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THE HOUSE OF ASSEMBLY STANDING COMMITTEE ON COMMUNITY DEVELOPMENT MET IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART, ON FRIDAY, 14 AUGUST 2015

CONSTITUTIONAL RECOGNITION OF ABORIGINAL PEOPLE AS TASMANIA'S FIRST PEOPLE INQUIRY

Mr RODNEY DILLON and **Mr LEE PROUSE**, WEETAPOONA ABORIGINAL CORPORATION, WERE CALLED, MADE THE STATUTORY DECALARATION AND WERE EXAMINED.

CHAIR (Mr Barnett) - Welcome. This is a committee and proceeding of the Parliament so the evidence that you give today attracts privilege for the purpose of getting full and frank discussion and interchange to ensure there is open and honest discussion, but once you leave here that privilege does not apply. I also note that this is a public hearing so we have members of the public who will no doubt be here and members of the media will be here.

Mr DILLON - Thank you for inviting me to this committee.

CHAIR - I know there was a meeting a couple of days ago.

Mr DILLON - We are probably representing a lot of people, I suppose. I always represent my own people from my own area and that is from down in the Huon. My family is from Fanny Cochrane Smith. We are direct ascendant from Fanny. She was the first aboriginal kid born on Wybalenna and we go down through that line.

I have lived down at Nicholls River, that is where we come from, and I have represented our area down there ever since I was a young boy in different areas on the rights to hunt and gather, on a right to practice our culture and a right to be an Aboriginal person and an identity from that area. They are some of the things.

CHAIR - Is that the Weetapoonna?

Mr DILLON - Weetapoonna and CTAC - I was a founding member of both of those organisations. I was the ATSIC commissioner for the state for seven or eight years so I have been in a few different positions as an Aboriginal person in my life.

Talking about constitutional change and things like that and the importance of doing that, we have had 200 years and a bit together and we have not been that good as friends. The first thing we need to do is build the friendship between the two groups. I would be concerned if we change this document without building that friendship between the two groups. I am in two minds whether you can build the friendship and do this all at the same time or whether you build the friendship first and then change the document. There has to be an order of how this is done and the importance of doing it in this order, building that relationship with the Aboriginal families that are community groups in the areas. I do not think that is being done. The areas where we have come from we have had very little to no contact with government.

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With the hierarchical system of government, I think our government in Tasmania has been lazy; they have only dealt with one group. If we want to build that relationship and friendship between us all we have to build that with all the groups and all the government. That is local government, state government and Commonwealth government. It is three very important steps that we work in these areas together.

There are things in the Constitution that do need changing and to be recognised as Aboriginals would be very important to us as families. It is very strange that years ago we were actually condemned for being Aboriginals; now people want to talk about us and put us in the Constitution. I do not know whether it was condemned for being Aboriginal but we were in that group of poor people as well as being Aboriginal, so there was a fair bit of discrimination and hackle about that over our lifetime. Anything like this makes change for our kids and our grandchildren that can go ahead and be proud of who they are in the schools. Those changes are very important to me as an Aboriginal person. It would be important to all our families.

Within our history of this place, we as Aboriginal people, there has never been recognition that there was a war in Tasmania; our history is very poor. Our teaching at the university is very poor. All these things are part of that friendship to build that relationship for us to come together. I went to the university here a while back and we had a New Zealander and a Canadian teaching Aboriginal studies. I find that very difficult as an Aboriginal person that our people have another person teaching who we are. The very principles of the universities and things like that are the things we have to get right first.

I have been on reconciliation but I didn't like reconciliation as a young man. I thought it was a stupid thing, but I believe reconciliation has played a major role in bringing us that little bit closer together. I would like nothing better if we had national carnivals, or carnivals where Aboriginal people from Tasmania, the first peoples of this state, are recognised and how we come together as one. We put the 220 years or thereabouts of occupation in this country and our history together, and the two together can make us a very powerful state. We don't have that. As an Aboriginal person, I don't like standing up for some of these things about the Queen and who we are. Our national anthem seems fairly ugly to me; we're talking about us coming together as a group and it says 'Advance Australia Fair'. All these are common things that really tear at my heart as an Aboriginal person.

In the meantime, I want us to be inclusive. Some day my grandkids are going to marry one of your grandkids. I learnt this a bit off the Indians, that unless we are all healthy we can all be very unhealthy through our own makings. Coming together and having things together are important to me. I might have mellowed and got older but I have come to understand we need to work together to go ahead as one group. We can keep our identity of who we are but we certainly have things in common. I have Irish and Aboriginal ancestry and I am very proud of both of them but I want to go ahead here as well. We all have different nationalities but we all have a common theme where we want to go and what we want this state to be. They are all important steps for me. I would love to see Aboriginal studies for kids in the schools, not unlike what they have in New Zealand, and that's not hard to do. It is just breaking that barrier in the first place.

Recognition within this in the first place is one of those steps. It is a step within a society; I think it's a country that is maturing as a society and they are steps we need to take. I am

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like other Aboriginal people in that I believe we need Aboriginal people in our Parliament here but we need each of the parties to take that on. I believe it is the responsibility of the three parties to do that and have people in those areas. If you have just one Aboriginal group and I think that can be a problem. If we had Liberal Party, Labor Party and the Greens and have it so our people have an avenue into those parties, because at the moment I don't think it is that easy for our people to join those parties or even be a part of it. It's not because the parties have excluded us; it is just the way we have been as groups. I don't think it is looking down on anyone or a grey spot anywhere; it's just how it has been. We should be putting an emphasis on these areas.

We have a very important history in this country of Aboriginal people and white people. We are here together now and we have this culture in our hands that is very ancient and we have been very arrogant about it as a country. We have seen forestry destroy a lot of it without too much care. We have seen roads destroy a lot of it. If I can get you to be as proud of my heritage and my culture as I am, that is a big step for us to go ahead together as people. You are halfway there, you've got a tie - and that's a start. Twenty years ago I don't reckon there would have been a politician game to wear a tie like that, so I think they are steps we are taking and we are stepping in the right direction. This might not happen quickly but it should happen and we should be heading in that direction.

CHAIR - Thank you for your opening remarks much appreciated. Just to clarify would you like to make some opening remarks?

Mr PROUSE - Yes, I will be brief. I am here today representing Weetapoonna Aboriginal Community and also my people.

I have jotted some notes down and I want to come back to things. I agree basically Rodney and I are very much on the same page. The way we talk, the way we speak, and those people who know us will know that.

What I want to open with is this is really exciting, because this is a great opportunity if we can get it right. Going back to Weetapoonna, and I have also been tied up in various ways with SETAC and a number of other ones. We are probably victims of our own circumstance because we have taken in the past a consultative approach rather than a confrontist approach. Therefore, we have been quite happy to bubble along and work in our own area. Unfortunately because of that, because we work in our community, we get passed over. We are not recognised. What we are talking about here today and what all sides of government are talking about is a fantastic opportunity, but it has to be inclusive. I do not know whether it is a statement or not but it must be fair for all, and it must be inclusive.

I want to also touch on what Rodney was saying about Aboriginal people in Parliament as well. I agree wholeheartedly with other people who have said this. The other thing I want to get back to though is it needs to be fair and equitable across all communities, not just those who hold the power. Everybody in every community needs an opportunity. I will leave that one with you because I am not sure how you are going to do it. I think if we could have that, and it needs to be done to a point where, when I say equitable, it needs to be equitable to all. As Rodney said the friendship of two peoples coming together, it needs to be equitable for both people. Do you know what I mean? For both sets of people.

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This is a great opportunity to start to remove the unconscious bias within government and I do not mean that disrespectfully, because it is an unconscious thing. There are lots of times people do not understand. It comes back to understanding or removing against certain sides of communities, and things like that. I think we can be friends, and we can work together, as long as we all listen before we jump. I might add here too every Tasmanian Aboriginal person should have an opportunity to have a say and be heard regardless of who they are aligned to, what group they are aligned to, what community they are aligned to. They should have that opportunity.

CHAIR - Thank you very much. We will go to Madeleine Ogilvie for the first round of questions.

Ms OGILVIE - Thank you. Rodney, thank you so much for coming. Even to get to this place has been a long time coming and I very much share your view about friends, and the sense of creating a new Tasmania that is all of us and not two groups.

I am very interested in the Campbell Town meeting and what you were able to achieve there. I am wondering if you might be able to sketch out for us what things you have been able to achieve, where things might go, and who was at that table.

Mr DILLON - The Campbell Town meeting was brought out of frustrations of people who have not been listened to by governments over the years. There were organisations, like I said before, the government has been lazy they have only dealt with one group and they have found - it started many years ago I think with Labor - they dealt with one group in the first place. The Liberals took it on and everyone found it easy to work like that instead of working with all the groups. It is hard to work with all the groups, because all the groups come from different things.

Our people have been very poor people. We have always lived very poorly. We never had the idea of building family wealth or handing down family wealth. A lot of our people have always been renters. We thought that the cheaper the rent was the better off we were, rather than buying a house. It is a completely different way. We have had to look at renting things and stuff like that. We should have been selling the houses to people rather than letting them rent them. I believe that in the wider society as well; we shouldn't have people renting houses off a government. They should be buying houses off a government. Those poor people should be brought up the scale a bit all the time.

We have come from that far back and we have been, as groups in areas, suffocated by the government. We have got to the stage where the government has only dealt with one group. When we tried to deal with government as a small group, as Weetapooka, we tried to deal with them on joint management of land, and we were suffocated. It was hosed down by a government body, by an arm of the government. We got a bit sick of that, and we thought the only way our voices can be heard is by building a bigger group. You guys are experts at it. That is how come you have Liberal, Labor and Greens. That is why you are there. We have looked at that style and thought the best thing to do is for us all to join together. We do have common things that we think are important. That is why we have come together.

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We don't want to speak on anyone else's behalf, but we don't want anyone to speak on our behalf. We want to be an identity as a group. We feel that, as Aboriginal people, our people should be dealt with evenly and with no bias, that the groups should be dealt with as the community people from that area. That is the important thing. That is why we come together. That is the very guts of what came out of frustrations for probably 15 years.

Ms O'CONNOR - Thanks Rodney and Lee for coming along today and teaching us. I am interested, Rodney, in what you said about how important it is that friendship between Aboriginal people and non-Aboriginal people in Tasmania is nourished and made better. What are the things we need to do as a community? What are the things government needs to do? What does the Parliament need to do to make that friendship the best it can be?

Mr DILLON - We started many years ago by negotiating with the government to get the flags put in Parliament. It is about starting to recognise that we have Aboriginal people. It is not easy dealing with Aboriginal groups, because some of us are pretty angry to deal with sometimes. I can understand that people wouldn't want to deal with that. It is about having that patience. It is about working relationships and working together on government policies. I don't think any Aboriginal group, and about nine groups were at that meeting at Campbell Town, has had any relationship with any government organisation.

Ms O'CONNOR - I would like to probe that a bit further because in the last term of government we made a real point of trying to engage with all Aboriginal groups beyond the TAC. The Aboriginal heritage legislation was probably the first time I think that all the groups had fed into a piece of legislation.

Mr DILLON - I probably shouldn't have said what I said, but up until the last few years we have not had any input; we have started dealing with you two. You are the only two from Parliament that have met with us. We know that politicians meet with groups of people and they have met with some groups of Aboriginals, but none of us to build that relationship with all groups of Aboriginals. NAIDOC events, where politicians come along to our events, and Labor and Liberal parties and the Greens to come to our properties and have a look at what we are doing as groups, would be the first step in the direction of building that friendship. It is not about us supporting Liberals or Labor or Greens. It is about us having that relationship with those three parties and friendship with them. This is not about a government. We want to speak to all the groups. We don't want to be just friends with the Labor Party or the Liberal Party. We've seen that that can be damaging, and it is not about that. It is about bringing those three groups in and saying, 'This is who we are,' and then coming to the Parliament. I sit in Parliament occasionally and listen to what's going on. It gives us an idea how you're thinking because we honestly, as Aboriginal groups, don't know how you think.

Ms O'CONNOR - And the same for us, the reverse is true probably.

Mr DILLON - Yes. They are the friendships we need to start building and building that relationship together as two different groups of people. It is strange. This is how it is at the moment: there's a line in the middle and you are all on that side and we see you all as the one group, and there is a line on this side and you see us all as the one group. We know there is the Liberal Party, the Labor Party and the Greens but we only see you as one group and you only see us as one group. It is breaking that down, dealing with this group, this group and that group - and they are the very steps that need to be taken in this.

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My niece is going to school now and doing Aboriginal projects. I can remember going to school and doing Aboriginal projects. The Aboriginal people didn't even get a say in it because they didn't recognise us. It's about recognition. You know how you are identified as a Liberal or a Labor and that is the tag you carry as a person, these are your values - that's how we have to be able to find out what the values are in that party and that party and for you to be able to find that in ours as well. They are the things that break down those friendships.

Ms O'CONNOR - How important is the return of lands in that relationship? What are some of the problems, do you think, we have had as a state in returning lands?

Mr DILLON - It's very interesting you say that because I was one of the first kids when I was 14 getting around with a placard saying, 'We Want Land Rights Now', and all the other things we've done to get land back. I wonder whether having land is the most important thing. Having a right to the land is very important, but the thing that is the most important is sharing the resources. Unless we have part of the resources - and this is what we spoke about in Campbell Town the other day - within the next 15 years we want our organisations to be part of being self-sufficient. We are not going to be able to survive - and the Commonwealth Government funds are being cut more and more every year.

