

THE LEGISLATIVE COUNCIL SELECT COMMITTEE ON ABORIGINAL LANDS MET AT HENTY HOUSE, LAUNCESTON ON 9 MARCH 2000.

ROS LEWIS AND JENNY CHESTER WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.

CHAIRPERSON (Mrs Sue Smith) - Thank you for your attendance. Ros, we have your submission before us. Perhaps again, as with the previous presenters, if you would like to speak to your submission, make any relevant comments and then the committee will ask questions they feel necessary at the end of the process.

Ms LEWIS - I also wanted to point that I'm also able to answer questions about the Community Aid Abroad submission if you should wish to do that because I am also a member of that group.

What I wrote was just trying to be a normal ordinary person who didn't really have any particular axe to grind and I guess it's all fairly straightforward. I don't have a great deal more to say about that unless you have some questions.

I was listening to the question that Tony asked Peter about the Commonwealth as compared to State and I mentioned that in the Preamble of the Native Title Act it actually does say that if people has lost their continuity of proof we have an obligation to do something about it and that is what we're doing in Tasmania. I would say that we're acknowledging - we're not trying to say who's guilty or who's not and that sort of thing - we're just saying 'Okay, there are people around, who through historical circumstances, cannot make a Mabo-type claim'. This could be true in other parts of Australia, not just in Tasmania, and this is at least something that we can do.

Mr FLETCHER - Just by way of clarification, the Commonwealth Government makes available \$50 million a year to purchase freehold land to offset that disadvantage where there are unsuccessful claimants and there is this \$50 million a year for ever that's available.

Ms CHESTER - Are we talking of the Land Acquisition Fund?

Mr FLETCHER - Yes.

Ms CHESTER - This is under the umbrella of the Native Title Act.

Ms LEWIS - Yes, that's a different issue from crown land, I presume, isn't it, so maybe it's more in the spirit of that.

Mr FLETCHER - Yes.

Ms LEWIS - It just sounded fair to me - fair and reasonable - and I guess that the other thing is that as a member of Community Aid Abroad we've looked at what's happening around the world with people who have been dispossessed and downtrodden in various ways and it seems really important for those people to have as much say as possible in what they do with their lives. In some ways it is only a token thing but it's something and having watched - I'm a teacher too and I've watched students, for example, develop greater self-esteem. It's interesting at Launceston College where there's now an Aboriginal section - a little club that people can go to and have lots of links with their own community - and it is being successful in getting more students to come into the college and get up the courage to actually attend classes and so on and I put that down a bit to their self-esteem becoming greater. I mean, in my own life I didn't realise the people I grew up with were Aboriginal at the time because they didn't want

to say that at the time and now it's not as if they have to make a big deal of it, but it's okay to talk about it now, and so it's not a skeleton in the cupboard that we have to hide. So I think it's a positive thing.

CHAIRPERSON - Ros, the comment was made to me - you would be aware of course in 1995 land was transferred to the Aboriginal community - by a very articulate young Aboriginal woman that even though land was transferred in 1995 the health, the education prospects, the suicide rates, the imprisonment of Aboriginals hasn't improved. Would you like to make some comment on that in consideration of the submission you made where they consistently say land rights are ways of tackling problems and you were talking about black deaths in custody and that particular issue, et cetera?

Ms LEWIS - Yes, well I'd say that five years is not a very long time to wait and see for these things to happen but I would say that experience with Aboriginal groups on the mainland and with communities throughout the world shows that you have to take a long time, you have to listen, you have to talk, you have to think things through - it won't happen really suddenly.

CHAIRPERSON - You also make comment that some other parcels of land should be returned to Aboriginal administration, would you like to make some -

Ms LEWIS - The bit where I said about if there were other returns to be done in the future how would we do it - further extensions?

CHAIRPERSON - Your comment: 'More and more relics of Aboriginal culture are being discovered. These relics which can be identified should be preserved, should be given to Aboriginal people to administer. Some other parcels of land should be returned to Aboriginal administration on the basis of returning at least some land to what existed before the European invasion'.

Ms LEWIS - I would like to think that 1995 was a start and this is a continuation and perhaps gradually we can go a bit further. I think everybody, the Aboriginal people as well, acknowledge that it's going to be a matter of compromise and it is a bit of a token thing anyway but the more each come together to some sort of a compromise then the more we work together and understand each other. I was thinking that if more parcels of land were going to be handed over it might be a good idea to outline some principles of how to decide so that we don't have an acrimonious debate every time this happens. I think this is more acrimonious than it was in 1995 and maybe it's just that people are speaking out more, so maybe you could see that as a plus for democracy, but I wouldn't like to see that every five years we go through this process. It wouldn't be very pleasant. And perhaps the principles that you were talking about with Peter and, who knows, you might have talked with lots of other people about things like that, it might be possible to get something a bit more clear worked out.

Mr WILKINSON - What would your's be?

Laughter.

Ms LEWIS - That's the difficult question.

Mr FLETCHER - I think if the process is open, transparent, got a big of rigour in it and has some justice in it then people are more inclined to accept it - like if you know how you're measuring at the moment. I don't easily see that. I've asked nearly everybody, as I'm asking you. Even if you want to think about it later rather than now and come back with it.

Ms LEWIS - One thing I've noticed from talking to some of the people at the Aboriginal Centre is that they feel they've done some compromising; for example, they would like fishing rights between the high and low tide mark and they feel they've compromised on that. I think that if that could be made clear to the community as a whole, that they weren't just grab, grab, grabbing, that they were trying to meet the rest of the community part way and that they were prepared to sit back and look at things, I think that would be good and it's partly in how things are presented to people. Sometimes people like to make a big deal and a big fight out of it and to have two sides that are going to be at loggerheads and it would be good if we could be more positive about that. I would think that a process of negotiation would be good and if it could be publicised that it was negotiable, but I don't have any idea where to draw the line in the sand.

Mr WILKINSON - It would be a good topic for your students.

Laughter.

CHAIRPERSON - Perhaps if, Ros, we can expand a little bit on the process. Certainly the working party identified the Aboriginal values on the parcels of land proposed to be transferred but consistently the comment came up that the group had been advised there had been no survey work done on historic sites of non-Aboriginal values. Where do you see the non-Aboriginal values fitting into the process on transfers of land - the traditional heritage of European society in those particular areas?

Ms LEWIS - I always get really puzzled when I hear people saying that. Maybe this is a prejudice of mine but I just think, 'What are they talking about, they've only been here for 200 years'. The place that I grew up in - I moved onto somewhere else and now I live somewhere else and now I live somewhere else and so on and so on - I can perhaps go back and visit and talk to the people back there but I don't feel as, just because I lived there for ten years or something, that it's a big deal. I don't feel that I have the same kind of connection, the same kind of right and I think it's part of my culture perhaps to just keep moving on but I also feel that if I did want - and I have done it - to visit areas that are regarded as having special significance to Aboriginal people, they would quite happily try to explain that to me as much as possible and I could share some of their feeling. I just don't understand why people who have had a place for farming reasons or something like that - I mean, you can love your farm and just have a wonderful feeling about it but you're basically there as a commercial enterprise, with your droving of cattle or whatever it is that you're doing - yes, I guess I don't have a lot of sympathy for that point of view, but Jenny might have thought more about that.

CHAIRPERSON - Perhaps we'll take that in a moment, but should we understand or take into consideration four generations of European family who have taken their family into some of these areas, traditionally fished, have a love of that particular land, have taught their families over generations to appreciate and respect that land, crown land that is mine as a share as it is others as a share, to those that have traditionally had a respect and an affinity with some of those areas as well. I'm trying to grasp that.

Ms LEWIS - Yes, I can see respect for that and I don't see that in the Aboriginal claim as being mutually exclusive because the way I read it the Aboriginal claim would still allow public access to just about everywhere that is now allowed and if somebody has a shack there they still have their shack, that's excluded from the claim. So, as far as I could see, the only places that were really going to be able to be fenced off if people really wanted to are the ones that have a midden or a petroglyph or something like that and I think everybody would want them to be fenced off and kept safe. It seemed to me that it wasn't going to shut people off from going fishing as long as they did it properly without damaging the area. That was my understanding of it.

CHAIRPERSON - Jenny, you wanted to make a comment?

Ms CHESTER - Yes. Really I think Ros has said it very adequately and I think that Clyde Mansell this morning and Ricky Maynard answered this afternoon in that mutual respect was one of the principles on which they have been operating since this bill was proposed in terms of consulting with current leaseholders trying to reassure about access, trying to reassure about continuing lease and trying to negotiate and find creative solutions, which I think has been outstanding in terms of the resources that the Aboriginal communities have got which aren't huge for funding, that within the resources they have they have been trying all along the way to find creative solutions with current leaseholders so I don't see that there would be - yes, I endorse really what Ros has been saying.

