

**SUBMISSION TO THE HOUSE OF ASSEMBLY STANDING COMMITTEE ON
COMMUNITY DEVELOPMENT INQUIRY INTO:**

- (a) proposals for amending the Tasmanian Constitution to recognise Aboriginal people as Tasmania's first people; and**
- (b) any matters incidental thereto.**

**Submitted by: David Houghton of 6 Glover Court, Evandale,
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The Tasmanian Constitution, at present, is completely devoid of any reference to race, ethnicity or heritage. All citizens are therefore presently treated as equal under the laws of this State. Any additions to this Constitution which recognise Aboriginal people as Tasmania's first people, regardless of good intentions, will be introducing a racist element by separating citizens of this State into Aboriginal and non-Aboriginal people. There is surely no argument that racism is totally abhorrent and has no place in Australian society. However, racism is still racism whether it is for good or bad intentions.

The question, therefore, arises as to why any reference to a race of people viz. Aboriginal people, should now be included within the Tasmanian Constitution (hereafter referred to as the Constitution).

If it is intended to be merely a symbolic act, perhaps of reconciliation, then it must be recognised that to many Aboriginal activists it is not worth doing. Indeed, to many non-Aboriginal people it is also not worth doing just for symbolic reasons. Historically, Aborigines have suffered terrible injustices and many dysfunctional Aboriginal communities still exist but symbolism will not overcome those issues. Australians have spent countless millions of dollars and enacted many laws over many years to try to help Aborigines achieve success in a modern society. That good will is still manifestly apparent today.

If it is intended to simply record an historical fact then the proper place for such a record is within history books and not in the Constitution which sets out the Rules by which this State is to be governed.

There is then the suggestion that there should be a preamble in the Constitution which recognises Aborigines as Tasmania's first people and that such a preamble would be innocuous. The words of eminent jurists such as the late Sir Harry Gibbs, the former Chief Justice of the High Court of Australia, are pertinent. In August 1999, Sir Harry wrote "The Courts have held that a preamble may have wider effects than as an aid to interpretation. A reference in a preamble to a matter has been held to make evidence of that matter to be admissible. Recitals in a preamble are *prima facie* evidence of the facts recited." and further, "It would be arguable that these rules are not excluded by a provision that the preamble has no force.....".

Sir Harry then addresses the possibility that a preamble, "even if devoid of legal force, could significantly affect ministers and other executive officers in the exercise of their discretionary powers". It would, he says, "provide authority for holding that there would be a legitimate expectation that a decision maker would act in

conformity with the statements in the preamble, whenever they were relevant to the decision to be made". He then adds that such a preamble could have political consequences saying that "Reliance could be placed on the words of the preamble by interested groups seeking, for example, to establish Aboriginal rights, or to prevent mining or development which it is claimed may damage the environment". Indeed today, in the national arena we now have calls by Aboriginal activists who are calling for far-reaching changes including land hand-backs, separate parliamentary roles for Aboriginal people, as well as a treaty between the Australian nation and an Aboriginal nation.

On the basis of these remarks by Sir Harry Gibbs it is apparent that a preamble recognising prior occupation of Tasmania by Aborigines may well open a Pandora's box of litigation and division. It could well expose Tasmania to the entrenchment, potentially forever, of a form of legal, social and economic preferment applying to one identified group of citizens that will distinguish them from the remainder of unidentified citizens. We would no longer have a Constitution whose terms assumed a common civic and legal status for all Tasmanian citizens of any race, religion or former nationality but, rather, two kinds of Tasmanians – one group identified racially and/or culturally and then the rest.

Another issue, which would then need to be addressed is, were the Aborigines, who were in Tasmania when Tasmania was established by the British, actually Tasmania's first people or original inhabitants? There is substantial evidence suggesting that there may have been a succession of waves of incoming inhabitants to the continent over the past 50,000 years, some of whom could have displaced earlier inhabitants and then been displaced themselves. Certainly, we know that there is much controversy among Aboriginal groups in Tasmania as to who qualifies as Aboriginal.

It is possible that every citizen in this country was born to a people who, at some time in the past, were invaded or settled by strangers who were stronger than they and who could not be repulsed and with whom they had to make an accommodation or separate or wage war. It is extraordinary that, after 212 years of European settlement in Tasmania, considerable immigration by scores of nationalities, and 159 years of existence under a sound Constitution free of racism, that we should contemplate such a retrograde, divisive and dangerous step as that being proposed.

The identity of Australians and thus Tasmanians should only be based on citizenship of this country and not on race, ethnicity or heritage. Surely the time has come to bring to an end the "age of guilt" that has poisoned relations between Aboriginal and non-Aboriginal Australians, and an end, also to apologising and compensating. We should, instead, be working to secure the acknowledgement of Australians as one people living as equals under the same laws in our common homeland. Such an ambition would be derailed by a Constitutional amendment which would move us in the opposite direction.

The following quotes from two Aboriginal persons would certainly indicate support for the sentiments in the previous paragraph:

Alison Anderson (Northern Territory Minister for Indigenous Advancement 2012) –

"I see people, not categories, divisions or races. I see people and the potential for all to work together to bring clarity and progress into the world we share." and "We indigenous people need to be more like other Australians. I do not mean we should abandon our beliefs or our language but, like dozens of other cultures in Australia, we must learn to combine our own identities with participation in the broader society that will not weaken us. To preserve the old ways, we must embrace the new ones."

Kerryn Pholi (Aboriginal public servant 2012) – " A system that responds to racism by implementing special entitlements and assistance for actual or potential Aboriginal victims of racism reflects an incredibly complacent, or perhaps defeatist, attitude to the problem it purports to address. Rather than rejecting racism as a backward belief that has no place in modern Australia, and promoting equal treatment and dignity for all and enforcing this where necessary, our governments create an alternative form of racism into which "vulnerable" Aboriginal people are shepherded for their own safety."

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Signed:



(David Houghton) July 9th 2015