Our group has the farm at Murrayfield and we don't make any money. We always thought you made money out of farms, but we have found that you don't make that much money and there is a lot of work in running a farm. We have been running that farm for 12 years and we have been having numerous meetings just to keep this going. If we hadn't had the ILC working with us, we would have been bankrupt by now. Land is important but the resources that make the money are the most important thing. Sometimes it is about having people working in these resources more so than owning the resources. It's about having employment opportunities that we haven't had in the past and having some of those resources that can make us self-sufficient.

If you give us back the whole of the south-west of Tasmania, I dare say 50 of us wouldn't make a dollar each a year out of it, but if we take it back and have a joint management and an arrangement where we can work together and work with other tourist operators who can make a quid out of it and we employ people and work together, we can all make a little bit out of it. I see that as a more important step.

I am not against getting land back, don't get me wrong, but I say if we are getting land back we need things to make it run. We are just building a relationship with one of the shipping companies here taking people to Bruny. We are going to employ three young people doing that. They are the things that make an economical future for those three boys. Instead of starting out in an area like a housing department area and living off that, they can now make a living and look at buying their own houses and things like that. If we hadn't got Bruny back, we probably wouldn't be here today talking to you. Having land back is very important, but you need other things to go with it. It is getting that.

CHAIR - Thank you very much, Rodney and Lee.

Mr JAENSCH - Thank you for coming and talking to us. Rodney, you said earlier that you were dismayed when you went to the school or the university and there were New

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Zealanders and Canadians teaching Indigenous Studies. New Zealand and Canada have different sorts of relationships with their First People than we do here. What do they have that we could learn from, do you think?

Mr DILLON - New Zealand has that Waitangi Treaty for a start. The treaty didn't even get implemented that long ago. I always worry about treaties. What New Zealand has is that they are teaching Maori language in the schools. That is about that relationship. When they do the haka, the white people do the haka as well. They have all got ownership. That is what I was going back to before. We have an opportunity here. We have Aboriginal people here that lived on the edge of the World Heritage Area through two ice ages. We have people that have a very ancient culture. For me, for you, to own that, you would protect that a lot more if you felt part of it than if you didn't. I think it is making it to have the faith in one another to build that relationship so that we both look after it together. They are the things. Canadians and New Zealanders economically are not that much better off than us, but they have Sealord in New Zealand which makes a profit, which they all fight over, the money that comes out of it. Those things are important steps, but they are steps.

CHAIR - The group you met with in Campbell Town on Wednesday, just to clarify, would you be speaking for them today? I know you are speaking for the weetaipoona people.

Mr DILLON - It is funny how I have only learned to speak for them in two days. I am.

Mr PROUSE - If Rodney was given -

CHAIR - Would that be a fair? I thought I would clarify for the record.

Mr DILLON - That is fine.

CHAIR - We have to represent you correctly and I don't want to misrepresent you.

Mr DILLON - No, that is fine.

Mr PROUSE - That was raised at the meeting and Rodney was -

CHAIR - Just to clarify the name for the record.

Mr DILLON - TRACA - Tasmanian Regional Aboriginal Community Alliance.

Mr JAENSCH - Which came first? The name or the abbreviation? It is a good abbreviation.

Mr PROUSE - There were a number of names put up on the board. The first three words probably were a common theme. Then there were different things that came up afterwards.

CHAIR - Thanks for that. We have terms of reference as a committee, so it is a pretty difficult and challenging task. The terms of reference are focusing us on the Tasmanian Constitution - not the federal one, that is another issue. Ours is part of the bigger picture and the bigger story. At the end of the day, we are looking at possible proposals for amending the Constitution. I want to let you focus on that and give us some feedback on that. I am listening to you on friendship and working together as a team and as Tasmania.

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I appreciate your comments in terms of getting my sense of ownership for your story. I appreciate all that, but at the end of the day we have a job to do in terms of proposals before our Constitution. I am interested in your views on whether you support or don't support it, or what your thoughts are on it.

Mr DILLON - We do need to be in the Constitution. It needs to be right at the front of the Constitution so people recognise that Aboriginal people were the first nation of people of this state. That is very important upfront but there needs to be steps after it and that is what those steps were.

CHAIR - Okay, no worries. You may not have had a look at the other states but Victoria, New South Wales, Queensland and South Australia have all legislated in recent years -

Mr DILLON - In the last couple of years?

CHAIR - Yes, going back to 2010 or so. I do not know if you have had a look at some of the wording of those interstate acts?

Mr DILLON - No.

CHAIR - Some are a little more expansive than others. Some are a little tighter in recognising the First Peoples. Others talk more about the injustice and inequality and so on. I do not know if you have a view in that regard?

Mr DILLON - I do. The important thing is about justice of the state - that it's taken 220 years or something to get to where we are. The justice of that is very timely. Talking about cornerstones of our society to be put into this document is very important to us as Aboriginal people but talking about us coming together after 200 years is the most important thing.

Around 200 years ago we talk about Fanny Cochrane, my great-great-grandmother, and here I am talking to you, but we've had five generations to get to this, so it has been slow and I don't think it needs to be taken that quickly but it does need to have those cornerstones that we appreciate in each other.

This Constitution should be talking about our values to one another, how we would like to be treated and how we would like to treat one another. They're very important steps.

Mr PROUSE - The terminology too; how you determine what you put into that. Whether it's 'Tasmania's First Peoples' or 'Tasmanian Aboriginal people' or 'community or communities'. From my point of view I'd like the last two to be way down the priority list. You need to use the word 'people', whether it's First Peoples or Tasmanian Aboriginal people, because that takes away the conflict of the terminology that's probably happening within our people today. I think the term 'First Peoples' -

Ms OGILVIE - Is more inclusive, larger?

Mr PROUSE - Yes, it includes everybody. That's going to be key because it can quite easily become a stalling point in the process. You need to think clearly about how you address that and don't rush in with a draft that's - you know. I think 'peoples' includes everybody.

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Ms O'CONNOR - For clarification, in language terms I hear First Peoples refer to themselves as 'palawa' and 'pakana', so when I'm doing an acknowledgment I have to say 'palawa' because I'm uncertain myself about the language. Is there any clarity there?

Mr DILLON - I've always called myself a Tasmanian Aboriginal person and I think these new words are people's ideas and are important. Going back to what should be in there, I think the government should be talking about treating all Aboriginal people equally in this situation and valuing all Aboriginal people's input into this. That's very important. The very first point that needs to be recognised is that all Aboriginal people in this are very important and we treat all Aboriginal people equally. That is the first step we need to take if we're going to come together as two groups.

CHAIR - Thank you very much. We appreciate your evidence today. If you have further views, particularly on the wording and feedback, that would be most welcome.

Mr DILLON - Thank you.

Mr PROUSE - Thank you; it has been a great day.

THE WITNESSES WITHDREW.

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Hon. RAY GROOM, AO, FORMER PREMIER OF TASMANIA, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR - Welcome to our inquiry, Ray. We are very appreciative of your time and effort to present to our committee of inquiry. You are obviously very familiar with the procedures and the privileges attached to evidence in the committee. Once you are outside, that is a whole new ball game. We appreciate your taking the time to be here based on your past experience, your track record and distinguished service to the people of Tasmania.

Mr GROOM - I have prepared a very brief written submission and would like to speak briefly to it. I want to indicate that I strongly support an amendment to the Constitution Act of Tasmania to recognise the Aboriginal people of Tasmania as the first people who occupied the island, all the other islands and the waters surrounding the island for thousands of years before European settlement. When you look at our foundation document, the Constitution Act, it would be appropriate and a great thing to have that history properly recognised to tell the true story of Tasmania. If you look at the history of Tasmania, there was Aboriginal occupation here for thousands and thousands of years before European settlement occurred in the early 1800s, and it is unfortunate that that great history that proceeds European settlement has been largely ignored, including in our legislation. To have something placed in that act in an appropriate form would be a good thing and would correct a wrong that has existed for a long time, in my opinion. Other states have done it and it would be wrong if we don't proceed as well.

I believe that we should as soon as possible include some words in our Constitution Act. The act goes back to 1855, from my research - there is some suggestion it might have been 1854 but that seems to precede when we became a self-governing colony, which I think was 1856. The Commonwealth Constitution was enacted in 1901 so there is a good argument that we should get in before the Commonwealth changes its Constitution. We should move quickly because there is a move to change the Commonwealth Constitution, although that is fraught with some difficulty, I think, and won't be an easy thing to achieve. This one is relatively simple because we simply need an act of parliament passed in both Houses. It is not fraught with all the difficulties of a referendum process.

I want to emphasise that obviously, and you know this, that we need full and proper consultation. This is essential when you are dealing with any Aboriginal issue. Aboriginal people are very good at consulting; they do rely on good consultation. I learnt this right back when I was a federal minister for the environment back in the 1970s, almost 40 years ago. I negotiated with the Northern Land Council in the Northern Territory concerning the development of stage 2 of the Kakadu National Park and was meeting with the elders of the Northern Land Council - Galarrwuy Yunupingu and other elders. A number of meetings happened over a period of time. I realised how important it is to consult properly, especially on Aboriginal issues, with the community. You will not always get agreement, often you will not achieve a consensus, but talking through of the issues is absolutely vital. I would strongly recommend that, even beyond this committee process, taking it forward - government or others or the Parliament - there be a further process of talking to the community in a less formal way before it all happens.

Ms O'CONNOR - On the language, too, do you mean Mr Groom?

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Mr GROOM - On the words as well as the initiative itself. I believe the words should be quite simple and not too complex and have the right spirit in the words, but the words are important. It might be that we could change the words that other states use. It could be a special Tasmanian form. I will comment on the New South Wales example and mention a couple of words there.

That consultation is important. I have done some other Aboriginal issues in Tasmania, meeting with the community, including the assessment of claims under the stolen generations and handback of land and other issues, including negotiating on heritage issues on behalf of the Labor-Greens government.

I prepared a paper, which I wrote myself, back in 1993 - A Step Towards Full Recognition and Appreciation. It is a very brief one; I like brief papers. The need for full recognition was one of the major elements of this. It talks about deaths in custody as an important issue, and education, land and heritage. It then talks about the path forward in developing a unit in Premier and Cabinet. Then we had a forum where all the ministers met the Aboriginal community representatives down at Wrest Point. We had a whole morning where we started at breakfast and we went through to lunchtime. It was quite a unique meeting; I do not think it has happened at any jurisdiction in Australia. Out of that came a feeling among all of the ministers, including some who had some questions in their mind about whether we should proceed. It was a good meeting where there was good consultation and everyone learnt from each other in respect to that. There is no mention in there of recognition in the Constitution Act or the Commonwealth Constitution, so it has developed in recent years. It is an important issue but it has developed in quite recent times; that is not to understate the importance of it.

I looked at the New South Wales precedent yesterday. I looked at these acts some time ago and I reminded myself. I looked at this as an example of recognition of Aboriginal people in section 2 of the Constitutional Act of New South Wales. I like the word in subsection (1) - 'and honours the aboriginal people'. Just 'recognition' as a word is a bit -

Ms O'CONNOR - Mealy-mouthed almost.

Mr GROOM - Yes, you recognise someone, but going further. In that document I have just tabled, it talks about recognition and appreciation. We could go beyond recognition but appreciate or honour, whatever the right words are. I like the word 'appreciation' because it goes further. The words in 2(b) of this New South Wales amendment have made, and continue to make, a unique and lasting contribution. This is a big issue for Aboriginal people. When I was in primary school we were taught Truganini was the last Aboriginal person, and it was said that Aboriginal people had disappeared. The reality is they have not disappeared. There are many Aboriginal people in Tasmania, living a life as Aboriginal people and recognising they are Aboriginal, recognised by the community as Aboriginal, and with descent. That 'continuing to make', or similar words, is important. I don't like subsection (3) - and this may have been mentioned before in one of the submissions made to the committee - which is the non-justiciable clause. That is the qualification that this does not give rise to any potential legal action, civil action, administrative action, and so on in the courts. That detracts from this sort of spirit of understanding and recognition. It is too formal, too legalistic, and I don't believe it is necessary.

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We have the Acts Interpretation Act, section 8B, and this guides how the courts interpret legislation. There is a provision in that section of the act where the courts are required to give regard to any speech made by the minister in making a second reading speech in explanatory memorandum that might be produced for the bill. In the process you could explain the reason for this - the recognition factor and so on - and make it quite clear in that statement that it is not intended to give rise to special rights and so on, if that is necessary. That is a way to safeguard against any risk. I think the risk is minimal. I don't think courts are going to look at this, knowing the history - they are always bound by the evidence that is produced in a court of law. The courts would be very loathe to use in any way that would undermine its general value for the community by creating all sorts of rights and problems, so I don't think that will occur.

One of the main points I wish to make is I feel there should be some associated initiatives produced by government. The words are great - they are not symbolic; they are much more than symbolism. This word 'symbolic', I think it understates the importance. Words can be important. Recognising the Aboriginal community of Tasmania in our constitution act is not just symbolic, it is fundamentally important. It's not just symbolism. I feel a lot of people in the Aboriginal community would wish to have some sort of tangible steps as well as the words.