I don't think the Aboriginal community are being disrespectful of European traditions and all the things that are precious to them and I think it's time that we - I mean, we have dominated respect for our traditions; our Anzac are a glorification which is all fair enough - there are many things that we respect but we haven't, I don't think, accorded a sufficient kind of respect for, say, Aboriginal soldiers who have died and we don't have many monuments; we have a lot of non-Aboriginal monuments - so I think there's a lot of ground to make up in that way. I think we've been giving respect. I don't think, though, from hearing Clyde and Ricky and others in the Aboriginal community that there's going to be any lack of respect at all to European traditions. That's my feeling in a sense.

CHAIRPERSON - Any other questions from the committee? Is there any other comment that either of you would wish to make to the committee?

Mrs SILVIA SMITH - I was just wondering whether Jenny wanted to speak to her submission.

CHAIRPERSON - Would you like to?

Ms CHESTER - I know I came in on the bandwagon so it's really Ros' show.

Laughter.

CHAIRPERSON - I think if we ask Ros if she is happy and comfortable that she has put across her point of view.

Ms LEWIS - I'm fine. I'm quite happy for Jenny.

CHAIRPERSON - Jenny, if you wish to take up a few minutes of the committee's time, please go ahead.

Ms CHESTER - Thank you, I'm not quite sure where to start. I was here during parts of today so as things come to mind there I suppose our submission - the Aboriginal (inaudible) - our group, incidentally, as we've said in the blurb about our group, has worked closely with Community Aid Abroad since its inception in 1988 and we hold meetings with Community Aid Abroad and have done over the years and we're probably going to merge more with, I should say, because our group is a little scattered at the moment.

The main principles for me, Mabo establishing unequivocally about prior occupation overturning the myth of terra nullius, I know that was raised this morning about prior occupation and would that lead to total land grab. Mrs Napier seems to be concerned about this kind of thing and I know other MLCs may have the same concerns of where will it all end and this might mean that the whole of Tasmania is up for grabs. There, again, that was answered this morning I thought well by Clyde who pointed out that the Aboriginal community are not being unreasonable, they're not asking for the moon, they're just asking for certain sites of particular significance and, yes, this point about where do you draw the line keeps coming up.

Mr WILKINSON - I don't think the committee - and I'm speaking for myself - believes it's going to be a creeping grab for the whole of Tasmania and the whole of Australia. What I'm trying to investigate is some criteria to be set down for history, if they ever look back, to say, 'Yes, that was reasonable' or 'No, they were totally unreasonable. They set down criteria which was too high and the bar was too high' or, alternatively, 'No, it was unreasonable, they set the criteria too low'.

Ms CHESTER - Yes, I hear that, Jim, and each State will be different and each State's laws are different of course which govern both Aborigines and non-Aborigines and Aboriginal policies. Then if you look at the bigger picture, if they're looking back historically the American Indians and the Maoris, the Inuits and other indigenous peoples who did have treaties when Europeans came over, unlike in this situation in Australia where we just walked in and colonised and took no heed, it was different.

There's a huge amount of self-determination, self-management in reserves in America and other countries and in New Zealand. I know we can't look back - well, we can look back to some extent but we can see that there's not been total disaster there. One of the things that came out of black deaths in custody commission very strongly - and part of our submission refers to the black deaths in custody recommendations, which really were a kind of social policy document trying to redress the legacy of dispossession which undoubtedly occurred. I read it as being likened to a national disaster and we're looking at this special treatment thing because I suppose one of the things in that question, Jim, it seems to me, and also it seems to me that the danger of it becoming a political football in terms of words like 'land grab' which were mentioned this morning worry me. Sorry, I haven't got great clarity, I can't think where I was getting to. There's so many issues in this it's hard to get clarity, forgive me.

Mr FLETCHER - You were talking about land grab, those words trouble you.

Ms CHESTER - Yes, those words trouble me so I think I've addressed that. That it was, say, 'a national disaster' so that when we have national disasters we also take care of people who are involved with natural or national disasters and they are given special treatment and, in that sense, I suppose I consider in one way the dispossession and invasion 200 years ago was of ginormous proportions national disaster and it continues to have its effects.

The black deaths in custody commission recommendations, which is what I was trying to get to, one of the things that they concluded and after much examination of many traumatic and much history and trauma with the Aboriginal struggles, self-determination - yes, like Ros was saying - builds self-esteem. People governing their own futures was one principle that was extremely important there and land as an economic base and as a means to self-determination. Self-determination in Aboriginal culturally friendly welfare policies came also out of the black deaths in custody commission. I suppose I'm referring to that in terms of land being important.

If we tried again to look at Jim's point about whether we'll look back in 100 years and say, 'Was this a good move?', I suppose we could point to communities on the mainland where the enactment of customary law and welfare programs that are devised by Aboriginal people and health programs and so forth, because at the moment, on all accounts, Aboriginal people come off worse on socioeconomic disadvantage. And I feel that is another factor, this thing about special treatment, I'm sure that's - what was Ros saying - there's a lot of sort of acrimony at the moment and I guess there's even more disadvantage in the non-Aboriginal community these days. There's more poverty widespread and so there will be more resentment - I mean, that's why Pauline Hanson soared in a two or three years ago because she appealed to the poverty and people who wanted to find a scapegoat in either immigrants or Aboriginal people for their own problems of poverty.

I guess when those problems are rampant - I mean, it's a really big picture thing - we will still get people, and in this debate it's been happening, saying, 'Why should Aboriginal people have special treatment?' I guess I still believe that yes, there are lots of non-Aboriginal people who are in dire straits and the greater number it increases unfortunately, but Aboriginal people still have a very special place because of their particular history. Whether non-Aboriginal people are poor or not, and there is a lot of poverty, we're still the benefactors of ill-gotten gains in a sense or stolen fruits, and I think we need to keep remembering that.

CHAIRPERSON - Thank you, ladies, for your presentation and we do appreciate the time you've taken both to sit and listen and to make your presentations this afternoon.

Ms LEWIS - Could I just ask a question? If we're wanting to know what sort of deliberations have been going on and presentations and so on, how do we keep track of what's going on? You see very little in the newspapers about it with this committee.

CHAIRPERSON - Yes, well the committee has met in Hobart, in the Furneaux area, in Launceston today and in Circular Head next week. As far as in the input of individuals, et cetera, when evidence is given to the committee it is retained as the property of the committee and the final report will be where you will gather all the information. The Press sits in on some of the things and it takes notes. What it does with it is out of the hands of everybody. But your presentation now is the property of the committee and it will be given consideration, along with the other evidence, when the committee sits to work through it.

Ms CHESTER - Sorry, a small point from this morning - or two - and I won't take long. Could I - I know it's late and it's been a long day for all concerned - you've been very patient.

Tasmanian Aborigines, it was pointed out, the land bridge - it's established archaeologically and historically that Aborigines have inhabited the Tasmanian Furneaux islands during Ice Age, there is a problem seemingly that keeps coming up about those 4 000 years when the sea rose and that they weren't necessarily getting over to the islands or some islands they obviously were at times - they had great water craft. But, to me, I thought to myself, 'Well that's neither here nor there in a way'. I mean, clearly they had been inhabiting this part of the world. Just because we say there was a 4 000 year gap, does that give Europeans any greater claim, I ask. We were at the other side of the world and we can hardly say just -

Mr FLETCHER - No, I don't hold that proposition. My difficulty, my proposition is if that argument is valid that prior occupation is sufficient reason to give rights over the land, even though there was an abandonment of that land for 4 000 years, then my self-discipline says we've got to offer them all Tasmania back. There's a logic in that position. That's the trouble - I want to be able to think things through logically and if you argue that just that level of occupation is enough to grant rights for return of that land then all of Tasmania has got to go back. Now that's not a reasonable and practical outcome and that won't be achieved, so where do we draw the line.

Ms CHESTER - And is the Aboriginal community asking for that, Tony?

Mr FLETCHER - But you are asking me to make a judgment - people are asking me to make a judgment according to my standards and so if I set this precedent and make a judgment according to that standard and someone asks me six months down the track or a year or six years to make the same judgment, I've got to reach the same conclusion and I'm not prepared to reach that conclusion. I need something more, some more rigour in the process than saying, 'The Aborigines occupied this land 10 000 years ago, abandoned it for 4 000 years, and even -

Ms CHESTER - But not necessarily, that's debatable, too.

Mr FLETCHER - for thousands of years after the Ice Age didn't bother to return there and didn't bother to return until after the European sealers of the late 1700s -

Ms CHESTER - I think we should examine the archaeological evidence much more closely before we say that they actually did. I think it may have been partial use.

Mr FLETCHER - I don't think that's going to be central to the final decision.

