was an administrative process whereby you actually had this facilitative mechanism for registering and then obtaining funding for an organisation. I cannot remember the exact figures but we went from something like eight Aboriginal organisations to 28 in no time flat. While you do have some level of disagreement and conflict between some of those, if I might call them original organisations between FIA and the TAC or ALCT in relation to certain issues, generally speaking those older core organisations tend to cooperate fairly well together.

I haven't been to Flinders Island for so many years I don't know how things are going with FIA these days. I used to be a lot more involved with FIA back in the 80s.

Ms RATTRAY - They are doing a fantastic job on the island and they are really well embraced by the whole community but they have no role in wybalenna and it is quite sad. I have some pictures and it is heartbreaking to see the state of wybalenna.

Mr LEHMAN - I was married at wybalenna in better days. The problem has occurred in that these other Aboriginal organisations started to spring up and that changed what was meant by the Aboriginal community. The Aboriginal community of Tasmania prior to that meant something different to what it means today. There used to be a thing called the Council of Aboriginal Organisations in the 1980s where there wasn't regular by any means. A couple of times a year FIA and CBI and TACA Tasmania Aboriginal Childcare Association, WAY Aboriginal radio the TAC - these were those earlier organisations - would come together to talk about major issues.

That started to fall apart when all these other organisations popped up that had emerged from the community that had been generated by ATSIC. Where TAC stands in all of that is that it is one of the original organisations. It is certainly the organisation that is responsible for the success that has been achieved in terms of recognition of contemporary Tasmanian Aboriginal people. The achievement of the Aboriginal Lands Act in 1995 brought the stolen generations compensation. It runs a very effective and professional health service and legal service, administers aboriginal housing stock amongst others

It is an important organisation from that point of view. However it also has some political positions on things which mean that it ends up being conflict and disagreement

PUBLIC

with some of these more recent organisations that have occurred. I do not have an answer for that but I would say that any expectation that all the Aboriginal people of Tasmania should somehow or another be in agreement and as one on things is a fairly unrealistic one because I cannot see any other cultural or ethnic group that automatically fall into line. There are differences of opinion political and cultural.

Mr DEAN - Thanks, Greg.

Mr VALENTINE - While you support the transfers, are there any niggling concerns that you have about the way the whole transfer is being handled that you want to share or are willing to share. You have talked about social engagement and inclusion; are there any areas that you feel need more attention than is being provided through this process?

Mr LEHMAN - I do not think so. I think it is important for there to be a process which is inclusive. I see that the business of this committee is addressing that issue. You are listening to a range of voices and attempting to weigh up those voices in terms of how they impact on your determinations. I see and hear a lot of issues being raised that are ones that were raised back in 1995. That is a pointer to some sentiments and some sensitivities that are still there in the broader community.

Mr VALENTINE - The underlying current of -

Mr LEHMAN - This process needs to be mindful of them, and it is clear to me that you are mindful. We need to be mindful of them but we also have got to be careful not to be over- reactive to them so there is also a degree of leadership required in terms of getting back to what I was saying before about quality information. If concerns are based on misunderstandings or misapprehensions then it is important to dig down in to what the factual basis of the situation is and give confident reassurance to people where it is necessary. I think arguably that is one of the key reasons why the 1995 bill succeeded. It was because Tony Fletcher was of a particular standing and political persuasion that perhaps more conservative elements in Tasmanian society were prepared to listen to what he was saying and were prepared to be reassured when he said, 'This is actually okay'. I do not know whether he lost many friends in the far north-west for his support of the 1995 bill but his leadership in that process was really critical to the success of that bill. That means sometimes standing up to expressions of concern that can verge on the hysterical or simply be misinformed.

Ms FORREST - To find the balance.

Mr LEHMAN - It is about finding a balance between competing valid opinions but it is also about ferreting out misunderstanding and getting rid of that because, as I said before, a process is only going to ever be as good as the quality of information that drives it. We cannot afford to be jumping at shadows.

Mr VALENTINE - Thank you for that.

CHAIR - Greg, we have gone over time but I am just wondering if there might be a closing comment or two you might care to make in guiding us in respect to our deliberations on this bill.

PUBLIC

Mr LEHMAN - No, I think I have said enough. I appreciate the opportunity to discuss the matter with you all.

CHAIR - Thank you very much for your background understanding of the issues involved with the Aboriginal community and with the organisations that we are dealing with. We appreciate every much the time you have taken to come in today.

Mr LEHMAN - Thank you and I will follow up and send you some references.

CHAIR - Thank you very much.

THE WITNESS WITHDREW.

PUBLIC

Mr JULIAN FRANCIS TYPE, TASMANIAN ELECTORAL COMMISSIONER, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR - Thanks Julian we might get you to abbreviate.