Not underrating the words, but I have a couple of ideas here I would like to put forward. Land is fundamental to Aboriginal people. It is part of the culture. The connection with land is essential. There is a spiritual aspect to this that not many people fully understand. Past governments have transferred some land, and it has been deeply appreciated. There is scope for some further, maybe limited, transfers of small parcels of land, which I think would help in the process. I said to Michael Mansell, and others I was negotiating with years ago, that there is a limit - and there has to be a limit for the broader community. Eddystone Point in the north-east is a possibility, and there might well be a couple of other areas in the south-west where there was a good deal of Aboriginal activity. There was a band in the south-west and so on. There are a couple of caves in the south-west area that is Aboriginal land now, surrounding the caves. There could well be other prospects of a limited kind. That would be deeply appreciated.

I want to make a point about Aboriginal heritage. I believe our Aboriginal heritage is greatly underrated. The history is greatly underrated. It is a most significant history in terms of human existence. Over time this will become more and more apparent. This was a most ancient people with a wonderful culture that few in the broader community fully appreciate. There is a lot of heritage. There is heritage overseas, in museums, in private collections. I would like to see a catalogue developed where someone - it might be an able young person who is a PhD student - takes on the task of. It is a wonderful job - maybe this is an Aboriginal person; hopefully it would be - going around and getting all the information. There would be information in the Netherlands, in France, in the United Kingdom. I know there are collections in United States that I have seen.

Ms OGILVIE - There are.

Mr GROOM - It is Australian Aboriginal, but there might be elements of that that are Tasmanian. I would like to see a really good catalogue developed of all that is overseas.

PUBLIC

The next step is to try to get some of it back. I hope that there could be a government-backed effort to return this material, much like where the Greek people have been trying to get the Elgin Marbles back for years. They have had one heck of a battle and it hasn't been easy. There have been efforts in the past in Tasmania - a lot of effort and some success - but there could be greater effort made in respect to a catalogue, and an effort made to bring things back to Tasmania.

When I facilitated discussions with the Aboriginal community on behalf of the Labor-Greens government, I was amazed to find that the relevant department had a lot of information which it has not passed on to the community. There are some sensitivities here. You have to be a bit careful about information being provided to the broader community, especially about sites because it might endanger sites, and items and objects, et cetera. It seems to me quite clear that the Aboriginal community, at least as custodians on behalf of the community, should be provided with that information. When you think of the history, it seems absurd that they are not provided with the information. I do not know whether there has been, in recent times, some move to do that, but it would be greatly appreciated by the Aboriginal community if all that information could be provided to them, because it relates to them.

Ms O'CONNOR - Are you talking about access to the information or ownership?

Mr GROOM - I am talking initially about access to the information.

Ms O'CONNOR - There is a view among Aboriginal people that they own that material as well.

Mr GROOM - Yes. That is another question. The first step should be access, to know what is there.

Ms OGILVIE - To know what is yours.

Mr GROOM - Yes, that is right. The other one is legislating to rescind the Aboriginal Relics Act and put in place new legislation on Aboriginal heritage.

Ms O'CONNOR - Hear, hear.

Mr GROOM - I want to make a strong point to the committee. It seems incredible that the Relics Act as it presently stands mentions the date of 1876. Why 1876? That is a strange date specified in the act such that relics and items are not actually Aboriginal relics under the act unless they were created before 1876. That is a cut-off point. The year 1876 was when Truganini died. That is the reason. It is not 1880 or 1870. Truganini, then said to be the last full-blooded Aboriginal person, died in Hobart that year. This is the 1950s, the old approach, that we do not have any Aboriginal people or any further cultural developments by Aboriginal people, but people are still creating Aboriginal culture and have created a lot since 1876. I would hope the committee might give some consideration to that particular reference because it could be removed. The whole point of developing heritage is complex. I know there are a lot of aspects to that which are not simple but that date is an unfortunate inclusion and its continuing to be there in that act of the Tasmanian Parliament is deeply offensive to a lot of people in the community.

PUBLIC

Ms O'CONNOR - It's racist.

Mr GROOM - Well, it's seen to be. Indeed, the Relics Act itself is seen to be legislative racism because the people responsible for looking after this information through the 1930s, 1940s, 1950s and so on were public servants, not Aboriginal people. That is all I wish to say.

CHAIR - Thank you very much. We will move to questions.

Mr JAENSCH - Ray, thank you very much for your contribution and your thoughts. You may have seen some of the other submissions that have been made but the issue of associated initiatives, not just the words in the document, are very important and you have given us some good examples. Others have talked about establishing not just housekeeping in terms of wording in documents and repatriation of heritage, et cetera, but establishing some enduring new participation of Aboriginal representatives in informing how Tasmania progresses. They could be advisory roles and there has been discussion of some sort of elders' council that the Governor or the Parliament might refer things to. Do you have any thoughts on that or other places where you have seen that has been of value?

Mr GROOM - I know the TAC has proposed these sorts of possibilities but I do not know who was making the submission. I know that Michael Mansell - who I have great respect for although I don't always agree with what he says - has done a tremendous job pushing the causes of Aboriginal people in Tasmania and a lot of the achievements, at least in part, are a result of his own personal efforts. He was proposing seats in the parliament and so on -

CHAIR - He was.

Mr GROOM - I don't always agree with Michael and I don't agree on that one. Anyone in our community, subject to certain qualifications or disqualifications, can stand for parliament and if they get support from the community they can become members of parliament and make their contribution. I'm not so keen on certain sectors having certain seats. That could result in lots of different sectors pushing for numbers of seats and so on. People can join a party or stand as an independent and win a seat. There can be informal processes and informal consultation which should occur. Ministers should meet community representatives, et cetera, and that is the best way to get the message across.

Mr JAENSCH - Yes. In that regard, because it is incumbent upon parliamentarians and governments to consult widely on everything and to be in touch, if there is a group of people who are afforded recognition and honouring through our Constitution Act, might engagement with those people be a different sort of obligation to broad community consultation on things if we see fit to -

Mr GROOM - No, I don't think so. I don't think this is selecting - if this is what you're getting to, Mr Jaensch - a group and saying they're in a special situation so they're in the Constitution Act and we're favouring them almost. I don't see it that way. I see it as simply a matter of fact that these people were the first people here with a huge great history behind them.

I know some people said it was racist to mention Aboriginal people in the Constitution or the Constitution Act, but around Australia there are 30 or 35 acts of parliament where

PUBLIC

Aboriginal people are mentioned and no-one has suggested it is a racist approach. I don't see this. It's simply a matter of fact that the people we are talking about, the Aboriginal people of Tasmania - their forebears - were here for thousands of years.

Mr JAENSCH - I suppose what I am picking up on is the distinction as you have made with reference to New South Wales about the continuing contribution. This isn't just a matter of correcting a historical oversight and correcting the record, but what we might seek to do through the constitution or some associated initiatives to ensure we are honouring Tasmania's Aboriginal heritage as a living thing.

Mr GROOM - Yes, it continues. It's not just heritage that suggests history; it's continuing culture. Having been the sole assessor of the Stolen Generations here, you have a special opportunity, a privilege really, to understand some of the details. I read the documents and some of them I couldn't believe. Some people don't believe there were stolen children but I can tell you now there were, although not in a strict legal sense of the law on stealing.

For example, in Hobart a number of decades ago, an Aboriginal child pinched a bottle of milk from the doorstep of the house next door. There was a complaint made and it ended up going before a magistrate who ordered that all the children of that family - I think there were five of them - should become wards of the state. They became wards of the state and that's where officialdom finished because then they were split up and sent to different institutions or foster homes. They were let down badly by the system. It was well-meaning in a sense but it was applying standards that some people thought were appropriate for another group of people who had a different cultural background.

I have some interesting thoughts on the nuclear family compared with Aboriginal families. They were tribal or bands and were responsible as a group for the children. A pilot flew to Cape Barren and went to the school because he had been asked to get this child. The child was taken from the school - literally dragged out - and flown to Launceston to be made a ward of the state and then sent to different institutions. You get an insight into the community in Tasmania through that exercise.

Ms O'CONNOR - Ray, it has been very profound listening to you and I want to acknowledge everything you've done for the Aboriginal people of Tasmania. I know you know there is great love and respect for you from within those communities. I'm interested in your thoughts on heritage and how that ties into strengthening the relationship between Aboriginal and non-Aboriginal Tasmanians. I know you went through the heritage journey in the last term, but isn't it the case that we can't as a community properly acknowledge and value that ancient culture and its heritage unless we sort out the Relics Act in a meaningful way and as a state create an Aboriginal heritage protection framework that is robust and protects heritage, which I am sure you would acknowledge the Relics Act has proven itself unable to do?

Mr GROOM - Yes, I believe we need new legislation. I am not sure it needs to be as complex as a bill I saw, and after the negotiations which went on for some months. A bill was produced that was very complex, in some respects. It has to be handled carefully because the broader community can get pretty uptight if you start to tie up great areas of the state to protect Aboriginal heritage. It has to be defined quite well; it is a balancing act. There is great heritage here and that has to be protected and we need good legislation. It does not have to be as complex as the bill I saw but you should have Aboriginal people playing a central role. That is absolutely necessary.

PUBLIC

Mr JAENSCH - In the drafting or in the implementation?

Mr GROOM - No, in the management.

Ms O'CONNOR - And therefore in the drafting to an extent as well.

Mr GROOM - And the drafting, of course.

Ms OGILVIE - Ray, I know we are a little bit short of time and we have had previous communications. Thank you so much for coming and for your support for constitutional recognition and this change. Thank you for tabling your document, which you note is silent on constitutional change from the 1970s. I have taken the liberty of reading all your work and the work of Sue Napier, Bacon and Lennon and everything that has brought us to this moment. With your deep knowledge in this area, that making the type of change that you have mooted today which does not have that justiciability clause in it - I happen to agree with that - do you think that is a good place to start on what could be a larger picture of restoration and reform of the law in this area? Or are there things we need to be doing in parallel? Is this a consequential conversation or is it something that is more, for want of a better phrase, a full court press along a number of fronts? How do we bite this apple?

Mr GROOM - It is an important step but I tried to say before that I think doing it alone, in isolation, may not be quite enough because other states have done it, and so on it might be a little bit ho-hum.

Ms OGILVIE - Yes.

Mr GROOM - We have some great occasions in the Parliament when things have happened, people have come in and it has been really powerful. You do not need to do a great deal but I think some more measures around it, associated with it, a package, is the way to go. This would be a key element in the package. This is recognition so long since 1855 it is about time it happened. It is a central element in a package but it is not many things. You cannot do everything people want but some things around the package could make it a good initiative as a package.

Ms OGILVIE - Turning to what you have suggested, and I think a very good place to start, lost and stolen cultural heritage, and I confess to my background working with the UN in this area. There is a place there perhaps for the university, which might be able to take some leadership in the catalogue of information and the disclosure of that. Having said that, do you think that would be a place to find some leadership on the lost and stolen relics and where they might be located globally? You mentioned a PhD student.

Mr GROOM - Involving Aboriginal people is essential. There might be a PhD student who is an Aboriginal person or whoever, but good young people. It is a great exercise to have this task. Again, before you do that, you need to consult about it. I just thought of a couple of things that might be tangible and I feel there is a great need there to do that and bring it altogether so we know and Aboriginal people know.

Ms OGILVIE - Collect your data.

PUBLIC

Mr GROOM - Collect your information first.

CHAIR - Thank you very much, Ray, for your evidence today, your wealth of experience, your views and we appreciate the interchange.

Mr GROOM - Thank you, Chair, and the committee for the chance.

THE WITNESS WITHDREW.

PUBLIC

Professor MAGGIE WALTER, UNIVERSITY OF TASMANIA, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR - Welcome. We appreciate you being here. Have had a look at the guidelines?

Prof. WALTER - I have.

CHAIR - This hearing is a proceeding of the Parliament, so it attracts parliamentary privilege. It offers the opportunity for a full exchange of discussions. What you say here is protected, but once you leave here then it is a whole new ballgame. What you say outside is subject to the usual course of law. If you could make some opening remarks, and then we will have an interchange.

Prof. WALTER - Thank you. I will make some opening remarks. Just to start I will say that I am very happy to supervise a PhD student, whoever it is going to be -

Ms OGILVIE - Yes, I know. I am aware of you sitting there.

Prof. WALTER - I can probably give you some names of people who would be the right people to undertake that task. The university would very much like to be involved in a whole lot of issues.

Ms OGILVIE - Fantastic.

Prof. WALTER - I believe there is a bigger role for the university to play in some of the issues between the Aboriginal community, Aboriginal relics, and heritage, how we bring Aboriginal place to the fore in Tasmanian society, as well as in the political system. Before I start I would also like to also comment a little bit on what Mr Groom was saying before about consultation.

I should introduce myself first. I am Maggie Walter. I am a member of the Briggs-Johnson family from the north-west coast, and so descended from Woretmoeteyenner and Mannalargenna along with many other Aboriginal Tasmanian people. I am a member of that large family group and have been always. I am also Pro-Vice-Chancellor of Aboriginal Research and Leadership at the University of Tasmania, and Professor of Sociology.

CHAIR - We have received your submission, with thanks.