Ms CHESTER - Well, it seems to come up and it comes up in this dangerous business of land grab, which I think can become a political football, and that is what I worry about this issue becoming, in terms of the Aboriginal community yet again and also the divide-and-rule aspect which comes up with identity issues. And the identity - you posed the question this morning, Tony, you said to Daryl West, 'What's the difference between an Aborigine and a descendant of an Aborigine?' and I suppose to that I would say to you, 'What is the difference between an Australian and a descendant of an Australian?'

Mr FLETCHER - Well -

Ms CHESTER - That's how I would answer that one because to me identity is a cultural thing and the mixed ancestry of Australians is as much maybe as the mixed ancestry of Aborigines. In the end it's cultural identity and what you would claim, no doubt, to be an Australian but you said this morning you had Irish or something - sorry, I can't remember what - but you said you had different ancestry.

Mr FLETCHER - I said 'Bog Irish, poor Catholic convict'.

Laughter.

Ms CHESTER - But I'm trying to make a point and I'm asking that question because, in all seriousness, it's an additional challenge which Tasmanian Aborigines have all the time in their struggle is their identity -

Mr FLETCHER - But -

Ms CHESTER - Well, I mean there could be a very dark-skinned Australian person who declares himself to be Australian true blue -

Mr FLETCHER - But, Jenny, I'm not saying there is a difference. I'm saying an Australian is an Australian. But Daryl this morning was saying that a person who has got Aboriginal blood is not necessarily an Aboriginal. That was his argument, not my argument.

Ms CHESTER - We're talking cultural identity again.

Mr FLETCHER - Yes, that's right. I've cited my background because my father was terribly nervous or embarrassed or shy about his background 'bog Irish, poor Catholic convict' - that's where we came from - and he didn't want to talk about it at all but I'm proud of it. Now there are some people who have an Aboriginal heritage and for generations they've been embarrassed by it and now they're learning to be proud of that fact and I want to encourage them to be proud of that fact and that's why I asked the question: is there a difference between, in the witnesses' opinion, an Aborigine and the descendant of an Aborigine. I believe both, and the answer from Daryl's point of view is yes, there is. There is a difference.

Ms CHESTER - Some times, it would depend - I thought that they said actually (inaudible) well I don't know, I maybe interpreting it wrong - but if there was a line of shown ancestry then that was part of the identification - anyway, that's for the Aboriginal community to determine. I feel it's their business really and I guess it's not ours and it's none of our business to get into that too much, I think.

Mr BAILEY - Well, I have got to say in relation to identity, I have some difficulty with that. I realise there has got to be a standard but it's a terrible thing if there are people out there who are of Aboriginal descent who can't get into or become a member of the Aboriginal Land Council of Tasmania because they can't necessarily get their pedigree right back, where those who have come from the islands more easily do that because it's been recorded in statute the families that were clearly from Aborigines. I think, in fairness to the committee, it is looking at first of all the exclusive area because of that historical fact and are there others out there who might also be of Aboriginal descent but are excluded from the benefits of the land that is going to be given back. I think that's the position from the question having been asked.

Ms CHESTER - Yes, I see what you mean, Ray. To that, I am sure that the Aboriginal community is well able to explore those concerns when they are given the opportunity to take charge of their identity issues. I would say that those concerns that you are expressing will come up but that it's their debate and I'm sure they will address those as fairly as they possibly can. From my knowledge of the Aboriginal community, I think they're a very fair people and a very tolerant people bearing in mind what they've had to put up with.

Mr BAILEY - I think that's one of the responsibilities that the committee has though to make sure that in this process there is fairness and equity between all Tasmanian Aboriginal people and -

Ms CHESTER - I'm sure that will get sorted out. We will make sure in our non-Aboriginal community that fairness and equity gets sorted out and once they are given charge of that - do you see what I mean, if we had a problem like that, all the different points of view would be put forward and I'm sure if there was a similar issue with Irish or whatever that those people would stand up and their concerns would be heard in a democracy and similarly with the Aboriginal community. It's a democratic thing. No-one more than the Aboriginal community, I would think, would take heed of local concerns because that is the way in which Aboriginal society, as I understand it, used to operate in terms of decentralisation. So I guess if there are concerns from different small localities and communities those would be heard fairly in the end.

It might be a long journey after all; it's not going to happen overnight. A piece of legislation isn't going to wave a wand, it's still going to take time to work out creative solutions and answers to all these things but with goodwill.

CHAIRPERSON - The last test of aboriginality perhaps was fought out internally between Aborigines in courts and I think that's unfortunate when it has to get to that particular stage and that has come forward and that is why it is an issue. It is in the legislation that we have to address and therefore this committee has a responsibility to take a look at it.

I do thank you again both for your attendance here today. It has been appreciated.

THE WITNESSES WITHDREW.

THE LEGISLATIVE COUNCIL SELECT COMMITTEE ON ABORIGINAL LANDS MET AT HENTY HOUSE, LAUNCESTON ON THURSDAY 9 MARCH 2000.

CHAIRPERSON (Mrs Sue Smith) - Thank you and welcome to the hearings this morning. I apologise that we have kept you waiting but we think it important that the committee expands on any issues they wish to when evidence is presented. The process we are using this morning is that we ask those presenting evidence to comment on their submission, bring out any relevant points or any extra information they wish to, and then the committee will ask any questions they see relevant at that time. We do acknowledge that you are appearing here this morning as the Leader of the Liberal Party of Tasmania.

Mrs NAPIER - Thank you, Madam Chair. Yes, we did make a submission back in January, and since that time we have been moving about the community to try to ascertain more information on this particular issue. That is consistent with recognising that this process is supposed to be about reconciliation and we were particularly concerned about the way in which the package that has been before the Houses was announced to the community. A number of communities expressed their concern that there was no consultation - I think the Circular Head mayor at the time was on the record, as was the Flinders Island mayor, Lyn Mason. They thought there had been quite a lack of consultation with the people involved, with the local people of both the Furneaux group, Flinders Island, as well as the north-west coast who were particularly impacted by the pieces of land that are identified within the bill.

We say that conscious of the fact that in the previous package that was put through Parliament in 1995, that process started in 1993 with the release of a paper on reconciliation. Even though initially it was identified that twelve pieces of land would be given to the Aboriginal communities through ALCT, but with an emphasis on local control, Wybalenna was not included in those twelve pieces of land at the time because there was a feeling that there wasn't agreement within the local community involved and ALCT in relation to the future administration at Wybalenna.

I think that is consistent with the fact that, even if I quote our now Premier on 18 March 1999 from *Hansard*: 'Reconciliation is a process whereby past grievances are addressed and a new and solid foundation for future relationships between Aboriginal and non-Aboriginal Tasmanians is laid'. Our concern is that we have seen an exacerbation of differences between both black and white communities, particularly in those regions in which land has been identified. We don't believe that has been fair to the Aboriginal communities who live there, nor to the white communities involved, and we have seen no evidence that that is reducing - in fact I think people are concerned that new rifts have occurred between them. Quite often it is purely in perceptions as much as it might be in realities, but there are rifts that have occurred; quite often it is the children in the schools who unfortunately are the victims of that.

The first point I think I have made well within the paper is that lack of consultation and lack of recognition that true reconciliation is about getting agreement between both the Aboriginal and non-Aboriginal communities, and here I refer to local Aboriginal communities. I think this committee would now be aware that there is a petition that has been received by a reasonable proportion of residents and landowners on Cape Barren Island who have actually decided that they oppose the return of all crown land on the island to the Aboriginal community. They believe this will not benefit reconciliation. It is not that they are opposed to the return of land per se, but they are opposed to the way in which this is being done. They believe that this is going to potentially disenfranchise those people whose ancestors arrived on the island back in the 1800s - it may stem back to the sealers or subsequently - and there is a feeling that they want to live together with everyone on the islands, not just hand the land over to the Aboriginal community. I have a copy of that petition if you haven't actually received that.

The other issue we would make in relation to consultation and the issue of 'local', is that in our more recent visits in the Furneaux group, it is my perception that the Flinders Island Aboriginal community would like to see some transfer of land to the Flinders Island Aboriginal community, but only where it can be guaranteed that there will be 'local' control. Most people in the Flinders Island Aboriginal community - not all, we wouldn't claim that ever - are concerned that even as local members, they have to ask permission from ALCT to be able to go on to what they see as being their own land. There are difficulties, that I am sure you have been advised of, in relation to Big Dog Island; there is yet to be a resolution of how the future management of Big Dog Island will occur, particularly in terms of making sure that local Aboriginal communities have a strong say in the management of that.

In Wybalenna there are still difficulties associated with the ongoing management of that. It comes back to the issue of self-determination, that this is not about giving the ownership and control of local lands that can be associated with local Aboriginal communities to a Tasmanian authority. I wonder whether we, as Liberals, got it right; I don't think we necessarily did in 1995. It was our intention to give local control and management - and that comes quite clearly through in Ray Groom's speeches - but it has not actually happened that way.