Mr TYPE - I, Julian Francis Type, do solemnly and sincerely declare that evidence I am about to give to this committee is the truth, the whole truth and nothing but the truth.

CHAIR - Thanks very much for joining us today to give evidence. You have been listening to a lot of the proceeding today so I will pass over to you to see if there are any comments you would care to make about this investigation.

Mr TYPE - I should say clearly I am disinterested in the affairs of the Aboriginal Land Council and the responsibility that I have as a statutory and that responsibility is to conduct elections for the Aboriginal Land Council. I think the community is well aware from the evidence today, and has been well aware for some time of some of the complex issues involved in the conduct of these elections.

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

CHAIR - What would you like to see? What do you think is a better option?

Mr TYPE - As I think you are aware the issue that has proved a very vexed one for quite a long time, is who is in need an aboriginal person. The act currently requires the electoral commissioner to determine whether or not a person is an aboriginal person in the event that an objection is made to that person's involvement on the Aboriginal Council Tasmania electors role. There is nothing about my skills or expertise or the expected skills or expertise of any electoral commissioner which would particularly equip you to discharge those duties.

It is somewhat problematic that the conduct of the elections, the elections themselves, has always been perfectly plain sailing.

CHAIR - How many objections do you have an understanding of? Are there a lot of people applying for the register?

Mr TYPE - In the most recent elections there were just over 100 persons who applied to place their names on the electoral role. Those names were placed on the preliminary role, which was then made available at Service Tasmania outlets state-wide. There were 24 objections lodged to those names and 23 of those objections I accepted.

Mrs TAYLOR - Was that for individuals or for the whole hundred?

Mr TYPE - There were 24 objections in relation to 24 individuals. In the previous round of objections in 2005, which ended up being delayed until 2009, my recollection although I wasn't the Electoral Commissioner at the time, is that there was something over 400

PUBLIC

objections. There may have only been four applicants who didn't sustain an objection at all but that was avoided during this most recent round of elections.

CHAIR - So, you are suggesting there were possibly 100 who were on the preliminary roll,

Mr TYPE - Yes.

CHAIR - 24 objectors -

Mr TYPE - 24 objections.

CHAIR - And of the 76, approximately, who -

Mr TYPE - They are added to the roll and if no one objects to you when your name is on the preliminary roll then you are transferred to the elective roll - it is essentially an automatic process. There is only one chance to stop people moving on to the electors roll.

Ms FORREST - Once they are on, are they on for good?

Mr TYPE - They are entitled to be on it for good. My view is that if they left Tasmania they would not be entitled to vote in an Aboriginal land council election but they then return to live in Tasmania but their Aboriginality would have already been established so they could be restored to the roll. So, essentially my reading of the act is yes, once you are Aboriginal person for purposes of the Aboriginal Lands Act then you are always an Aboriginal person.

CHAIR - How many are on the roll?

Mr TYPE - Just under 500 currently.

CHAIR - So, it is not a big figure then? In one way of thinking

Mr TYPE - It is not an enormous figure, no.

CHAIR - How often are the elections held, every three years?

Mr TYPE - Every three years, yes.

CHAIR - When are we due for the next one?

Mr TYPE - We are due to start again around July 2014. Typically the last elections ran over almost a full calendar year and in consultation with the Aboriginal community we had a three month enrolment period. We then allowed three months for the preliminary roll and objection process to work itself out, then had a bit of a break for the summer and had nominations and the election during the Autumn of 2012.

CHAIR - So, any prognostications regarding how many you think might go on the preliminary roll if you look at comparisons over previous elections. Would there be another 100?

PUBLIC

Mr TYPE - I think that the Aboriginal community themselves might have a better idea of that than I would. Clearly there are going to be people turning 18 years of age and we are going to have three years worth of 18-year-olds. The extent to which there are still eligible persons who have not enrolled on the electors roll yet, I am not really sure, I think, Clive Mansell or Graeme Gardner would probably have a much better idea than I would.

CHAIR - Could you tell me about the review committee that will be established under the aegis of the electoral commission? Did I hear right, that the Aboriginal Land Council of Tasmania and Aboriginal people will be the representatives on that review committee or are there people drawn from other areas?

Mr TYPE - The review committee, which I convened in 2011, was essentially the same review committee as had been convened by my predecessor Bruce Taylor back in 2005. Greg Lehman, whom you just heard from, turned out to be unavailable so we went ahead with seven members rather than eight. The review committee is based on section 10 part four of the Aboriginal Lands Act and in order to properly consider any objection, the electoral commissioner may request the advice of such persons as the electoral commissioner considers necessary, that is the legal basis for the review committee. I also took advice where appropriate from the Tasmanian archives and heritage office and as it turns out, in one particular case also sought advice from the register of births, deaths and marriages.