Prof. WALTER - With consultation, it needs to be understood that Aboriginal families, even though most of us live in nuclear-type environments, still have a much broader understanding of family than perhaps is the norm from the western model. Those large groups still communicate and still see each other as family. Everything we do has to be relational rather than instrumental. That is where the consultation comes in. Nothing moves until the relationality has been established and people are comfortable with it and about who people are - who and how they would be, before you move things forward. It is quite a different way of doing things, rather than just the instrumental 'Here is the idea, give us your comments, and then we will do this'. It needs to have a bit of a mind shift over to the relational rather than the instrumental.

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Having done that, you have why I think the Constitution should be amended. I will not go through all of those things again. It is obvious. It really is important for Tasmania more generally, not just the Aboriginal population, that this happens. It is really important for who we are as Tasmanians. I have read some of the submissions and the usual war horse of how it is divisive and it is racist. Those sorts of things come up. I am always reminded when those people go straight to the racism, it is a little bit like the corollary of domestic violence. If you say, 'I would like to talk about domestic violence as a problem,' people say, 'How dare you accuse me of beating my wife?'. It is exactly that same leap of argument that happens there. It is not about being divisive. It is about recognition and within that, reconciliation. Reconciliation and recognition are not passive and they are not sole - one party cannot do it without the other. They have to be done in partnership. There is always a possibility that if this is not done right, Aboriginal people will say, 'Thanks, but no thanks.'

Ms OGILVIE - It is not ours, yes.

Prof. WALTER - That is right, yes. That may happen at the federal level, the way things are going.

Ms OGILVIE - Indeed.

Prof. WALTER - I would argue there is a really big need in Tasmania to get over this silencing and the other things which have been our past and to celebrate, but there is a huge lack of knowledge about Aboriginal history and heritage and contemporary Aboriginal Tasmania everywhere in the community. I'm sure I could run a quiz now and trip you all up by question 3. At the university we are trying to do something about that. I have just signed on to write a unit which will run right across the university called 'Indigeneity: local to the global', which will start with Aboriginal Tasmania and then show how we are all connected.

Ms OGILVIE - You might need our parliamentarians to undertake it.

Prof. WALTER - I can arrange parliamentarians to also undertake nuritinga palawa, which is a unit we offer through our Murina program. I am getting the whole of the university to undertake that so it is a good next step. We all know that Tasmania is a really unique and special part of the world and MONA and all those other things are really highlighting that to the rest of the world. Aboriginal heritage is an essential part of that and we should be celebrating it, but if you go out in the landscape today for a drive you won't see anything. If you're a Japanese or Chinese tourist who comes in without knowledge you could be forgiven for thinking there were never any Aboriginal people here and there are no Aboriginal people there now. There is nothing there.

When I go out in the landscape I see it very differently; I can see Aboriginal presence everywhere. I come from the north-west, up at Goat Island. On the non-Aboriginal side we've been there since the mid-1800s. There's the fish trap there and they've rebuilt that because they used to live just up on the hill, but it was already there and if you look when you step up to the car park from Goat Island there's a line of middens this thick running on the cutaway of the step. The country is talking to you everywhere.

PUBLIC

Mr JAENSCH - My kids and I used to go rockpooling at Fossil Bluff and before we got up on top of the bluff we looked down to realise we were in fish traps because they were the places we were finding fish.

Prof. WALTER - Yes. That needs to be celebrated and brought out in the open. We can't forget what happened in the past but it's a small part of this whole history.

Ms O'CONNOR - Thank you, Maggie, for this presentation and coming along to teach us today. Regarding the parliamentary Aboriginal council you have proposed in your submission, can you flesh that out a bit? As you know, there has been submissions made about parliamentary representation for Aboriginal people and maybe setting aside some seats. We have heard from Rodney Dillon about doing it another way through the party system, but this idea has huge appeal and I'm very interested to know how you think it might work.

Prof. WALTER - I love the idea of parliamentary seats but I'm also a pragmatist and it's got Buckley's, it's not going to happen. I would support it but I don't expect to see it in the recommendations. The advisory committee, however, is a much more robust idea. An advisory council can provide advice and guidance to Parliament on issues that Parliament refers it to but can also bring issues to Parliament that are important for the Aboriginal community that may not be seen within Parliament looking at various acts and other things. I would see that it would be made up of people appointed for their particular skills and abilities. It would have to be representative of the three main Aboriginal families in Tasmania to make sure it is fully representative. I'm not the identity police and I don't go there, but the three families are well documented and have been for a very long time. It would meet on a regular basis, not too often, to consider issues of importance to Aboriginal people and to Parliament's consideration.

There would be the two avenues and ways people could feed in, Parliament could feed in and vice versa. It would also be a fairly strong committee that could help make sense and be that link between the Aboriginal community - not that we're going to do all the work for you - and the Parliament so we can translate things in a way that people will understand.

Ms O'CONNOR - What are we missing out on as parliamentarians at the moment in terms of hearing the voice and understanding that story and connection to country? What do you think might be able to be achieved in a tangible sense through that council?

Prof. WALTER - What you're missing out on is huge. The level of non-knowledge - it's not ignorance, it's non-knowledge.

Ms OGILVIE - You don't know what you don't know.

Prof. WALTER - Yes. Even if you're just considering non-Aboriginal Tasmania, imagine the depth of knowledge and belonging you would feel if all this knowledge was available to you and you could be proud of it as a Tasmanian, as part of your own heritage? It doesn't mean you're Aboriginal and we have this bit and you have that bit; it belongs to all of us as Tasmanians. We're all part of this place.

Ms O'CONNOR - And what do you think we might be able to achieve as a community through this council?

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Prof. WALTER - We would have an important Aboriginal voice that could contribute and we would completely change the narrative of Tasmania. That is important for us locally, nationally and globally. I took Ray Groom's point about not being ho-hum, so it would be a great lost opportunity if the words that came out were some of the almost weasel words that are in some of the other documents. It's all a bit mean-spirited, a bit like, 'Yes, we'll give it to you but what's the least possible thing we can give to you?'. To open up that narrative of Tasmania would really create a whole new space of how we are.

Ms OGILVIE - I want to come back to what's at the heart of this conversation for this committee, which is a change to the Tasmanian Constitution. Being a lawyer, in my mind it is very clear that it is the cornerstone of law from which all other state laws flow. Do you think there is a recognition of that sense, that this is at the heart of things under what I would call our 'Anglo' system and that for us to propose this we are trying very hard to reach out, so should the big-heartedness with which we frame the words be done by us or you when it is drafted? Should it be a joint effort? How would you see that?

Prof. WALTER - It has to be a joint effort and something like the committee I have already proposed would be a good place to start to work on those words with parliamentarians to get those words right.

Ms OGILVIE - So an ongoing standing relationship with a model where we can develop that friendship Rodney was talking about - a deeper friendship?

Prof. WALTER - Yes, a deeper friendship and a deeper family.

I just want to point out my little graph about the growing Tasmanian community. As we all know, 7 per cent of Aboriginal Tasmanians aged 18 to 24 are at university compared to 23 per cent of non-Aboriginal Tasmanians. There is three times the rate in jail, four times the rate of children going into care. We don't have the health data but all the GPs I know tell me their Aboriginal patients are way at the end of the multiple disease and burden of disease level. If you have this group coming through, if we don't change something in Tasmania - which includes the whole narrative - then the story for this huge group is going to be the same as in the past. That has to change.

Mr JAENSCH - Thank you very much for your contribution. Most of the witnesses we have had so far have talked about the things we need to have, as well as words. I am clearer that your Aboriginal Advisory Council model is something which might even precede the words as to be a basis for it. When I read your submission it left me eager to get chapter 2. I suspected there is more you have to say about what else is important, as Mr Groom did. Can you give us some idea of what other dimensions need to be reflected in whatever we end up with in the Constitution?

Prof. WALTER - For the terms of the Constitution you need to look at the United Nations Declaration of the Rights of Indigenous Peoples as one of the key informing documents of the sort of things that need to be considered within that. I would like that document, which Australia has signed up to, to also be at the heart of any advisory committee that we might put up.

PUBLIC

It is about recognising, not formally like they do in New Zealand, but informally, a biculturalism. New Zealand is officially bicultural, which is a wonderful thing so they have Maori seats in Parliament and always have had. Everybody speaks Maori at the opening of Parliament. It would be wonderful if we had palawa kani that was spoken regularly in Parliament by Aboriginal and non-Aboriginal people alike. For that to happen, the Aboriginal community has to feel safe to share. You release a word like kunanyi and somebody domain-names it within hours.

Ms OGILVIE - That's it, and then fights you on it.

Prof. WALTER - Yes. Those things have to be taken care of to make the Aboriginal community feel safe. There is a lot of distrust. The idea of building the bicultural atmosphere and narrative of Tasmania through lots of small, but highly visual things -

Ms O'CONNOR - Which we did with dual naming.

Prof. WALTER - Dual naming is so important. I have recently hosted a big group of Navajo students from Northern Arizona University and they were all the time asking, 'Where is the Aboriginal presence?'. They are from the Navajo nation, right next door to Northern Arizona University. I was at a loss.

The other thing is of course Tebrakunna, which is vitally important. It is where the vast majority of us come from. We are all from that north-east nation because that is where the predation of the women by the sealers happened. The only people who survived were the offspring of some of those women and sealers who have stayed on the islands and didn't get shunted down here to the orphan school. My matriarch, Dalrymple Briggs, was with Mountgarret. John Briggs was with Munro out on one of the islands. If land hand-backs are going to happen - and I am not asking for millions of acres - they have to be places where the contemporary Aboriginal population have a real connection to. We do to that area. Have you been to the Tebrakunna Visitor Centre?

Ms O'CONNOR - Yes.

Prof. WALTER - It is wonderful. The Chinese built it. Aunty Patsy went to where they were building the turbines and said, 'This is really important land to Aboriginal people. We should have an interpretation centre.' They said, 'Of course you should'. Away it went. That is the sort of attitude that I would like to see in Tasmania. When we say 'dual naming', a celebration of manalaganna, recognition of some of these important sites, even though some of them are sites of sorrow, that people say, 'Of course we should be recognising those things and of course we should be celebrating those things'.

CHAIR - Thank you very much, Professor, for your time.

Prof. WALTER - Thank you. I asked at the back of my submission: how willing are you to take leadership on this critical issue?

CHAIR - We will sit on that question and we note it, and we appreciate your feedback.

THE WITNESS WITHDREW.

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Professor HENRY REYNOLDS, UNIVERSITY OF TASMANIA, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR - Thank you very much, Professor, for being here today. This is a proceeding in Parliament, so privilege does apply to what you say, but once you depart that is a matter for yourself.

Prof. REYNOLDS - Generally I support the idea of recognition. I realise in Tasmania there is a particular and distinctive problem of deciding who is and who is not an Aboriginal, and which groups are legitimate and which are not. There are two areas I want to address and they relate very much to the work I have done over many years. The first is the question of land and land rights, and the second is a matter of history.

In respect to land rights, I have often expressed the view that it would have been possible to mount a land rights case in Tasmania in the north-east, where we know definitely they are direct descendants of mannalargenna. As you probably know, land rights cases are time consuming. Many of them take more than 10 years and you may not, of course, get a favourable judgment in a lands rights case.

What could be done in Tasmania - and let me say it is very much the traditional territory of the north-eastern people and not elsewhere - is what you might consider is a land rights agreement. I am not quite sure whether you are aware how important these have become but over 600 land rights agreements have been negotiated. Many of them are in Queensland and often with Aboriginal groups who either do not feel confident they can establish the level of proof to get native title, or because they know this is a much quicker process than going through the courts. This is all conducted by the Land Rights Tribunal, which provides negotiators and sets up the necessary meetings. Once the land use agreement has been signed it has the force of law under the Aboriginal Lands Rights Act.

The north-eastern area would be a very good area for that to be done, in which case it may be that - particularly given the TAC is overwhelmingly made up of people descended from the north-eastern tribe - they would probably gain greater access, greater legitimacy, greater authority in that area of their ancestors' tribal territory.

On the other hand, I do not consider they have the same sort of claim anywhere else in Tasmania. I think they can certainly claim an interest, but certainly not an interest in the legal sense of any form of ownership, because such claims would be asserting rights over the land of their traditional enemies, in particular.

In terms of land, it is important to come to some agreement with, if you like, the north-eastern people. There is now very interesting work being done, particularly by Patsy Cameron, in a sense re-learning the country. As I say, outside that area, it is a different story, where the TAC should certainly have an interest and so should other Aboriginal groups. That interest may involve their participation in management and things like this.

In a way that is a two-pronged attack to the question of return of land and land ownership, where there is a serious claim for the people in the north-east, because we know that George Augustus Robinson as an agent of the government made an agreement with

PUBLIC

mannalargenna, who was the recognised leader of the north-eastern people. That is documented. Therefore there is a stronger legal basis for those people than is usually seen. That is my first one, the question of land rights.

My second point is the question of history. Recognition as it's understood at the moment is clearly related to history - that is, you are recognising the historic occupation, ownership and sovereignty of the original inhabitants over the land. It is an historic recognition.