I think the emphasis of control is, despite their best intentions, with the State authority, being the Aboriginal Land Council of Tasmania, and local Aboriginal communities in both Circular Head, as well as the Cape Barren and the Flinders Island Aboriginal communities feel they have very little say, very little control and have minimal opportunity for management and development of those lands. I believe there would need to be significant amendments to the bill to absolutely, in legislation, make it clear that it was the local Aboriginal communities that controlled and managed that land, and it was really a matter of the deed being entrusted to ALCT but not in the sense of control.

The other point that influences me is that if you look at the work that is being done on Aboriginal deaths in custody and so on, nationally particularly, we see that self-determination does not refer to control being given to State authorities. It refers to control being given to local Aboriginal communities and that self-determination is very much about local control.

I think this is something that, perhaps, as a previous government we did not totally reflect within our legislation, as I said, in 1995 but it is something, I think, we need to come to terms with because if we end up disenfranchising the very people who live on the land that has been given over to the Aboriginal communities we are actually, once again, disenfranchising the people who were bought there be it against their will.

I think you would be aware of the history that is established on the Furneaux islands, for example, that although there is certainly evidence of Aboriginal communities living on the islands some 4 000 years ago there was a period of time in which there is no evidence of Aboriginal communities living there and that in effect it was re-settled by white communities. I think the first was the crew of the *Sydney Cove* on Preservation Island in 1797. You can then trace it to Kent Bay on Cape Barren Island in 1798 and, of course, the sealers brought Aboriginal women with them. Some from Tasmania, some from Australia and one who we know of was a Maori. I think this issue of the way in which those communities have grown and developed both white and black and those who have that shared heritage being identified as Straitsmen, there is a feeling that the legislation that this Government is putting forward fails to recognise the heritage of the Straitsmen and it fails to recognise the heritage of the many white people who have lived on the islands from the 1800s onwards.

The other points that I would make in relation to particularly the Furneaux area, although I am sure next week you will find that there are similar concerns in relation to the amount of land that is being transferred under this bill in the north-west and similar concerns over the lack of guarantee that there will be local control and management of those heritage areas. I certainly had quite a bit of evidence given to me that questioned some of the history that is provided in the Government's own briefing notes. They believe it to be selective, they believe that it does not adequately refer to the sealers and the contributions that they made, no matter what blackguards we may have thought that they be at the time. The reality is you cannot label their ancestors as being similarly so, even though wrongs may have done in the past.

There is really a strong concern that the islands that are identified in the bill are being transferred because there are not many people living there, that it is easy to do that as way of assuaging the conscious that we might all have in relation to what may have occurred in relation to the Aboriginal communities when white man came to Tasmania. Even in relation to the verbal treaty that is talked about that was made with the Aboriginals who were sent to Wybalenna in the 1830s, there is an indication that there was a verbal treaty that they could return to their own lands. Those lands were not the Furneaux islands; they were Tasmania - many of them actually in the north-east of Tasmania. It is those kind of concerns that people really believe that Furneaux has been chosen, that St Marys in the north-west has been chosen because they are crown land and because there are not many people there. I certainly picked up a deal of concern over the way in which the history has been presented.

In the research I have done, looking at Tindale's report, looking at the artefacts report by Simm and Stewart in 1991, looking at some earlier documentations in terms of reports that were provided to the early government back in the late 1800s, I think there is sufficient evidence to suggest that the history provided by the Government is not sufficiently balanced in terms of the true history of the islands.

I think you have had Mr Whinray, who might have a particular point of view, but in a number of areas he certainly looks at the Stewart and Simms report and questions the references that are made to the amount of artefacts and what they actually mean in terms of why particular islands have been chosen.

I am certainly open to other questions that can be made there. There are concerns on the island in relation to the leaseholders and what guarantee there may be to current leaseholders. To a great extent that stems from what happened on Badger Island. There is concern that rent was in fact doubled from \$2 000 to \$4 000. There is concern about how the person who had the lease on Badger Island was treated - and I know that you have received representations on that matter - so it is not unexpected that there would be concern by other leaseholders on the island. For example, in relation to Mr Sorren Fuglsang, who believes very much in sharing some of the research that he has with the Aboriginal communities that are on the island in relation to making the aquaculture industry, with particular reference to abalone, a real gold mine for the island and he believes that would be so.

I think that is one of the reasons why many people on Cape Barren Island have petitioned you to say that they don't want the legislation to be passed because there are concerned that they don't want to see the island fractured. They want to get on with their lives on the island and work towards what they see as a positive future in working together, not being artificially separated. Certainly they do not want to lose control of their land that they live on, that they own and that they personally stay on the island as against those who have ideas about what should happen to the islands but who do not actually live there or live there for short periods of time.

Similar feedback we received in relation to the north-west coast. I think you are familiar with the concerns about access in relation to Mount Cameron West but in looking at the issues of West Point and Sundown Point I think everyone is very concerned to ensure that the petroglyphs and sites of significance are identified and preserved. I find generally no opposition to those sites of significance being under the control and management of local Aboriginal communities but I do find opposition to the significant number of hectares that have been identified surrounding that, that in fact that amount of land should be given to the Aboriginal community because they believe that both black and white should have equal access to that.

They also believe - and I think you may have come across the suggestion - that there ought to be joint management of a number of those areas because it ought to be looked after for all people and that includes the significant number of shells, middens that you will find down the west coast. I have been down a considerable section of that sometime before and there are sites that ought to be preserved and I think you will find that both black and white would like to see some of those sites preserved.

I tend to think this stems back to the inadequacies of the Aboriginal Relics Act and the dissension that exists about who identifies, how do you decide which sites are to be preserved, who is responsible for looking after them, where are the resources going to come from - and they should - to be able to make sure that we can look after those sites of significance? Having determined that, perhaps then we can have a more constructive look at the lands issue.

There is a great deal of mistrust that has emanated as a consequence of what's seen as being a land grab. That applies, I think, to the north-west coast as much as other areas but let it never be suggested that there isn't a feeling that sites of significance should be preserved, that the Aboriginal community should have control and management over those particular sites of significance and that that shouldn't necessarily mean that the amount of land that is being identified - and you would be aware that there is considerable distrust in relation to the fisheries issue - I am conscious that you are not accepting evidence in relation to fisheries but I pick up in the community a view that there should not be special rights of access to the fisheries, beyond that which has already been provided in terms of recognition of cultural pursuits, as was provided in the Living Marine Act, I think it was called.

Mr WILKINSON - Marine Resources.

Mrs NAPIER - Yes, and I think that there was general agreement that that was only fair and right that that issue should be addressed.

I believe that this bill, although it may have been put together with good intent, there was a total failure to communicate with those people it most dramatically affected and that was those Aboriginal communities that live in the area and those white communities who live in the area. If this is to be about reconciliation and establishing - and I quote from our Premier, 'a new and solid foundation for future relationships between Aboriginal and non-Aboriginal Tasmanians' - this has missed the mark. There are a lot of people who feel totally alienated from the process and I believe that there will be a need for considerable ongoing discussion within the community before there can be an agreement about where we might move and certainly I believe that we shouldn't be moving into legislation at this stage with the amount of dissension that exists within the community.

One of the other matters in the issue of determination of aboriginality, I am aware of Justice Merkel's indication that he would like to see the determination placed with a tribunal that is representative of Aboriginal people. I draw your attention to page 7 of our submission that refers to two recommendations that come out of the Aboriginal deaths in custody and national commitment, the Tasmanian Government's progress report, and that emphasises the role of the organisations to uphold the principle of Aboriginal self-determination and it comes back to the principle of local Aboriginal communities having to be an essential part of the process of the recognition and determination of Aboriginality. I find, certainly in the north-west and north-east areas that are particularly impacted by some of this legislation, there is a feeling that this will result in the disenfranchising of many people who see themselves and are recognised as Aboriginals under the Federal system. There is also a view that it shouldn't be possible to be defined as an Aboriginal in terms of access to Tasmanian rights and laws but then be defined as an Aboriginal differently and be able to access different Federal rights, services et cetera. We would recommend that we retain the existing system that we have in relation to the method by which aboriginality is recognised.

The recommendations in relation to decriminalisation of drunkenness, we welcomed this initiative right from the beginning. We believe that there certainly must be an indication of the Government of sufficient resources to be able to be provided to assist us in bringing this in and we have no opposition to that section that refers to the cremation and dealing with deaths, the element of that, but we have grave concerns about where we are headed in relation to the particular sections firstly, those that deal with aboriginality and secondly, those that deal with the issue of land.