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

I think there may be latent concern, in the drafting of the act, to the Aboriginal community as well. I am sorry, did I answer the question?

CHAIR - Can you tell me who the people were, who were on your previous review committee?

Mr TYPE - Yes, Furley Gardner, Carla Jennings, Clyde Mansell, Annette Peardon, Phyllis Pitchford, and Theresa Sainty and Laurette Thorp from the Office of Aboriginal Affairs in an *ex-officio* capacity. Greg Lehman was intended to be a member of the committee but he was unavailable on the day scheduled for the review committee to sit, and given that a couple of the folk had come down from Cape Barren, it just wasn't practical to reschedule it.

CHAIR - You are going to need to get your head around who you might have on your review committee for the next election? Do you have a sense that they will be the people who will be the first invited?

Mr TYPE - The people I have just named have served for a number of years and it may be that their personal circumstances dictate that the membership of the committee needs refreshing. You heard testimony earlier today that they are respected members of the

PUBLIC

Aboriginal community, and they will probably be the first people I consult. I repeat, I don't want you to think the power is going to my head because it is quite the reverse, but essentially the Electoral Commissioner can talk to whoever the Electoral Commissioner pleases.

CHAIR - We have heard there is some controversy about the election of people to go on the roll. Do you get a sense of that? Do you get a feeling that there is concern in the community - that there are some who feel disenfranchised by their non-inclusion on the roll, even though they have all the evidence to support the parameters under which they have to present?

Mr TYPE - With the committee's indulgence, I request that you allow me to answer the question in general terms because I don't want to go to the specifics of individual cases on the public record.

CHAIR - That is not an issue.

Mr TYPE - I expect that almost every, if not all, applicants to the electors roll are applicants in good faith. I expect that the lodgement of an objection, and the acceptance of an objection, would be hurtful to the individuals concern. I have endeavoured to accept that in the advice I have provided to affected individuals.

CHAIR - Will Mr Lehman be invited back, if he is available?

Mrs TAYLOR - He hasn't decided yet.

CHAIR - I am just wondering whether you are going to go with the same group of people that you have now or whether that is up for review as well?

Mr TYPE - God willing, and if I am still the Electoral Commissioner at the time the elections fall due, I would certainly be proposing - as I indicated previously, if the committee needed rejuvenation - to at least consult with the previous committee about possible candidates for the committee. With 500 persons already on the electors' roll, the committee should be drawn from persons on the electors' roll, but I will be guided by the Aboriginal community. But, you are asking me to foreshadow a decision I have not given a lot of thought to yet. That is why I am speaking in fairly general terms.

CHAIR - That is quite okay. Will the number be eight?

Mr TYPE - Not necessarily. It was effectively six plus an *ex-officio* member in 2011 as well. So no, not necessarily, but in general terms, if I remain the electoral commissioner I will be intending to follow pretty much the same process as was followed in 2011.

CHAIR - Thank you very much.

Mr VALENTINE - Is maintenance of the roll the same as maintaining any other roll - with people dying, do you take them off the roll? Also, when you receive objections, what do you do? You might want to address those two issues.

PUBLIC

Mr TYPE - Yes, it is like any other roll because, as you say, people move address, and they unfortunately pass away. Generally we will review it in plenty of time for the next round of elections. We have the advantage of being able to compare it to the state electoral roll to discover if a lot of those things have taken place, but we also write to electors to make sure the roll remains current.

Mr VALENTINE - When you receive objections, what do you do?

Mr TYPE - Objections are lodged within 28 days from the publication of the preliminary roll - it is either a month or 28 days from the publication preliminary roll - and I then invite each of the persons against whom an objection has been lodged to make submissions. Those submissions are in accordance with the procedures for dealing with objections to enrolment and the guidelines concerning the requirements set out in section 3A of the Aboriginal Lands Act, which is to do with who is, or who is not, an Aboriginal person. I then make decisions based on the submissions I receive and the advice of the review committee, and advice from the Tasmanian Archives and Heritage Office, and possibly the Registrar of Births, Deaths and Marriages. I consider any other available information - as I said, I may seek advice from other sources if it appears necessary or appropriate.

Ms FORREST - On that point before you go on, Julian, you always seek advice from the Heritage Council and the advisory council - it is called a called council is it not?

Mr TYPE - The Archives and Heritage Office.

Ms FORREST - Do you always seek advice from them?

Mr TYPE - How do I answer the question? In the particular process that was followed in 2011, a representative from the Archives and Heritage Office was present throughout the meeting of the review committee, and if that representative had any information to offer, then I am perfectly confident it would have been offered. The involvement of the Archives and Heritage Office becomes more appropriate the more genealogical information and the sources of the information is provided by the applicant. There would have been cases where the Archives and Heritage Office did not have much to say, but that would probably have been because there was not much in the way of ancestral information to look. Again, I am speaking in broad terms here. I do not want anything I say here to be taken as relating to an individual case.