If you are going to recognise the prior ownership, it is equally appropriate to recognise the struggle to maintain that land in what is in Tasmania known as the Black War. This is particularly so at the moment because we are spending a great deal of time and money in recognising the importance of war in commemorating past wars. When in Tasmania the conflict was clearly a war, it was recognised as a war at the time and was called a war by the governor. The British House of Commons parliamentary paper, which contained much of the correspondence, was about correspondence relating to the military operations against the Aboriginal inhabitants of Van Diemen's Land. Remember, in the Black Line there were 500 British soldiers involved. Not only was it seen as a war and looked like a war but the death toll was very significant, much higher than elsewhere in Australia. There were 250 Europeans killed and more Aborigines. It is quite likely the death toll in the Black War over a five- or six-year period was as high as the number of Tasmanians who died in the Second World War.

This is a very significant part of our history and it should be recognised. It can be recognised locally by the State Government and possibly by some sort of war memorial, but recognising both the white and the black people who were killed. There are a few monuments of that sort around Australia now. Even more so, I think the State Government should ask the War Memorial to recognise the Black War of Tasmania. It is an event of not just Tasmanian but national significance and should be recognised as such. They are my two points: land and history, and in a sense they both relate very closely to the question of recognition.

Ms O'CONNOR - Thank you for that, Henry. In your book you talk about the war and describe the Aboriginal people as 'mighty warriors' - I think that's the term you used. Why do you think as a community we haven't been able to acknowledge Tasmania's first warriors and that history? How much do you think it has held us back as one people divided?

Prof. REYNOLDS - It is important to recognise that it was a conflict. It was far more even than fighting later on the mainland, particularly in northern Australia. We can recognise the fact that most of those who were killed were young convicts who weren't in any sense settlers choosing to be here. In a way they were as well the victims of British government policies as the Aborigines because they had no choice in the matter. There is a very good reason to treat the conflict in Tasmania as morally different to the conflict in many other parts of Australia where people were going out into Aboriginal country to take the land. The poor convict workers who were overwhelmingly those who died weren't in that situation.

The extraordinary thing is that the Tasmanians were so successful in their fight with clubs and spears that were just sharpened wood. They were able to maintain this fight for five

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years. The main groups across the middle of Tasmania were reduced to only 26 people at the end of this war and yet they had gone on fighting. Those two young men - Tongalongata and Montpeliata, were undoubtedly two of the most extraordinary military figures in Australian history. Even TMAG does not recognise them in its new display - there is nothing about them as individuals and yet we can know a lot about them. They ended up on Wybalenna, and there is a lot about them in the documents. You could write quite significant stories about them. It is a real absence, a strange unwillingness to recognise.

This is not the case in New Zealand. Obviously it is not the case in the United States where, if you look up the official United States government list of wars that the United States has been involved in, they include every Indian war, even the smallest ones that lasted for a short time and may have killed 12 people. These are considered officially as wars in the United States.

There is an anomalous situation and Tasmania really should take the responsibility of pushing this question as part of recognition.

Ms O'CONNOR - My next question goes to the fraught issue of identity, aboriginality, the families, people who identify here as Aboriginal but there is no written record, the Lia Pootah people. In your book you talk about the erasure in the records of people, their culture and their history. Do you want to talk more about that? It is really at the heart of much of the conflict, lack of action and tension in our engagement with Aboriginal Tasmanians.

Prof. REYNOLDS - One of the problems has been the government, and not this Government in particular, but governments over a long time, by simply recognising the TAC I think it is exacerbated. The TAC is clearly authentic, those people know their genealogies, they were taken in the 1950s and the 1930s and the genealogy is absolutely solid. There are the other groups, in particular those descended from Fanny Cochrane Smith in the south and Dolly Dalrymple in the north.

It seems to me their legitimacy is equally sound because I suspect they, particularly the Fanny Cochrane Smith people, too have their genealogies rock-solid. There are other people who feel genuinely that they have Aboriginal ancestry, some of them may well be the descendants of black convicts. Remember there were quite a lot of 'people of colour', as they were called, or black convicts but in the early years there were almost certainly children born of the sexual relations between European men and Aboriginal women who may simply have been absorbed into the community.

As you know, there was a federal court case into the question of identity. Unless you could prove definitely that these people were not Aboriginal, the assumption had to be that they were. That being the federal court judgement, I think it was sound legally in the argument that identity is important, almost like a form of property, in a sense, and it cannot be lightly dismissed. There is this grey problem where, I do not know what the TAC now says but they used to say, 'There about 6 000 of us, we know exactly who we are and all the rest are impostors'. Maybe their line is not as hard now as it used to be but it is still a very difficult problem.

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Ms O'CONNOR - It is quite similar.

Prof REYNOLDS - That is why I would settle with them separately but then say that you cannot claim land elsewhere in the state - why should you? They talk about return of land but it was never their land. They may want it but it is not a return in any sense of the meaning of the word.

Mr JAENSCH - Professor Reynolds, you have made reference to an agreement between Robinson and Mannalargenna; other witnesses have also raised that in their evidence. I am interested to understand more about that and its formality, but also its relevance to our challenge now regarding the drafting or recommending something in formal recognition. Is it of such a nature, in your view, that it is something that we should reference or even turn to in this discussion?

Prof. REYNOLDS - Yes, I think so. We didn't know about this until Robinson's papers were published in 1965, when Plomley edited and published them as *Friendly Mission*, but we know now that Robinson made promises to Mannalargenna that he recorded. They were that they would leave Tasmania for a short period of time while there was still conflict, they would then be able to return to their home territories and there would be no interference with their culture and their traditions. There were several other indications he was making the same promises, but I suspect he was doing that all around. That is why people went. They were not forced to go. They could have killed Robinson any night of many months. They went because they felt they had an agreement.

Mr JAENSCH - I'm not as interested in whether that is an agreement of a type which may be binding down the generations, but is the notion of that returning when safe and no interference with culture a premise we might usefully revisit?

Prof. REYNOLDS - I think so. When the younger people sent a petition to the Crown from Flinders Island they said, 'We made an agreement with the old Governor and we have not lost it from our minds. We are a free people, we were not taken prisoner.' The interesting thing is, had this been put on paper, I suspect it could well have been considered as a treaty. People say that can't be right but you have to look at cognate jurisprudence, in particular Canadian jurisprudence. In Canada there was a case *Shuey(?) v the Queen*, maybe 10, 15 years ago. The Australian High Court is inclined to look at Canadian jurisprudence in those areas where they haven't had any experience. This was a claim by Indians that they had an agreement to be able to have access to a particular part of land. This had been promised to them in 1758 or so by a British army officer, who had written this down. The court looked at this and said, 'This has to be considered as a treaty', and a treaty has to be seen from the viewpoint of the indigenous people. If the indigenous people had reason to believe this person was an agent of the government, it has to be considered as a treaty. It was confirmed.

That area of law we have had no experience of in Australia. I don't know what a court would do when there is nothing on paper except Robinson's description of it. It wasn't written down like a treaty but it does have to be taken more seriously than just something seen in passing, because there is no doubt that Robinson was the agent of the colonial government and was seen as such by the indigenous people. They felt they were

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negotiating with the government and Robinson no doubt saw himself as such and literally was.

Ms OGILVIE - Thank you. I think we are all very interested in the story of the promise. The idea to me of international treaty law is fundamentally about contracts. What deal was made and were the conditions fulfilled? It seems to me that there is a discussion around one side fulfilled the conditions and did what they said they were going to do, and the other side is perhaps yet to grasp that nettle. My question, coming right up to why we are here today, around constitutional recognition, is in some sense can we see that as part of taking a step towards fulfilling our part of that larger bargain? When it is safe to do so, we will come back together, whatever that looks like. Can I put that to you as a big question?

Prof. REYNOLDS - Yes, it has to be taken seriously and be part of our consideration, just as the Treaty of Waitangi was only a short time later. It is clearly written down and is a much more formal document but for a long time it was disregarded. It has now returned with great strength and is considered the foundation document of New Zealand. We have to treat that seriously. It is specifically a promise made to the ancestors of those people today, we know that. I think everything that is done has to be informed by the history or it lacks the historical resonance that makes it likely to be acceptable.

It is very interesting to look at the community on the Bass Strait islands and how some of them continued throughout this period to regard themselves as Aborigines, although some didn't, some just said they were Straitsmen. Many of them, particularly the Mansells, said, 'We're Aborigines and we have a right to this because we are free British subjects'. They had this rhetoric throughout the nineteenth and into the twentieth century, so there was that awareness that somehow they had been tricked out of their country, and I believe that goes a long way to explain some of the anger.

There is the famous expedition of Tyndale and Birdsall to the islands in the summer of 1939. They went because they were studying half-caste Australians but they left a very interesting record of the discussions they had, as do many of the government inquiries. These people seem to think they have rights to Tasmania. So there is a continuing tradition of the sense of being dispossessed unfairly.

CHAIR - We have been tasked as a committee by the Parliament to focus on the merit of relevant proposals to amend the Constitution Act in Tasmania. Land rights and identity are very important issues and we appreciate that evidence, but I am interested in your views on the wording. You are probably familiar with what South Australia, Victoria, New South Wales and Queensland have done in recent reports?

Prof. REYNOLDS - No, I haven't seen their wording so I'm at a disadvantage here, but it is the sort of wording that is not often in a constitution.

CHAIR - Do you believe it should be in the Constitution?

Prof. REYNOLDS - Yes, but presumably you would want it as a preamble or something like that.

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CHAIR - We are looking at options and a preamble is one of the serious options we are looking at but there are others that have been put in evidence to our committee. Some of the other states have taken a more expansive approach and others a more minimalist approach in terms of recognition of their First Peoples. In Western Australia and some other places they have not legislated. They had an inquiry in Western Australia and there has been the national inquiry with the report delivered by 30 June, so we are looking at that in context. We are looking at our Constitution Act 1934 which was originally enacted back to 1855, so it has a long history. We are looking at whether there is merit in including a preamble or other legislative changes and reforms in our Constitution Act so any views on that would be welcome.

Prof. REYNOLDS - I can see there is a distinct benefit in having a statement, possibly in a preamble, that recognises the long history of human occupation in Tasmania. That is important for us to put a recognition of that long human history in the central document of the state.

The problem then, of course, arises because a lot of your critics are going to say this is just symbolic, it is of no consequence. I can understand why people say that but I think symbolism is important and it should be done. That does not mean it is necessarily all that can be done but that in itself I think has virtue.

My feeling about the recognition is that the Mabo judgement was the critical recognition. That really was so important in recognising that these people owned the land. They were not wandering savages. They actually owned the land and they had a system of law. That was a very great leap for Australian law and that really is the most important recognition. I do not think anything that is done in later constitutional changes can match the significance of the Mabo judgement. That has clearly had enormous effect in the rest of Australia. The agreement with the Noongar people in south-west Western Australia is an extraordinary decision. I noticed there was a new agreement yesterday or the day before in central Queensland. There are now so many of these agreements which follow from the recognition of their land ownership.

I wonder, what can we do? It is difficult because in most of Tasmania there is no chance of people establishing a native title claim. There might be a chance in the north-east in that they did not abandon their country, they were in a sense forced to leave it or they were encouraged to leave it by trickery, if you like, and were not allowed to come back. Recognition, yes, I think your difficulty will be crafting the words, whether that is part of your job; crafting the words will be very difficult but I think in itself it is a good thing.

CHAIR - We are out of time but we thank you for your evidence today, your wealth of experience and knowledge in this space.

Prof. REYNOLDS - Good. I wish you well in your labours.

CHAIR - We appreciate that.

THE WITNESS WITHDREW.

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Reverend DOUGLAS JEFFREY GRAY, TASMANIAN COUNCIL OF CHURCHES, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR - Welcome and thank you for being here today. Are you familiar with the guidelines for giving evidence?

Rev. GRAY - I did read the guidelines.

CHAIR - It is a proceeding of the Parliament and as such there will be privileges attached to the words and evidence, which allows a full and frank discussion across the table but once you leave this room that privilege is departed and you are in the public arena from there.

Having said that, thank you again for being here and we appreciate your presence. Please proceed and then we will have some questions.

Rev. GRAY - You know the reason I am here? I am representing the Tasmanian Council of Churches, I am currently the President. A bit of background just for the committee. The Tasmanian Council of Churches has had a long-time involvement in efforts of reconciliation between Aboriginal and non-Aboriginal Tasmanians. There was a gathering of Aboriginal elders and heads of churches at Risdon Cove in 1999, and for a number of years in the 1990s and early 2000s, there was an ecumenical liaison group on reconciliation that comprised members of the Aboriginal community as well as the Anglican, Catholic, Quaker and Uniting churches that met several times a year to assist building relationships.

Then there were the steps that the state government and successive parliaments have made in building relationships between Aboriginal and non-Aboriginal people around Tasmania. Church leaders have consistently spoken in favour of the return of land. Bishop John Harrower from the Anglicans, and the former Catholic Archbishop, Adrian Doyle, both made supportive public statements in the late 1990s.

This current inquiry is another step towards improving that relationship. The Tasmanian Council of Churches as a whole believes that it can be a helpful step forward. A key issue that has come to me from my consultation with heads of churches, however, is that it needs to be more than just some easy token words. We want something done about it. Just as the Tasmanian Government established a process to provide reparations to those Aboriginal people removed from their families when no other state government did this - and we acknowledge Tasmania was first in that - we also believe that this state's constitutional recognition process could be more progressive than the fairly well accepted acknowledgement of country, which both parliamentarians and non-parliamentarians tend to use.