We have had briefings from members of the Aboriginal community on other alternatives which may well assist in the reconciliation project. The party has had a briefing on the - I always say it incorrectly - the Kooparooona Niara project that is more in the direction of Mole Creek. That of course focuses more on tourism but also the recognition of the history of the Moonbird people. We think that kind of project is well worth examining as much as might the issue of land for its own sake. Land costs money to manage and one of the mistakes perhaps that we made was that in providing land there wasn't sufficient resources in relation to education and training, land management plans and appropriate resources to go with that. We'd rather see that issue addressed of the existing lands that have been handed over to the Aboriginal community with more appropriate resourcing. Let's get that right, let's get the access issue right, let's get the relics issue right and then perhaps we can look at other issues.

In talking with Ms Scott of the national Aboriginal reconciliation process, I note that their concern was that land without appropriate resourcing can actually result in negative consequences rather than positive consequences. You need appropriate resourcing to be able to adequately manage the land, preferably some of that land is economically sustainable and provides an opportunity for projects of economic worth, be that linked to tourism or be that forestry, farming or any other area, or in fact mutton-birding -

Mr WILKINSON - Did that come out as a report, Sue?

Mrs NAPIER - No, that was in discussions that we were having on that particular matter. But I am conscious that the main areas that they are now looking at nationally are constitutional legislative matters, the issue of self-determination and the focus on local and local control, community education and awareness, cultures and heritage and social justice. They were concerned more to establish targets for health, targets for justice, targets for the achievement of education and training standards for the Aboriginal community and ensuring that we try to achieve those targets. I think their concern was more to ensure that through the reconciliation process that there was a real opportunity for the Aboriginal communities to achieve those health, education, training, justice targets as much as might any other member of the white community rather than an emphasis on land, given in the case of Tasmania there is no case for native title.

I think you would have it presented to you on the island that if one was looking at the restitution of land in return for what happened in relation to Robinson and Wybalenna, theoretically you could have been looking at other areas of Tasmania, not necessarily the Furneaux island. I think it was for that reason and the tenuousness of links that could be established that the previous Government identified Wybalenna as a place of significance and those other islands that were previously handed over.

That is as much as I would add. I have collected a great deal of historical readings after having been provided with some pretty strong arguments, particularly the past few days but also before that, that questioned 'Why the Furneaux islands? Why have they been chosen? Have we actually got the process right in the 1995 act? I think the local Aboriginal communities are saying 'No'.

The intent was right but as it has worked out many of the people in those communities feel disenfranchised. They are really concerned that with the lack of open consultation with communities affected that it is actually exacerbating the rift between Aboriginal and non-Aboriginal communities, which they believe had significantly healed following from 1995 onwards.

When I also received the petition from the representatives of the Cape Barren Island community, both white and black - not all members of the community, but a significant number of the Aboriginal community over there - that they didn't want to see this bill go through because they didn't see that it was not going to help their community in any way. I think from that point of view it reaffirmed the position that the Opposition took. We had some considerable concerns about this had been done.

We decided to focus on consultation and listening and talking with communities to find out whether these lands were appropriate, whether there could be agreement within communities. We said we would support whatever lands both black and white communities agreed to within that local area. So if they can be in agreement with the Circular Head Council in relation to future management of lands in the north-west, some small areas under particular control and managed by the Aboriginal community, others in joint management and if it was felt within the local community that was the way to deal with it, we would support them. But we will not support the identification of lands that are on questionable historical grounds and that fails to take into account the views of the people who live there, both black and white.

Mr FLETCHER - Sue, does your recommendation on page 5 with the regard to the transfer of crown land still apply? You gave some variations on that theme generally through your dissertation but it seems to me, looking at those recommendations, you are saying that each site must be considered on its merits with due regard to both Aboriginal and non-Aboriginal, but any land identified as significant should only be issued under lease through local government and a local body involving both Aboriginal and non-Aboriginal people should be appointed to manage that. That seems to be in essence what you are saying.

Mrs NAPIER - That was certainly a view that was coming through very strongly in the north-west. I would have to say in the north-east, the Flinders Island Aboriginal community for example, would say, 'As long as we can have local control and management' - they would like to see even a Flinders Island Aboriginal land council and so on, I am not sure that is possible but -

Mr FLETCHER - I am more looking for your party's position at this stage. What are you saying?

Mrs NAPIER - We would say each site should be considered on its merits and access is a crucial component of that. It is a nonsense to have local Aboriginal communities having to ask Hobart for access to their own lands - that's an absolute nonsense. I think it is also a matter of reasonable access for other people who have been mutton-birding there, and so have their grandfathers, back into the 1800s - and they are white - as much as might have the Aboriginal communities been doing so.

The issue of land management I think brings up the issue of resources, that whatever might be considered, that the resourcing of whatever land has already been received and could be transferred needs to be taken into account. But if you can't get agreement within a local area on a particular site then you don't transfer it. If you get agreement you would consider it.

For example, we looked at Clarke Island. The Flinders Island Aboriginal community already have the leasehold over an area of that land and in talking to the communities we don't find great opposition on Flinders Island to the issue of Clarke Island. Yes, the history might be questioned and the number of artefacts found on the island, according to Simms and Stewart, are quite small. But if the community said 'We wouldn't oppose Clarke Island. That could be done', well, we wouldn't oppose it if the Flinders Island communities thought that might be done.

I will also say that the Flinders Island Aboriginal community will not agree to, in effect, our taking over control of their lease and that is what they are concerned about. How we deal with that in legislation, I'm not sure. I am just sharing with you views and concerns that I have received.

We have not said no to all land, nothing. There may be an area of land, or some areas of land, in which both black and white communities agree that this would be positive towards reconciliation. If it's not, don't transfer it.

Mr FLETCHER - You seem to be saying then that the party's position is that we will determine the white communities position through the local council. If the local council says, 'Yes, it's okay to grant this land', that is the reflection of the values of the white community - the European community?

Mrs NAPIER - There always will be people who will oppose the handing over of land, there will always be some. But if you have pretty well agreement within your community and yes, the council is an important point of reference for that, then we would certainly take that on board. But I would have to say we can't find that agreement at this stage.

Mr FLETCHER - Having listened to your presentation, am I right in reaching the conclusion that the party's position is that there should be no further land transfers until such time as we get the funding and the management regimes right for the existing land, that we get access rights clear with regard the existing land and that we get the Relics Act reformed or reviewed or amended in some way to give due account of the contemporary values? Is that your position?

Mrs NAPIER - We certainly went on record on that issue early on. The Government was of a view that the Relics Act could not be brought forward because they wanted to see the national legislation in relation to the Relics Act. Now our concern would be, if that is so, let us at least get the Relics Act right first, because we think a lot of misunderstanding, be it in perception or reality, is stemming from a lack of an agreement within the Tasmanian community about how the Aboriginal Relics Act should operate and be dealt with. We think if we could clear that up we will get a much clearer look at the issue of reconciliation. We proposed the management of the sites through perpetual leaseholder under the local government body with representatives from all groups affected, because we were looking for a mechanism which would give local Aboriginal communities control. That is what we were looking for. That may not be the answer, but we know that what is currently operating seems to disenfranchise local Aboriginal communities.

Mr BAILEY - If I could just go through the manner in which land should be held for the benefit of the community, are you advocating a structure that the land could vest in the Aboriginal Land Council in fee simple so they are the legal owners, but then it devolve perhaps by way of some perpetual lease to a local community which would then fulfil certain conditions and, if those conditions were not fulfilled because of probably lack of numbers or the organisation dissolved - that is, the local management organisation - the land would then revert back to the Aboriginal Land Council for its management and control?

Mrs NAPIER - That may be one way of doing it. One of the reasons why we have not just come out in favour of that method - and we also looked at the issue of working through the local council basically - was the difficulties that have been experienced, for example, in getting agreement in relation to Wybalenna and also the difficulties in terms of getting of agreement in relation to management of some of the existing islands in the Furneaux group, in that it depends on what the requirements of the lease are as to whether the local community feels that they do have full control on ownership. The problem certainly arises in terms of the mechanism by which finance can be raised by the local Aboriginal communities in relation to the lands that they would wish to control and manage. Now, from that point of view, if ALCT can have the capacity to be able to be the body through which that money is raised but under the control and management of the local communities, perhaps that would be possible, but I think there is not sufficient trust in relation to how that would work that we feel as if you could put that into legislation.

So how you actually in legislation make sure that the local Aboriginal community is going to have real power in terms of self-determination, real power in relation to these issues of lands, I think is quite crucial. How do we define the perpetual lease-hold and under which terms it might be established, what might be the requirements and what rights do people have to modify those from both parties? Could we do that through regulation? I'm not sure.

Mr BAILEY - Well, it would be difficult because each site would have to be looked at individually, I would have thought.

Mrs NAPIER - And that has been the problem so far, I think, as well.

Mr BAILEY - But your funding is a crucial point.