After obtaining the advice of the review committee, I then write again to both the objector and the person to whom objections have been made, setting out the source and substance of the materials and information on which I tend to base my decisions in relation to the objections. This additional step basically arises from the remission of the objections to the Electoral Commissioner following the 2005-09 Aboriginal Land Council elections and complies with the requirement to provide natural justice to both the objector and the person objected to.

Having done that and having received any further submissions, I then make the decision, as I am required to do in law, and notify the applicants accordingly. We would then go into the election phase. That is the process for objections and, as you would expect, it is the one problematic area in conducting Aboriginal Land Council elections. I am keeping

PUBLIC

them well apart from this issue of who is or is not an Aboriginal person in conducting the elections; it is a pretty straightforward process.

Ms RATTRAY - In relation to the rejection of somebody on the roll, do you know whether it needs - when you get the advice from the six plus one person on the committee - do they all have to agree that person does not meet the guidelines? How does that work, or is that something that you can not share with us?

Mr TYPE - Again, I have to go back to section 10:4 of the act and I really do not want to sound like a megalomaniac, but the act says in order to properly consider an objection the Electoral Commissioner may request the advice of such persons as the Electoral Commissioner considers necessary.

Mrs TAYLOR - It is your decision.

Mr TYPE - Yes, it is - that is what the act says.

Ms RATTRAY - If you put forward the person's name who is being objected to and out of the act it identifies three areas they need to satisfy and one is Aboriginal ancestry, the second is self-identification and then the third is communal recognition by members of the Aboriginal community. If they do not get a tick on each of those then -

Mr TYPE - It goes on to say, too, and I think it goes on importantly in the same section 3A of the act - and this is the 2005 amendment bill Ms Forrest referred to earlier - that the onus of proving that a person satisfies the requirements in subsection 1 lies on that person. That is what we call reverse onus of proof. It is completely different to the construction of the previous Aboriginal and Torres Strait Islander Commission Act 1989, I think it was - the federal act. Therefore you assume that if I am not getting positive confirmation on each of those three issues from the review committee that I am going to be unable to make a decision to dismiss the objection because of the way in which the onus of proof is constructed.

Ms RATTRAY - Unfortunately I only have the representative of the Circular Head community to put against what we were told at an earlier time, but if they have provided in their mind a 'yes' to A a 'yes' to B and 'yes' to C where recognition by the Aboriginal community - and they are talking about the Circular Head Aboriginal community. Obviously, in this legislation you need more than just their own immediate community; it needs to be the Tasmanian Aboriginal community.

If I were reading this I would expect that I could meet that three criteria as long as I had the support of the Aboriginal community to which I belong, but when it gets to your part of identifying and putting them on the role then that is not the case. Is that correct?

Mr TYPE - I hesitate to answer your question. I really desperately wanted to avoid saying anything that could reflect on an individual case.

Ms RATTRAY - That is okay; I understand. I am disappointed but I understand.

CHAIR - There is parliamentary privilege here, Julian.

PUBLIC

Mr TYPE - Can I answer the question this way? I certainly see the issue of double jeopardy that you are raising. Your question presupposes that the person being able to establish Aboriginal ancestry, given the reverse onus of proof set out in section 3(a) a priori. Not in every case will that assumption be correct.

CHAIR - Julian, you inspect all of those objections; you go through the detail of evidence that is put forward or do you leave that to the review committee to do the actual scrutiny of the evidence?

Mr TYPE - We do it collectively. We spent a full day in Hobart dealing with the 24 objections which were lodged this time. I expect that groups of the review committee probably spent more than a day in relation to the large number of objections which were lodged in the 2005-2009 process. My practice on the one occasion that I have done it is to familiarise myself with all the material in each case.

CHAIR - Do you get a sense that yours is the final word?

Mr TYPE - The act says that.

CHAIR - That is what I wanted to hear. Members, do we have any other questions?

Ms RATTRAY - No, thank you. I am fine.

CHAIR - We get a sense of the awkward position you feel that you have been in, of not wanting to reveal identities and being cautious with how you have ruled the evidence. We appreciate that and we have been able to draw information from you that will help us with our deliberation, our understanding of the process as it works. Thank you very much.

Ms RATTRAY - It is a difficult area for somebody outside the process, particularly given some of the evidence that the committee had received, to understand the process and that is what I was trying to explore a little more with you. I appreciate your position but I hope you can understand from my perspective as well. It is important to try to establish that process.

Mr TYPE - Thank you, committee.

THE WITNESS WITHDREW