Within my own Uniting Church we always acknowledge whose land we are on when we start our meetings. That has been common. I guess what I am saying on behalf of our church is, we are looking for something going beyond those courtesy words. We are looking for something that has some meaning for people. We think that type of process falls short of recognising Aboriginal sovereignty in any meaningful or practical issue.

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Among the various comments that I received from the various churches as I prepared for today's hearing, these were some common points that came from the various churches to me. Bishop Harrower is on leave at the moment, so Archbishop Chris Jones, who is the assistant bishop and I think the general - he indicated that the Anglicans are supportive of recognition. They agreed with the sentiments in the submission from Professor Walter. They read it and affirmed that one there. Other comments were, 'We urge the committee to ensure there is extensive consultation with the Aboriginal community.' I am sure that is what you are doing, but that came from my churches.

Also, we see recognition as a precursor to future steps towards reconciliation, including additional land return. I will come back to that. A couple of people made those references.

They also support endeavours to consult widely. I have said that.

They also recognise it is a complex issue and that there is a variety of opinions among some of the Aboriginal and Torres Strait Island communities. Within our Uniting Church, in 1985 our Aboriginal and Torres Strait Island members formed what is known as UAICC - Uniting Aboriginal and Islander Christian Congress. They are the group within the Uniting Church that speaks on Aboriginal issues. Even with that, the -

CHAIR - Is that the Tasmanian group or national?

Rev. GRAY - That is national, but the Tasmanian group is part of that. Our head of church said that for a Uniting Church position I needed to make contact with the UAICC Tasmanian Committee, which I did. I will just digress a tad because I am here for everyone. On our own Uniting Church, we just recently had a national assembly, which is every three years in Perth. There were, in the context of the Australian constitutional recognition, resolutions made at that meeting with which we aligned our position on that. I can tell you more about that if you would like afterwards. That is complex. Within our congress, membership within the Uniting Church, it is acknowledged there is a differing view from some members to others. It is not a united view that comes from Aboriginal people. This is speaking personally now for the Uniting Church, having spoken to our state people, it is more to do with some of the wordings and what is meant by words and things like that - some sticking points. That is an aside.

Going back to other comments that were made, we would welcome further exploration of the meaning of 'treaty' and the implications of constitutional recognition on future possibility of treaty. This came up a few times - treaty and sovereignty. The church said they will continue to be actively involved in groups exploring ways of providing opportunities for education, knowledge-building and discussion on constitutional recognition. We continue to support recognition as long as the form of recognition offered can be seen as a step towards and not a blockage to the larger issues of sovereignty and treaty. That was a common theme. We are committed to work to educate members of the church about treaty.

A comment one group made - it was my indigenous people - was that because the Constitution is the foundational legal document for all government in Tasmania the statement of recognition needs to address the foundations of our relationships between

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Aboriginal and other Tasmanians and, if possible, open the way for some of the foundational injustices to be addressed.

Mr JAENSCH - The sentiment you expressed of more than easy token words has been consistent throughout the evidence we've received so far. You have made reference from one quarter of endorsement of Professor Walter's position, which includes the concept of an Aboriginal parliamentary advisory council of some kind. What else needs to come around this as action more than words?

Rev. GRAY - You've probably got me on that one, unfortunately. I'm not making any excuses for myself, but like yourselves, I'm busy with other things. Just for the committee's information, the seven members of the Tasmanian Council of Churches at the moment are the Anglican Church, the Baptist Church, the Catholic Church, the Churches of Christ, the Salvation Army, the Society of Friends or Quakers, and the Uniting Church. That means your Pentecostal-type groups are not part of the Tasmanian Council of Churches. The Greek Orthodox Church was at one stage a member but is not currently, and the Lutheran Church was an observer a few years back. I can only speak on behalf of those seven churches and these were the comments that came back when I consulted with the various heads. Whilst making that statement, none of them indicated anything concrete for me to pass on.

Mr JAENSCH - But the sentiment is that words in a document that most people would be fairly unfamiliar with now, by themselves don't fix anything.

Rev. GRAY - My reading from the advice I received is that this only part of a stage to look at wider issues of reconciliation.

Mr JAENSCH - You have also mentioned, again from others' comments to you, the words 'treaty' and 'sovereignty' and I had the sense there are people who believe that is an ultimate destination, that this is part of the journey too. Is that widespread or is that a narrow group?

Rev. GRAY - No, it is more than one group. That particular comment didn't come from any Uniting Church folk and that is certainly our position. My reading is that it was fairly common.

Mr JAENSCH - From the context you heard that in, do you have a sense of what they meant by those sorts of words?

Rev. GRAY - Unfortunately no. Because of the other things I am doing, they sent some email details to me and that's what I have run with. I didn't get a chance to personally speak to those people. I spoke to our minister for congress here in Tasmania, Grant Finlay, so I had some input from him.

From our Uniting Church perspective, at our national assembly - and this was in the context of recognition in the Australian Constitution, the bigger picture - the assembly noted that there is a diverse set of views within congress regarding recognition but continued to support recognition as long as the form of recognition offered can be seen as a step towards and not a block as to the larger issues of sovereignty and treaty. That came

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from our indigenous people in Australia but, again, I was not at the assembly so I am not quite sure what they are meaning about sovereignty and treaty.

I am aware of Waitangi and the New Zealand perspective where a formal treaty was made between the Maori and the Pakeha but unfortunately I cannot elaborate further on what they meant by that. I realise at the moment you are probably looking at the recognition and this is probably a further step you may not be envisaging, but I think what my churches would want me to say to you is they're hoping it does not stop at the point you are at the moment but will go beyond that point.

Mr JAENSCH - And not do this in such a way as to truncate it further.

Rev. GRAY - Yes. That could I think in realistic terms be something that may happen over a number of years, not necessarily at this point, but I was asked to raise that and that is what I've done.

CHAIR - Thank you.

Ms O'CONNOR - Jeff, you would agree that reconciliation is a journey -

Rev. GRAY - Yes.

Ms O'CONNOR - and that we are all on the journey now as Tasmanians. In the churches and your engagement with Aboriginal Tasmanians I am wondering if you have some insight into what it might mean spiritually for Aboriginal Tasmanians to be recognised and honoured in our foundation document. Many other issues have been raised with us and it is all part of a story. What are your thoughts on how that recognition and honouring might soothe some of the hurt and anger that lives in our Aboriginal people today?

Rev. GRAY - On the broader issue of spirituality and cultural things, we amended our Constitution of the Uniting Church of Australia in a preamble that now recognises first and second peoples. Of course this is from a Christian perspective. One of the statements is, 'Through this land God nurtured and sustained the First Peoples of this country, the Aboriginal Islander peoples, who continue to understand themselves to be the traditional owners and custodians'. What they were saying was that we as western white people did not bring Christianity to the Aboriginal people; we acknowledge in our church that God was already present and the spiritual nature was already in that.

I'm on a tangent here but I've had some engagement with the Adnyamathanha people who are the Southern Flinders Ranges people. I was on an eco-spirituality retreat which the Anglicans ran but we heard from a geologist about how the earth was formed that way and then we heard a couple of the Dreamtime stories of creation, and for me as a Christian the spirit was there and active in those stories.

To answer your question, Cassy, I had a chance to read through the other constitutions and I particularly like the Victorian one because it acknowledges some of those issues. I think for the local indigenous people - I'd better be careful what I'm saying here because I'm trying to represent all my churches, not just a few - there would be fair acknowledgment that some Aboriginal people may feel that the western system and the church we have is

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white man's stuff. Recognising them in a preamble or an amended Constitution, depending on which format you take. I have read a couple of papers - one by a lass, Alice - but I am also aware that Queensland put in a preamble, whereas the others put it in the middle of their constitutions. I think it would help them to realise we are acknowledging that their Aboriginal spirituality is also valid and part of who they are as a people recognised in the Constitution. The bottom line is that all our constitutions, whichever state we are in, were framed by men who were Anglos.

Ms OGILVIE - One of the things that has been a reflection for me over the last few days is to make sure we are hearing as many voices as possible. It is excellent that we have the Tasmanian Council of Churches here today, so that you very much for that. For my part, I have a connection through asylum-seeker work but I also have kids at a Catholic school. I went to Friends School and I remember distinctly the wall out the front with the broken shards of glass to stop the Aboriginals from getting in, so I appreciate the deep traditional and long-held knowledge of these institutions in that regard but I am always heartened when I see the Aboriginal flag flying as well.

If we are to move forward into this brave new world of family, friendship and inclusion, and if it starts with words and conversations around the appropriate change in the Constitution, do you think we could invite the churches to support us in an ongoing process of engagement, along the [inaudible] line advisory groups? Can I hear your reflections, given your experience within your own organisation in setting that up?

Rev. GRAY - As I began my presentation, I indicated that since the 1990s all the Tasmanian Council of Churches and heads of churches have strong links with Christian reconciliation and working with these ecumenical groups. Going on that past history of the involvement of Tasmanian churches on that level, I am sure they will be very receptive to being invited. I don't believe that is an issue because we've had a strong link going way back to the 1990s of wanting to be involved in that. It is part of what the Tasmanian churches as a whole have done.

CHAIR - Thank you very much for being here and presenting in the way you have and representing the TCC.

Rev. GRAY - As to wording, I particularly warm to the Victorian one. It reflects a bit about my own personal church background. That first phrase at 1A is, 'The Parliament acknowledges that the events described in the preamble to the statement could, without proper consultation, recognition or involvement of the Aboriginal people'. I think that is an important statement to be made. The last section at 2C says, 'They have made a unique and irreplaceable contribution to the identity and wellbeing of Victoria'. I personally like those two additional phrases. I have only seen the Queensland, New South Wales and Victorian ones.

CHAIR - Thank you for that. Our focus is on those terms of reference and the wording, which you have touched on, so we appreciate your feedback.

THE WITNESS WITHDREW.

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Father FRANK BRENNAN, SJ, AO, AUSTRALIAN CATHOLIC UNIVERSITY WAS CALLED BY TELECONFERENCE, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR - Father Brennan, we welcome you and pass to you for opening remarks, after which we will have an interchange in questions.

Fr BRENNAN - Thank you for the honour and opportunity to address the committee. Of course you are aware of the fact that I am not Tasmanian or an Aboriginal so I come as something of an outsider but I have an interest in the question you are considering.

Might I make a few initial observations? I presume I have been asked because I have been involved a little in the discussion about national recognition in the Australian constitution of Aborigines and Torres Strait Islanders and have published a book entitled *No Small Change: the road to recognition for Indigenous Australia*.

CHAIR - Father Frank, I interpose there to put on the record the acknowledgment of your vast experience in this space at both the federal constitutional recognition change process as well as your research and authorship. We acknowledge that and it is very much one of the reasons we are motivated to speak with you and gain your expert input to the terms of reference we have before us in this committee hearing. Please again continue, thank you.

Fr BRENNAN - Thank you. I cannot apologise for Qantas but they were unable to get me to Launceston on Wednesday so it is wonderful to have this opportunity utilising the technology. I have also given you a reference to my address to the Sydney Institute which I addressed together with the Professor Megan Davis, an Aboriginal scholar from the Indigenous Law Centre of the University of NSW, and that might be a useful address to consider the context of my remarks.

The key suggestions I would like to make are these. A lot of the talk about recognition in constitutions is premised on the notion of whether or not there should be mention in the preamble of the Constitution of the situation of Aboriginal peoples. I am strongly of the view that we should draw a distinction between a preamble and what I would call an acknowledgement. A preamble strictly so-called will set out a various list of reasons why one is legislating or constituting, and obviously in the Australian context that would not only include the situation of Aboriginal Australians, but all sorts of historical factors and references to other Australian citizens. Now, it may be that you are seeking to modify or modernise the preamble of your Constitution, in which case there may some place for the mention of Aborigines in that preamble, but even if there is a mention of Aborigines in a preamble, it would seem to me that there is still a case for going further with what I would term an acknowledgement which would be a separate provision of the Constitution that would come immediately after a preamble. That acknowledgement would relate solely to the situation of Aboriginal peoples.

Secondly, I make the observation that the legal difficulties which are thought to be attendant upon a preamble - whether or not a preamble might have any ongoing legal effect - I do not think that doubt, small though it be in relation to a preamble, is in the least relevant to an acknowledgement. That might be a way forward in terms of avoiding the unfortunate prevalence in a Constitution of stating gracious words in favour of Aborigines

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but then stating in the next breath that of course they are to have no legal effect. An acknowledgment freestanding from the preamble and which is not said to be free of legal effect is something which can be safely put into a state Constitution.

Having said that and moving onto what form such an acknowledgement might take, I notice you have a submission from Professor George Williams who has set out the various provisions in the other state constitutions which have made acknowledgements or preamble changes of some sort. I have also had the opportunity to look at the submission from Michael Mansell and to see the very strong statements - understandable there - in relation to what might be achieved by Aborigines with changes of the sort which are being discussed.

In light of those observations I would come first to what I would regard as the most modest type of acknowledgment. It would seem to me that a modest acknowledgment would be stated in these terms:

On behalf of the people of Tasmania, the Parliament acknowledges that Tasmania was first occupied by Aboriginal people, many of whose descendants maintain continuing relationships with their traditional land and waters and respects the continuing cultures, languages and heritage of Aboriginal people.