Mrs NAPIER - No-one should be surprised that there are different points of view amongst Aboriginal communities; there are amongst white communities all over the place. As I understand it, the difference is within white communities we accept that majority rules, but within the Aboriginal communities culturally they operate by which each community must determine their own view. I remember that very, very strongly in those first meetings that the Groom Government had with representatives of all Aboriginal communities bar two organisations. That was bewildering for us at first because we thought how can we actually find what a common point of view is, and the point was made very strongly about how each Aboriginal community has a point of view and we need to consult with our communities before we can actually say that is truly representative of our view. We, as the Liberal Party, are trying to come to terms with that, in that culturally they are operating in a different way in terms of the importance and significance of local control.

There are sufficient references in national reports to the fact that self-determination should be local, not State, that our legislation needs to come to terms with that. If that is the power of self-determination, if that is the power that will give those Aboriginal communities a feeling of respect, of ownership, of being able to forge ahead in terms of their own economic and cultural development, then that is what we need to try to find the answers for. What we seem to have done is actually transfer the ownership from the white community to an authority that many Aboriginal communities cannot get on with, or cannot agree with the decisions of, put it that way. Whether they are right or wrong, they cannot agree with them.

Mr BAILEY - Would you always see the local authority in which the land is situated being part of that local community group? I just go back to Wybalenna. Quite clearly the local authority there had an interest in that land based on the fact that there were white people as well as Aboriginal people buried in Wybalenna, so there was a community interest there. But if there was to be no community interest in

a particular area of land, would you see just the local Aboriginal community as having the total management and control of that rather than a joint control as might have been reasonable on Flinders Island?

Mrs NAPIER - I think the issue of Wybalenna is different to the issues of the other islands. Wybalenna was, in a sense, a site of tragedy - and I think we all recognise that - but it was particularly impacted because there were also grave sites of white people from the local community, and that is why we saw the answer as being to get a deed of agreement between the Flinders Island Aboriginal community, Flinders Island Council and ALCT in terms of how that was to be managed into the future. I certainly think there was a lot of common agreement amongst the Flinders Island Council and the Aboriginal community that they wanted to really make that place work for them, and particularly for the Aboriginal community, and I think there is still that view on the island. I haven't got to the bottom of why there has not finally been able to be a deed of agreement about how that might be progressed. It is one of the reasons why we hadn't transferred Wybalenna, because it was our view that that ought to be signed first, rather than giving the ownership to ALCT, which wouldn't actually have provided the power base from which the Flinders Island community could rightfully have a strong point of ownership and control of that site. It's great to see that the Flinders Island Aboriginal community are looking after the site in terms of general maintenance and so on, but I think there's a feeling that the kinds of things that they would like to have happen there as a community aren't happening. And there are similar issues in relation to the mutton-birding issue, too, on Big Dog Island.

Again, the Flinders Island Aboriginal community, in cooperation with the shed owners are keen to manage Big Dog Island and deal with the fact that they now have to meet health requirements if they are to commercially process mutton-birding - well, being able to pay for your lease means that you have to be able to be involved in commercial mutton-birding, not just recreational mutton-birding. The national food health laws are impacting on the Aboriginal community as much as they might be in any other little store that now has to meet higher health standards.

But the question is whether the answer is one factory on the island to process all birds or whether it's a matter of upgrading some of the sheds I think is something for the people who operate the leases and the sheds on the island to decide. I actually don't think that's someone else's decision to make and I know they're quite perturbed that that whole question of how that island is to be managed and ensuring that there is local control and management on that, it hasn't been resolved and that's sad.

Mrs SILVIA SMITH - I would just like to explore a little bit, you made a few comments on the question of aboriginality and of course that is part and parcel of this new piece of legislation on who decides who is Aboriginal. It is a contentious issue that has come up with many, many of the people who we've been listening to. I would just like to ask you: do you see that governments, of any kind, have a right, through legislation, to tell a group how to determine who is, in this case, Aboriginal and who isn't? I'd like to just also hear your thoughts on something that was brought to the committee previously on the consideration of DNA testing as being one way of absolutely deciding aboriginality in Tasmania?

Mrs NAPIER - Well, we're moving to DNA testing in a whole range of areas. The point that I find comes through very strongly is there is a real concern if there was a move to recognition of aboriginality purely on the basis of documentation. That's what I pick up that there's considerable concern about. I recognise and acknowledge that there are those who would not wish to recognise that they had a degree of aboriginality or otherwise; there are others who find out that there is a link and they well identify with it and that is their choice to make. But the important thing is that the local Aboriginal communities know their own history, they are the people who can trace through their elders who has an Aboriginal link and who doesn't. They know their histories well, and that's a verbal history; it's not always corroborated in written documentation. Whatever process is used it must acknowledge that the local Aboriginal communities are the best people to identify whether someone can actually establish their links to those Aboriginal families or not. I think there's a lot of concern in the community that that would not be given the credence that it's currently given under the way in which it's established federally.

Mrs SILVIA SMITH - Do you suggest that what the Government is saying in this amendment bill that we state, as a government, that an Aboriginal person is a person who satisfies the following requirements: Aboriginal ancestry, self-identification as an Aboriginal person and communal recognition by members of the Aboriginal community - and obviously that's the elders included there? Do we have a right to do that or should that whole piece be left out?

Mrs NAPIER - The point that we have particular concern about is that the suggestion that that should be administered by ALCT and we believe that the current system where the Chief Electoral Officer does that as an independent officer is a better way to deal with that.

Mrs SILVIA SMITH - You touched on the DNA testing, could you just explore that a little bit further?

Mrs NAPIER - I've not discussed that with the Aboriginal community. I suppose if there was a point of contention I'm not opposed to it if that is seen as being acceptable.

Mrs SILVIA SMITH - Because there is a lot of contention within the community -

Mrs NAPIER - There is.

Mrs SILVIA SMITH - that you are Aboriginal, I'm Aboriginal but you're not, and that person is not and there doesn't seem to be any concrete way of making a decision one way or the other and we are saying 'community members' but we first have to define who those community members are.

Mrs NAPIER - I haven't given a great deal of thought to whether DNA testing should be used or not, but it seems to me that if someone self-identifies and it's questioned by the local Aboriginal community with whom they would self-identify then the question is whether DNA would be used as a way of resolving that, I don't know. There may be an argument that we need to look at international paradigms by which indigenous background is actually identified and I think I'd rather see us looking at that - but I'd want to look at it nationally. Frankly, I don't think a State should be setting up a separate system to the national system. I'm not opposed to national reform on the matter and I think an international reference on that would do a great deal of good for not only those indigenous people who are getting much better recognition but for those who haven't yet and there are many indigenous people that are still being decimated in many other countries and will never be known about, as much as the Irish were decimated or any other group was decimated. But right now we're dealing with our history and no matter what might have happened to our own ancestors.

CHAIRPERSON - Thank you very much for your presentation this morning.

THE WITNESS WITHDREW.

THE LEGISLATIVE COUNCIL SELECT COMMITTEE ON ABORIGINAL LANDS MET AT HENTY HOUSE, LAUNCESTON ON THURSDAY 9 MARCH 2000.

RICK MAYNARD AND JAY McDONALD, TASMANIAN ABORIGINAL CENTRE, WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.

CHAIRPERSON (Mrs Sue Smith) - Thank you, gentlemen, both for your submission and your appearance here today before the committee. We acknowledge that you are both representing the Tasmanian Aboriginal Centre and giving their position. The process we utilise is that we ask those who have presented a submission to speak to it, to bring out any relevant points, to add anything to it you wish, and then the committee shall ask any questions that they believe relevant. We will pass over to you.

Mr MAYNARD - We would like to thank the committee for extending an invitation to the TAC to present evidence in relation to the Aboriginal Amendment Bill of 1999, and the other measures: traditional burials and cremations, decriminalising public drunkenness, and the issue of aboriginality being returned back to the community, particularly I suppose for ALT elections.

We would just like to open by saying that we feel that to build a just society the rights of all people ought to be respected and recognised. There are three fundamental rights: a right to an identity, a right to our land, and a right to be able to practise our cultural heritage unhindered by any white laws. That is what we say. We support this bill because it is a worthy attempt by the Bacon Labor Government to give us that opportunity to be able to practise those rights, and it recognises those certain rights that we have, distinct rights because we are Aboriginal people. There is no disputing that we can directly link ourselves back to our traditional ancestors and, by virtue of that fact, we should be accorded those distinct rights. Okay?

I would just like to make another point, that the TAC feel that the bill probably doesn't go far enough. We would urge that Rocky Cape and Mount William National Park and Eddystone Point be included in Schedule 3 of the bill, because those areas there are very rich in Aboriginal heritage - there are many midden sites. There are a lot of sites of significance, and I think at one of those sites there is an actual traditional burial site. So we would like to put it to you, to urge you to consider those two other areas to be included with the other eight parcels of land that are proposed to be returned to us.

I will now hand over to Jay for the next section.

Mr McDONALD - We don't believe Part 2 goes far enough in the bill about our cultural rights. 'In the Tasmanian Aboriginal Centre's view the current bill goes nowhere near enough to protect the rights of Aborigines to engage in such cultural activities as fishing, hunting and gathering. Article 27 of the United Nations International Covenant on the Civil and Political Rights stipulates that governments must ensure that Aboriginal culture can be freely practised and that governments must take steps to ensure Aboriginal culture can be freely enjoyed. The Mabo decision, the Native Title Act and the Tasmanian Living Marine Resources Management Act 1995 and the Lands Act 1995 show recent moves in beginning to deal with this problem. However, the present situation within Tasmania is that many Aborigines who wish to continue their cultural practices are actually forced to break white laws. They are prosecuted by the white legal system who show no regard or respect for the time-honoured Aboriginal cultural practices'.

An example of this would be if an Aboriginal person was to go up to Eddystone Point and he went diving and got three abalone, if a Parks and Wildlife person or a police officer caught him he would be

charged with that. That would be an offence. So we are trying to put to you that we should be able to practise our cultural practices without being hindered by white law. We should be able to do it because this is our right.

'At present, recognition of Aboriginal rights to practise Aboriginal culture is restricted to hunting and gathering on the twelve parcels of land referred to in the schedule of the Aboriginal Lands Act 1995. Beyond those physical boundaries Aborigines may only catch fish or gather kelp or shells without a licence in the salt water. The Department of Primary Industries and the Fisheries interpret those part of the Living Marine Resources Management Act 1995 which provide for Aboriginal cultural pursuits as imposing every restriction on Aboriginal people that is also imposed on recreational fishers. In other words, Aboriginal cultural fishing amounts to the cost of a recreational licence'.

Now we see this as the Government, or not so much the Government, but the act here says that our cultural rights are just the same as a recreational fisher's rights, but I don't see this as true now because the TAC - our cultural rights have been around for generation after generation and thousands of years. It is totally different to a recreational fisher.

Mr MAYNARD - As you are well aware, we already have twelve parcels of land that have been handed back, and I think that represents about 0.006 per cent of land. With these other eight parcels of land that we have proposed, I think that will represent just over 1 per cent of the land. Admittedly it was a very important first step by the Liberal Government back in 1995, but we feel now that we should be able to go on and have these other proposed land areas returned. This is probably, if you look in terms of reconciliation, one of the best ways of assisting the reconciliation process.

I'm not sure if people want to ask questions now before we go on to talking about the eight parcels of land and expanding on each of the parcels of land.

CHAIRPERSON - Perhaps as a precursor to the questions, if you could just for the record name the members of the TAC, your management representatives and the process of appointment, whether it is by election around the State to make them representative of different -

Mr MAYNARD - You mean like State committee?

CHAIRPERSON - Yes, State committee.

Mr MAYNARD - Jay is actually on the State committee.

Mr McDONALD - There is me, Jay McDonald; Annette Peardon is the secretary, but she is on leave at the moment because of illness; Jodie Mansell; Nathan Mansell, who is the president; Chris Mansell, who is the administrative person down from the main administrator from Hobart, the acting one at the moment, but he was also the treasurer, but that job's been passed on to another member, Ricky Horton from DACA. There is John Wright, I think his name is, he is elected by the community; Trudy Maluger and Ben Everett. I can't think of anyone else at all. Nathan Mansell, he is selected, he is put into a position. I'm not quite sure if he is elected by the community or not as the president but I think he is elected by the community. I'm the branch president for the north; I'm elected by the community at the first branch meeting of the year, so is the north-west branch president, Trudy Maluger and she is elected by the community and so is the south branch president, Ben Everett. He's also elected by the community. There's a community-elected person from within the community which is John Wright and then you have your paid position which is Annette Peardon who is the secretary and she also does other duties other than State committee, too. I'm not quite sure whether the treasurer is a paid position but that's a person who has fair knowledge of what happens with the runnings of the business and the financial position of the TAC. I'm trying to think who else. Jodie is another community-elected person - Jodie Mansell. That is another person from the community from the north-west area and -

CHAIRPERSON - Do they have appointments long term or is it a two-year or a four-year appointment?

Mr McDONALD - I'm not quite sure about State secretary, I think that's more than a one-year term because that's a paid position but it's twelve months -

CHAIRPERSON - Those elected by the community perhaps.

Mr McDONALD - The community-based is all one year. You get your position for one year and your State committee position for one year.

CHAIRPERSON - And if either of you can expand on the funding for TAC - all organisations cost money to run - can you give us an idea of the funding?

Mr MAYNARD - It's federally funded through ATSIC.

CHAIRPERSON - You wouldn't have any idea of your yearly budget or does that change from year to year - an administration budget plus particular special project funding?

Mr MAYNARD - No, no idea.

Mr McDONALD - I couldn't specifically say. You would have to talk to the treasurer about that, sorry.

CHAIRPERSON - Thank you. Have members of the committee any questions external to the parcels of land that the gentlemen have indicated that they will speak to before we get to those individual parcels?

Mr FLETCHER - Yes. Through you, Chairperson - Rick stated as one of the basic rights of each community to practice their culture unhindered and also said at a further time that white man's law shouldn't apply in relation to certain areas, perhaps you would expand a bit on that, Rick? If I get my understanding of the right, first of all, you have a right to hunt and gather for personal gain with a restriction that you come under the limitations of the management plan adopted by Parks and Wildlife or Department of Primary Industry and Fisheries for that respective area, so that is what I understand it to be, but you say it should be extended beyond that.

Mr MAYNARD - What we argue is that it should be extended beyond the twelve parcels that have been handed back. If we wanted to go and do some inland fishing at the moment we have a licence that enables us to go netting, potting and diving but if we wanted to practice fishing inland we would be subject to fisheries laws. We wouldn't be able to practice that unhindered. If we wanted to go and take mutton-birds in certain areas, to hand it down to the young people, we would be in breach of certain laws there. They are just a couple of examples.

Mr FLETCHER - Well, I would need to do some further research. I'm not clear on the inland fisheries because quite clearly the arrangements at the time were made with Sea Fisheries and are you saying that you can't catch mutton-birds at all? My understanding is it is probably limited to the season which would be the limitation applied by the management plan at the time, so your suggestion is that in relation to Aborigines management plans shouldn't apply, that you should be free to take according to your need rather than according to the limitations the management plan -

Mr MAYNARD - That's right, I would support and I would argue that. There's that and certain other things like if you wanted to collect certain shells, bull kelp, certain plants that people used to do in traditional times and we wanted to follow and maintain those certain practices we would have to be very careful and that's what we argue, that there should be no restriction.

Mr FLETCHER - Does that mean that you believe you should be able to catch for a commercial gain rather than for personal use?

Mr MAYNARD - No, I would say that if we wanted to catch fish - is that what you're on about?

Mr FLETCHER - Well, whatever -

Mr MAYNARD - You want there to be a communal-type licence set up?

Mr FLETCHER - Well, the argument previously was that members of the community should be able to catch fish or birds or game for their own personal use but not for commercial gain, not to set up a processing factory and sell it off and become commercial. I'm asking now whether you've shifted from that position or you still hold the personal use position?

Mr MAYNARD - That's just my personal view. I think that really should be thrown over to community discussion.

CHAIRPERSON - If I might extend on that then, in your submission you say that the Tasmanian Aboriginal Centre recommends further legislation be enacted and you've covered some of those - living marine resources, fishing rights extended - quite clearly, in your fourth dot point, you are saying the provision of an Aboriginal communal commercial fishing licence in those zoned saltwater areas.

Mr MAYNARD - Yes, I'll have to correct myself there.

CHAIRPERSON - So those five dot points that are in the submission is the position of the Tasmanian Aboriginal Centre, do I take that as correct - nothing has changed since then?

Mr MAYNARD - Yes, that is correct.

CHAIRPERSON - Thank you.

Mr WILKINSON - Talking about reconciliation, do you believe reconciliation is becoming the one community?

Mr MAYNARD - I think what the reconciliation process is about is respect for one another. Through the reconciliation process there should be a respect for us, or Aboriginal people as a group of people that has certain fundamental rights - that is, right to an identity, to land, to culture. If we become one - my personal view is that we then start to lose that identity and I personally think that there should be respect on both sides. The reconciliation process should respect us as a people and we have certain rights.

Mr WILKINSON - So it's not a reconciliation although it's a bringing together to become a single unit, it's a reconciliation on the basis that European people should recognise that Aboriginal people trod the earth in Tasmania and Australia before European settlers came. They carried out certain ways of living and now the European people should respect that they carried out that style of living and they should allow them, not to revert to it but to revert to certain parts of that type of living, but not other parts because obviously you wouldn't want to go back to the similar situation as it was a couple of hundred years ago?