A very modest acknowledgement of that sort would simply be acknowledging the historical fact that Aborigines were the first occupiers of the land. It would not contain an acknowledgment of the historical fact of dispossession and its ongoing effects but it would acknowledge respect for continuing cultures, languages and heritage of Aboriginal people. It seems to me that a modest acknowledgement of that sort would be the very least you would expect most citizens to embrace, and therefore the welcome if it were contemplated by the Parliament as a change to the Constitution.

My second suggestion would be that there is a case, particularly given the history of Tasmania, for an acknowledgement which is more than that simple modest one. Therefore I would suggest that in addition to the acknowledgement I have already outlined, there would be an addition of two terms of acknowledgment which in part draws upon the language of the existing preamble of the Tasmanian Constitution. If I might read it out completely, this is the suggestion I would give as my own personal submission for an appropriate type of acknowledgment in the Tasmanian Constitution, although of course I add again the caveat that I am not a Tasmanian or an Aboriginal person.

On behalf of the people of Tasmania, the Parliament:

- (a) acknowledges that Tasmania was first occupied by Aboriginal people, many of whose descendents maintain continuing relationships with their traditional lands and waters;
- (b) acknowledges that Aboriginal people were dispossessed of their lands and waters when the Parliament of the colony of Van Diemen's Land was first established, and were long deprived the benefits of peace, welfare and good government of the said colony;

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- (c) acknowledges that Aboriginal people have continued to suffer the effects of their dispossession and past deprivations; and
- (d) respects the continuing cultures, languages and heritage of Aboriginal people.

I want to say an additional word in support of such an acknowledgement. It is quite clear that it has no legal effect but I think the moral imperative which was implied in such an acknowledgment is that Aboriginal people have suffered greatly from past dispossession and all the other deprivations in relation to peace, welfare and good government and that that is an ongoing responsibility for the Tasmanian Parliament.

Finally, I draw attention to the expert panel report produced in 2012 at the request of the Gillard Government on recognising Aboriginal and Torres Strait islander peoples in the Constitution. You will be aware that a number of substantive provisions were proposed both as a result of that report and discussion that has gone on since. There is no need in the Tasmanian context to discuss the present live national controversy about whether a change to the Australian Constitution would include a non-discrimination clause, given that Tasmanian laws are already subject to the Commonwealth Anti-discrimination Act.

Another major theme which has emerged since the publication of that 2012 report has been whether or not there is a need for some indigenous body which might sit alongside our Parliament in an advisory role or perhaps even to have some quasi-legislative role. I draw attention to page 188 of the expert panel report where they stated:

While it is clear that constitutional recognition of Aboriginal and Torres Strait Islander peoples would not directly address many of the issues that are of concern to communities and governments, many of those consulted by the panel supported the idea that constitutional recognition could provide a more positive framework within which the issues collected under the heading 'Closing the Gap' would be addressed more successfully.

I would simply make this observation: that an acknowledgement, particularly a full-blooded acknowledgement such as the one I propose, could be of assistance in setting better parameters for the negotiation of future programs, policies and legislation for the wellbeing of Aboriginals in Tasmania. As presently advised, I would not see there would be a place in your own state Constitution for trying to set up a separate indigenous body, or perhaps to put it more efficaciously, to propose such a suggestion I would think at the moment in Tasmania is something which is not likely to win overwhelming cross-party support.

I would suggest the way forward in this welcome development in Tasmania is that there be an acknowledgment rather than a preamble put into your Constitution and that the changes be restricted to the inclusion of an acknowledgment. The real debate will relate to whether that acknowledgment should simply be an acknowledgment of first occupation and ongoing respect for culture, language and heritage, or whether in addition it would include an acknowledgment of past dispossession and the deprivation of peace, welfare

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and good government and the need to acknowledge there are ongoing adverse effects from that dispossession.

CHAIR - Thank you, Father Frank. We appreciate your experience and knowledge in this space and your special focus on the possible proposals for amending the Constitution, which is very consistent with the terms of reference. I wonder if I can kick it off on behalf of the committee.

Having perused the interstate acts, I would like to ask two things: first, do you have any feedback or comment on the Western Australian parliamentary report that was brought down in the last few months, and the Commonwealth joint parliamentary committee report brought down before 30 June, is there anything we can learn from those two reports that would guide us as a committee? You said there would be no legal effect from the words that you have put to us. My second question is: on what basis do you say that? I think there would perhaps be different views and opinions as to whether there would or would not be legal effect or legal consequences flowing from such wording.

Fr BRENNAN - In relation to your first question, I must confess I have not apprised myself of the Western Australian report, so I am no use to you there. In relation to the report that was handed down by the federal parliamentary committee, suffice it to say that what is central to its recommendations is the need for some form of non-discrimination clause or at least some attempt to limit the scope of the Commonwealth's legislative power so it could only be exercised benignly in the interests of Aborigines.

I have expressed my view fairly strongly on this issue that I think that any of us who endured the traumas of the legislation of the Native Title Act, first in 1993 under Prime Minister Keating and then in 1998 with the amendments under Prime Minister John Howard, would be well cognisant of the fact that section 7 of the Native Title Act was a tightly contested issue both in 1993 and 1998. It relates to the relationship between the Native Title Act and the Racial Discrimination Act.

Suffice it to say that the major parties, Labor and Liberal, whether in government or in opposition, each time - in 1993 and 1998 - rejected the overtures of the Greens and the Democrats to legislate in such a way that the Native Title Act would be strictly subject to the Anti-Discrimination Act. It was agreed by the major political parties that that would not be possible unless there was to be a guarantee of the security of interests of miners and pastoralists on lands in the future where there may be a native title interest. So it is not facile to suggest that only way forward on that, despite the recommendations of the parliamentary committee, is that you would have to get the agreement of the Business Council of Australia, the Minerals Council and the National Farmers Federation to revisit section 7 of the Native Title Act. If you were able to clean that up, you might then consider the question of discrimination.

In relation to your second question as to whether there would be any legal effect from an acknowledgement, I am not aware of any court authority that has ever had to deal with the question of the legal effect of an acknowledgement, but if one looks particularly at the remarks that have been made in the past by Sir Harry Gibbs in relation to preambles, and some of the recent commentary, the most that can be said is that in cases such as Leeth in the High Court of Australia where Justices Deane and Toohey expressed what can only be

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said to be a minority view, namely that one might draw some sustenance and some legal significance from the words of the Commonwealth Constitution's preamble, I do not think you can realistically suggest that that mode of argument transposes to that of acknowledgement.

I would readily concede that if you were to put in an acknowledgement without putting in words of legal exculpation, then of course you would want to get the opinion of Senior Counsel to that effect, but in giving instructions to Senior Counsel, I think you would want to draw a clear distinction between what might be the legal effect of a preamble over that of an acknowledgement. After all, where it says that there is legal ambiguity about the legal effect of a preamble, it has always been premised on the notion that a preamble sets out the reasons why you are legislating within the contours that you are. That is why courts have said if there is ambiguity about the language, you might be able to get some sustenance on what has been said out there in the preamble. An acknowledgement is simply a freestanding acknowledgment which in no way enjoys the same relationships to other provisions as with a preamble.

CHAIR - Thank you for that. I have a third and final question. Having perused Victoria's, Queensland's, South Australia's and New South Wales' Constitutions, it would appear to me that three of the four acknowledge the history and the heritage and the indigenous people as the First People of their states but only one of them has an acknowledgement of past injustice. You are recommending to us that be included in our wording for our Constitution. Could you explain why you recommend including that second part in this Constitution?

The second part of my question is: Queensland legislation not only acknowledges the First People but it also calls for the protection of the unique environment and to acknowledge the achievements of our forebears, meaning not just the indigenous people but all the forebears from many backgrounds who together faced and overcame adversity and injustice, and whose efforts have been appreciated. How far do we go with the wording that we are considering?

Fr BRENNAN - If I may take the second question first, Queensland, of course, has a preamble rather than an acknowledgement.

CHAIR - Correct.

Fr BRENNAN - As I said at the outset, if you were going to go down the path of revising or modernising the preamble of your own Constitution, then of course you would speak of things other than simply Aboriginal peoples and their relationship to the polity of Tasmania. If you were to simply have an acknowledgement, as I have suggested, then I think you can limit it to Aboriginal peoples and their relationship to the polity.

On the first question, and I say so with the greatest of respect not being a Tasmanian, I would think everything I have heard from Tasmanian Aborigines over the years - not only Tasmanian Aborigines but from a lot of Tasmanian citizens - is a very acute awareness that the dispossession and injustice which was suffered by Aborigines in Tasmania was all but total in the early years of the colony. I notice, for example, Mr Mansell in his submission to you pointed out - and I have not checked these figures myself but I have no

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reason to question them - that now on the mainland of Australia Aboriginal people and Torres Strait Islanders have interests in anything up to 30 per cent of the land mass, whereas in Tasmania it is only 1 per cent. I would have thought that in Tasmania, if I may say respectfully as a mainlander, the issue of the injustice of the dispossession and its ongoing effects is something of acute local significance. I am sure you will have heard this from local citizens down there to that effect far more eloquently than myself.

CHAIR - Thank you.

Ms O'CONNOR - Father Frank, when Michael Mansell and other community leaders have talked about constitutional change, whether it is in the context of Commonwealth change or what is being discussed here at a state level, there is a very strong desire that along with that change, should it happen, there would be a set of rights and responsibilities - rights for the First People, responsibilities on the part of government and the Parliament. Having listened to you I know you understand in part how grim the history was here and quite distinct in a number of ways from what happened in other states, what do you think the meaningful, tangible effect of constitutional change can be? How do we ensure it is also part of a push to have some more tangible outcomes that go beyond words in a constitution?

Fr BRENNAN - It is the old debate. It is never a matter of 'either/or', it is always 'both and'. Even though I am a lawyer I don't see any magic in constitutional recognition, but if that constitutional recognition is accompanied on the side by other undertakings which are made in means of negotiation and partnership, setting policies and service delivery, then the whole package can be something which redounds for the wellbeing of Aboriginal people generally. I am cautious about the idea of trying to write some responsibilities into a constitution as such, whether it be the Federal Constitution or a state constitution. I suppose, having chaired the national human rights consultation for the Rudd government, I became very aware of just how cautious our politicians generally are in our major parties about trying to write too many rights into a constitutional document, thereby transferring power from elected politicians to unelected judges. We are very different from what you might call the American context.

The other observation is that the more particular you start to get with rights and responsibilities then the more acute becomes the question as to who is eligible for the exercise of those rights and to whom are those responsibilities to be owed? I could give perhaps a contemporary controversial Tasmanian example. Senator Jacqui Lambie in her maiden speech claimed she was an Aboriginal person or a person of Aboriginal descent, and that caused some agitation among some Aboriginal groups in Tasmania. Those sorts of disputes you want to quarantine from your constitutional provisions, and have those dealt with in other more administrative-type procedures.

Ms OGILVIE - Father Frank, thank you so much for appearing electronically and for your deep knowledge in this area. We forgive you for not being Tasmania, but we think you are coming very close to being an honorary Tasmanian. I am very interested in your legal distinction between amending the preamble and/or having an acknowledgment which may sit separately, perhaps as a separate paragraph. We heard some evidence this morning from Ray Groom. He opined that under the Tasmanian Acts Interpretation Act the preamble sits within a separate category as far as interpretation is concerned. He was less

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concerned about the possibility of a broader interpretation being driven from the preamble. The point you make is sage because if we were in a Commonwealth jurisdiction, depending on what sort of matter was brought on, the determination of what the preamble was pointing towards may be taken more broadly. Am I encapsulating that or am I on the wrong track?

Fr BRENNAN - I suggest further that most of the fears which are expressed about the unintended legal consequences of preambles are overstated in that there has not been any proven case where a preamble has resulted in unintended consequences which people think horrific. As to the national debate, the usual fear is expressed in some of the thinking that was developed by Justices Deane and Toohey, particularly in Leeth's case, but they were only two of the seven High Court judges and their views never developed any traction. In an ultimate court of appeal you will often have one or two judges who float ideas, but regarding the idea that somehow a preamble of a constitution or an act has had devastating legal consequences, I am not aware of any in contemporary Australian history.

Ms OGILVIE - I think Ray Groom was on the same page as that.

CHAIR - Would you like to make any concluding remarks, Father Frank, or can we wrap it up.

Fr BRENNAN - I might put a formal note to you setting out the wording of that acknowledgment that I suggested.

CHAIR - That would be greatly appreciated.

DISCUSSION CONCLUDED.

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Mr ANDRY SCULTHORPE AND Ms SARA MAYNARD, TASMANIAN ABORIGINAL CENTRE, WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.

CHAIR - Thank you for being here. We are a committee of the Parliament, therefore things that are shared here attract parliamentary privilege. All interchange and discussions are properly protected but once you leave this room, normal defamation and other laws apply.

Ms MAYNARD - We are really keen about this issue. The TAC has been fighting some recent battles lately in regard to legal services. We understand that Michael Mansell, a leader in the Aboriginal community and a very good friend of ours, expressed his opinions on the matter in Launceston.

CHAIR - Are you associating yourself with those opinions today, or are you sharing separate opinions?

Ms MAYNARD - We represent the Tasmanian Aboriginal Centre -

Ms OGILVIE - Michael was here in his personal capacity.

Ms MAYNARD - Yes, as a member of the APG - the Aboriginal Provisional Government.

CHAIR - So he was speaking for them?

Ms MAYNARD - Yes, so we are speaking on behalf of the Tasmanian Aboriginal Centre.

If 'Recognising Aboriginal People in the Tasmanian Constitution' is just words, then we, as the leading community organisation on behalf of the Tasmanian Aboriginal community, would not support it. We don't want just words, we want action. Some of the things we would really support are land return; obviously that is something the Tasmanian Aboriginal Community believe in and we have a great working system at the moment. We're looking at an economic base so that's something else we would be requiring, and Aboriginal representation, seats in the Parliament, so that we have people who represent our community, a voice that sits within the Tasmanian Parliament.

CHAIR - Would you like to share any opening remarks, Andry, before we go to questions?

Mr SCULTHORPE - To reiterate what Sara has mentioned, recognition can recognise a lot of things but it really has to deeply recognise the past of Tasmania and the situation of where we are. More importantly, it has to recognise how it is going to improve the situation for Aboriginal people. Tangible benefit is essential from our point of view in a campaign like this. We don't want it just to be statements that continue to repeat things that are obvious, like we were here first. It needs to be more than that.

The things Sara mentioned are very important, like economic self-sufficiency. An economic base to develop from would be essential. Some ways that could be done is through a land tax system similar to other states. Clearly land return has been on our

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agenda for a long time and it is important that our agendas that have been going for a long time are recognised and acted upon. That is the foundation for what we see as something that is going to improve the situation.

Ms OGILVIE - Thank you so much for coming. It is really helpful for us to have everybody at the table knowing that we have a long way to go. We have heard a lot over the last two hearings around more than just words. I don't think there was anybody who didn't mention it, and certainly from my perspective the ultimate aim is to move forward together. Certain models have been put forward by various people and I don't know if you have had the opportunity to read some of the submissions, but Maggie Walters was suggesting an advisory council and there are other suggestions and other models to have this form of engagement. If we were to suggest that we move ahead with constitutional recognition and work together to frame up appropriate words, what sort of model or process or ongoing dialogue could you envisage that would make this deliver more than words? Is there something more that we could be doing?

Ms MAYNARD - First of all there would have to be agreement that there was going to be more than words; that is number one. After that we would take detailed information back to the Tasmanian Aboriginal community as a whole to come up to frame the possible model that would be put in place. The TAC does an amazing job in regards to community consultation. We have three officers around the state. We're also linked in with Cape Barren and Flinders Island and we would be talking to members of the Aboriginal community about exactly what they would like to see. Obviously we would prefer this process to go past November, the end date, and it would be great if we could continue this discussion and have agreement for it to go past November this year so we can continue to work on things together.

Mr SCULTHORPE - Our thinking is that advisory bodies in general have a limited potential to really help Aboriginal people. It needs to be recognised that Aboriginal people have a right to be involved, to actually make decisions on issues that affect Aboriginal people, the big issues around culture, heritage, land and language. In my mind it's not been demonstrated that an advisory body has ever really achieved that, so the idea of having recognition through Parliament is probably something that would be a stronger model so it sits Parliament or bodies that have decision-making power within the Parliament under the Constitution. A continuation of setting up advisory bodies isn't a strong result for us.

Ms OGILVIE - You're looking for something that has more teeth?

Mr SCULTHORPE - Yes.

Ms MAYNARD - Recently more people, especially governments, are realising that is the way to go to have direct contact with the Aboriginal communities because there is a better outcome than an advisory committee. Advisory committees just advise things. When you have direct contact with the people you are wanting to achieve things for it is more meaningful when you have better outcomes.

Ms O'CONNOR - I think what Maggie Walters is proposing would have more weight in law than an advisory body and more of a direct connection back to the community. It is more

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of a special council to attach itself to the Parliament to advise it on all the issues that are relevant to the community. Once you create that sort of body you certainly create an expectation that it delivers an outcome for its people. It is not like some advisory body; it is a special council that would attach to the Parliament.

My question is about parliamentary representation. When Michael spoke to us the day before yesterday he talked about the three seats, the quota system. Do you think that's necessary, because there is so much leadership within the community here and strong Aboriginal leaders? Why do you think you need to set aside a number of seats rather than coming up through the democratic process?

Ms MAYNARD - Because I don't think the current system is working, to be honest with you. If we have community representation and people in our community who have a connection with these people, I feel they would automatically get us, know us and have our interests at heart. I think the continuing of open dialogue would be great if we had Aboriginal people allocated in the Parliament.

Mr SCULTHORPE - I think it would be very difficult for Aboriginal people to get elected to Parliament through the public electoral process.

Mr JAENSCH - As Aboriginal people?

Mr SCULTHORPE - Yes.

Ms O'CONNOR - Or without a party behind them?

Mr SCULTHORPE - Yes, for them to get voted into Parliament would be hard so there would need to be specific Aboriginal seats so they could be voted in by their community.

Ms O'CONNOR - That's an interesting thought. It's hard for anyone to run for Parliament and win a seat and some are more supported by parties than others. I am particularly interested in the notion of how you get the tangibles out of not only this process but the Premier's desire to reset the relationship. What do you think of the idea of a treaty or how would you ensure that certain rights and responsibilities are placed on First Peoples and government if not through this constitutional change process? Is it through a treaty? How do we do it if it is not through a special council?

Ms MAYNARD - I think a treaty would be the ideal.

Mr SCULTHORPE - A treaty has been talked about for a long time and I think there is a strong will in Aboriginal communities right around Australia for a treaty, so that could be the mechanism if not through constitutional change.

Ms O'CONNOR - You are aware of the Campbell Town meeting the day before yesterday and a new group has been established. I acknowledge this is your business so I'm not trying to put my nose in too much, but how do we make sure that governments and parliaments are talking to as much of the community as they possibly can?

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Ms MAYNARD - Come and talk to the TAC. The Tasmanian Aboriginal Centre represents the whole community. We have open community forums. There is only one community.

Mr SCULTHORPE - The Parliament can talk to whoever it wants. We would never say don't talk to anybody.

Ms O'CONNOR - No, I guess we'd want to be assured that we're hearing the voices we need to hear.

Ms MAYNARD - Will Hodgman came and caught up with the community. He has visited the TAC, both offices. We have had ongoing discussion with him about various kinds of things and we have done that with the Labor government and Greens over the years. Sometimes we all don't agree with each other, of course, but we try to work towards a resolution.

We do a lot of community consultation. The community can come into any branch meeting. We have branch meetings regularly in our areas; every four to eight weeks our community can come in and talk about any issue that they want to.

Ms O'CONNOR - Is that how you do the consultation, at the branch meetings, a bit like a party branch meeting where community members can feed into positions and issues?

Mr SCULTHORPE - That is one mechanism. They are open so all Aboriginal people can attend those but that is only one activity of many. Other times there will be specific meetings called and that sort of thing, annual general meetings.

Ms MAYNARD - Also we do general consultation all the time within the community. I go out and visit families in their homes and I talk about all sorts of issues and see what people's thoughts are in particular issues, whether it is land return, whether it is a tourism venture, whatever it may be at the time.

I visit Aboriginal people in Risdon Prison and we talk about all sorts of things all the time, and that is community consultation.

Ms O'CONNOR - That is what Maggie Walter was saying this morning. It is quite a unique and deep consultation philosophy within the community here.

Ms MAYNARD - It is very embedded within the TAC. For example, I popped over to the elders group last week and I spoke to 20 elders at Risdon Cove about lots of different issues. It was fantastic and it has always been that way. People can always pop into the TAC and catch up with us and talk about a particular issue. You can always pick up the phone and call the CEO, unlike, I am sure, in other organisations. It is pretty casual and relaxed. You have to be when you are a part of a community-based organisation and you are representing people you care about.

Mr JAENSCH - You have talked about, as everybody has, not just words but action to follow. Our job in this committee initially is to look at ways to achieve recognition in the Constitution. Do you think that the specific actions, the practical aspect, needs to be named

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in the Constitution or do those things need to be in place before we get the wording of the Constitution squared, or does the Constitution just need to support and enable further reconciliation along the lines that you have talked about, or otherwise?

It is a chicken and egg thing because it is high-order document rather than a prescription, I think. You made some comments earlier, Sara, that the wording is one thing but you would need to go back and consult and bring agreement on the enabling actions almost before agreeing to what is in the Constitution - that is the sense. I am interested in that process and how you see that working.

Ms MAYNARD - Andry might want to have some input on this also but I think that if the Tasmanian Aboriginal community were going to support this we would want agreement of some actions prior to supporting it, whether that is agreement with the Tasmanian Government about the things like land return or like receiving some money in regards to land tax and getting secured seats in Parliament, then we agree to including us in the Tasmanian Constitution then that might be one solution.

We could try to talk and work out what the best practical solution for all of us, for both parties, is.

Mr JAENSCH - Could you imagine a situation where the TAC would publicly withhold support for constitutional recognition until you had parliamentary representation, hypothecated land tax and land returns committed legally?

Mr SCULTHORPE - It would need to start showing some signs of being of benefit. These are the things we have said we want to aim for, for benefit. How you are going to write that up is probably the job ahead for you but that is the sort of thing we want to see out of it. We could make an assumption that we may not support whatever it develops into next but we would like to be able to see something we are happy with.

Ms OGILVIE - We are very much hearing that we would like to support it. The idea for me is that the conversation needs to happen in parallel around what you need and what we need, it is a negotiation. It may be that we look at what that framework looks like, with tacit approval that we move down towards the path together in the hope that we arrive at a place where you support the constitutional recognition and we say, 'Here's the pathway to the things you need'. For me, that has to be dialogue. Is that a process you think you could participate in?

Mr SCULTHORPE - Yes, that sounds reasonable.

Ms OGILVIE - That assurances are given, there might be a memorandum of understanding about what is in the conversation that goes beyond November, that there is a standing conversation that continues. For me, that seems to be a way we could move forward together. I put that to you.

Ms MAYNARD - Yes, I think this is just a start. The Aboriginal community wants to head in a particular direction but at the same time we don't want tokenistic words, and I am sure you guys would agree and understand that. Our current Premier has made a commitment

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on wanting to work better with the Aboriginal community, and that is why we are here today. We have multiple things going on at the moment because we want to work on achieving the things I have outlined. I am sure, Cassy, you support land return, and so do you, Madeleine.

Ms O'CONNOR - Absolutely - we tried.

Ms OGILVIE - Yes.

Ms MAYNARD - Hopefully we are going to work on you guys soon and we can go from there.

Mr JAENSCH - I am going to leave here thinking about how we have an arrangement, accepting that some of the aspects you have laid out - land reform, economic base, representation in Parliament - there is a long journey to get to some of those. You can't agree to agree on something which may be somewhere down the track. Does that mean constitutional recognition is something we need to defer the hope of until we have satisfied those other areas? Is that the reality, or is it a starting point from which to go on the journey towards those other things?

Mr SCULTHORPE - Let's hope it is something that can spark a change that can cause those things to happen. We're repeating ourselves a little bit but we really want to see some benefit. An incremental benefit is hard to perceive in the short term and so we want to see something that provides a pathway.

Ms O'CONNOR - Two Tasmanian premiers promised to return wukalina - Mount William - to your people. Have you had any approaches or any further discussions about that? We had Professor Henry Reynolds in here earlier talking about the north-east and the north-east families. If we are talking about land returns, is that possibly the most important and symbolic in terms of tangible, meaningful return? Have you had a look at some models such as the Quandamooka on Stradbroke Island, where the park was handed back to the Quandamooka people? They have title and they have management rights. Have you thought about those sorts of things as a mechanism for having a promise made twice fulfilled?

Ms MAYNARD - On your first question, I think there are significant places all throughout lutruwita/Tasmania that are significant to the Aboriginal community. I don't just think the north-east is wholly and solely. There are so many significant places within Tasmania that are equal. I don't think you can say one place is more special than another place. The Tasmanian Aboriginal community has wanted particular areas of land returned for some time now, and wukalina is one.

Ms O'CONNOR - It is one that was promised.

Mr SCULTHORPE - Yes, and it does have significance and that is why we've been wanting it back.

Ms MAYNARD - But there are lots of other places that we want returned to the Aboriginal community, such as Rocky Cape, the lease at Irapuna - it'd be good to have that land

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returned rather than just a lease - the west coast Aboriginal landscape and the World Heritage Area. The Aboriginal community discusses this on a regular basis about areas of land but it is the government of the day we have to negotiate with. We compromise quite a lot but wukalina is one.

CHAIR - Thank you very much for your evidence today and being part of our inquiry. We have to report by 19 November and responding to the terms of reference we have to come up with proposals.

Ms MAYNARD - Is there anything more you would like from us before 19 November?

CHAIR - My only request is to please consider the terms of reference and express your views on it. We are looking at the mainland states as to the wording of the amendment to the Constitution. I respect what you have said today and your views on proceeding and that you want a whole range of other initiatives. As the Premier has indicated, he wants to reset the relationship and is going down that path, but we have a job in terms of amending the Constitution and reforming it and we have to come up with some proposals. If you can assist us in coming up with some words as to the reform of the Constitution, that would be welcome. You are a very important stakeholder in this process and we appreciate the opportunity to have an interchange.

Ms O'CONNOR - It might be one to talk to the community about, too.

Ms MAYNARD - Yes, and we can provide further information before November. You guys have a very important job to do but every single member of parliament has a job to do in looking after the welfare of the Aboriginal people in Tasmania.

THE WITNESSES WITHDREW.