Mr MAYNARD - I personally think with the reconciliation process, okay, it's probably failed in some areas but there are a lot of people who don't support it. They think reconciliation is creating division. In my view - that's just in their view - I think we could get along if people were able to accept us and respect us for what we are. We have to accept and respect non-Aboriginal laws, rules, regulations and we do that, so if we want a right to land ownership, practise certain cultural heritage, what's the problem with accepting, recognising and respecting that?

Mr WILKINSON - Because if you've got two laws, one law for one people and one law for another people to me, that's not going to assist in any reconciliation. It's only going to cause resentment amongst the two competing groups. In other words, you might say, 'If there are laws for one the other people are doing exactly the same thing'. The police will come and say, 'We want you, you and you. Forget about you, you and you'. These people will say, 'Hey look, we're only doing the same as them'. To me that doesn't assist in any reconciliation process.

Mr MAYNARD - Why should we have to give up those practices or our claims to our heritage just because other people don't agree with it? As I said in my opening statement, the contemporary community we can directly trace our ancestral links back to our traditional people and by virtue of fact we should be able to practise those fundamental human rights.

Mr WILKINSON - But then so should I because my ancestors 200 years ago living in Tasmania didn't have to pay fishing licences; didn't have to drive on the right-hand side of the road; left-hand side of the road; didn't have to pay however much mortgage rates at x per cent; didn't have to do a number of things. What I'm saying is you see, if you look back and you say 'Look, our tradition is this'. Anybody can look back and say our tradition is this we shouldn't have to do it. But because of the laws - and I realise they're European laws - we've got to toe the line as far as those European laws are concerned.

Mr MAYNARD - But look, Jim, I think there's a difference here. It's clear that we are of the first nine nations of people who were here. They had certain fundamental rights, they had sovereign rights, exclusive rights to be able to practise and maintain and do whatever their culture demanded of them. Europeans came 200 years - we know about the history and the history books. So what I'm trying to say is that there is clear evidence that Aboriginal people have been here 35 000 years and maintain this. We argue that we should still have that right to be able to maintain our identity, our claim to our land and a claim to our practices. I know what you're trying to say.

Mr FLETCHER - We need to balance that against the fact that you are living in the broader community and to all intents and purposes you walk and talk and have the same opportunities that I have, surely. You recognise the law that I recognise so we are all following the one law really, aren't we. It's a matter of whether there can be some variation on that theme to allow the culture practice to be brought into the current times, into the contemporary times. That seems to me to be the difference. I don't see any lack of recognition, I don't see any lack of some land going back.

There has been a granting of some cultural rights with limitations. I suppose, no matter whether you're Aborigine or of European extraction, somewhere for the good of the total society there have got to be some restrictions placed on all of us, whether we are the Aboriginal community or the European community as well. We can't all do exactly as we want to. The price of living in the total community is we accept some restrictions, which is the law that you recognise and the law that I recognise.

Mr MAYNARD - Tony, do you accept - you would have to accept that there is an Aboriginal community in this State?

Mr FLETCHER - Yes, sure.

Mr MAYNARD - Would you accept then that we have a right to ownership of land and a right to be able to practise certain cultural heritage practices?

Mr FLETCHER - Rick, that's what I'm struggling with at the moment. My struggle is this: that there is a national law based on the High Court precedent of Mabo and Wik and the High Court decision which establishes the benchmark for Aborigines, Aboriginal people, communities, to claim native title rights - generally applying right throughout Australia and Tasmania is Australia. Of those claims for native title rights some are successful and some aren't. To compensate to some degree for those who aren't successful the Commonwealth Government has invested a sum of money which makes \$50 million a year available to buy freehold land for the Aboriginal people who are unsuccessful in making native title claims.

That is a right that you have that others don't have. It seems to me - and it is the reason I was involved in the first instance - that the Tasmania Aboriginal community making a claim for native title would be unsuccessful. Some accept that, some reject that but the proof will only be when a claim is made and followed all the way through. Now if that claim is unsuccessful there is still that \$50 million a year fund available to buy land to provide the freehold title to the Aboriginal people.

The difficulty I have is trying to establish a logic that I can stand by in the longer term. So if I say to you that I accept your right to land and I'll agree to transfer land to you because it's significant and because I know that the ancient people inhabited this land then I really have to give you all Tasmania back, if I follow my own logic, because all Tasmania would be significant to the ancient people and the ancient people inhabited all of Tasmania. They were everywhere at one stage or another during the 40 000 years.

I am trying to find a criteria which will enable me to make an intelligent, logical decision that says, yes, this land should transfer back because there's been a process, there is a ..., but I'm not going to agree to transfer all Tasmania back to the Aboriginal community. That's not deliverable, it's unrealistic and if it's unrealistic and not deliverable, where do I find the benchmark that says to me, that's fair and that's achievable and it's the right thing to do but if I step over that line, it's not? That is the difficulty I have; that's what I'm struggling with.

Mr MAYNARD - It is difficult and it's complex but by virtue of the fact that we are Aborigines surely that in itself should be able to tell you that we have certain rights. One right is a right to our land, okay? We know it's not going to be reality, we know we can't get the whole of Tasmania back.

Mr FLETCHER - But, Rick, isn't that right established in Australia by the native title legislation, by the High Court's ruling in Mabo and Wik, followed by the native -

Mr MAYNARD - We may beg to differ on that process.

Mr FLETCHER - Yes, well -

Mr MAYNARD - But then again, it's non-Aboriginal law or white law dictating and telling us what we can and can't do.

Mr FLETCHER - Yes.

Mr MAYNARD - We know who we are and we know what rights we have and we should be accorded.

CHAIRPERSON - If we can expand on that - and I make two comments: Mabo is white law, whether you agree or disagree. It's a process that is unacceptable. Surely it is white law, an act of Parliament that will transfer land back within the Tasmanian system, a white law that you will accept as being acceptable to the Aboriginal people to transfer parcels of land. The other comment I make is - and it is something I struggle with - the Tasmanian community are transferring sectors of land back with strings attached - for example, high-water mark plus 15, access, and so on. Would you give me some comment from the Tasmanian Aboriginal Centre's point of view about these strings attached? I sometimes have this, 'Why not some land with no strings?' - perhaps not as much, but something that gives ownership, go do what you like, how you like, practise your cultural experiences or whatever you so wish, without the strings that are being accepted by the Aboriginal community in 1995 again through Wybalenna and again in the proposed amendments here.

Mr MAYNARD - It is like parameters or railway tracks: very limited in what we can do as Aboriginal people. We have to work in these boundaries all the time and we just have to accept what we are given. There are a hell of a lot of concessions that have to be made on our side too, so everything is against us and we have to fight all the time. It is just like way back in George Augustus Robinson's time when there was a treaty and a compact made between the traditional people of the time and the Arthur colonial government. Promises were made. These people were then shipped to Flinders, people in Wybalenna still maintained their claim to land. Cape Barren - it was never lost all the way through. What tools do we have to fight with? It's just our pride and rights to our heritage.

CHAIRPERSON - You talk about the restrictions that you have to operate within. You do not have an opinion of benchmark significant areas identified? I instance that 500 or so hectares at West Point. Undoubtedly some acknowledge, I think it is 38 special sites, and so on, that have great significance. Why 500 hectares in that particular process as against all the sites with total control by the Aboriginal community to decide whether or not outsiders should enter?

Mr MAYNARD - I was not involved with a lot of those meetings where those decisions were made so I can't adequately answer that question.

CHAIRPERSON - Okay, thank you. Perhaps if you would like to follow on with the individual pieces of land you wish to speak about, and we may pick up other things as we go.

Mr MAYNARD - I'll just go through the eight parcels of land and make comment as to why they're significant to us and why they should be in the proposed legislation. Cape Barren Island. There are a large number of Aboriginal sites ranging from artefact scatters, middens, rock shelters, caves that age from 10 000 years ago to sites dated at mid-nineteenth century. The first sealing camp was in Bass Strait on Kent Island, that's on Cape Barren. Aborigines began to resettle on the island from the 1860s when they were forced off the smaller islands by the Government granting leases to non-Aborigines. In 1881 the Government reserved 6 000 acres of land for Aborigines at the west end of Cape Barren Island. This land was subsequently lost when the reserve was abandoned. An Aboriginal community has remained on the island ever since.

Does the committee just want me to go on?

Mr FLETCHER - Are you going to hand this out, Rick?

CHAIRPERSON - We've actually got it so if you just wish to pull out some relevant pieces; if there's something particular about one of those areas that you want to reinforce. We actually have in front of us what you're reading.

Mr MAYNARD - Okay. We have always maintained connection with those islands and, as you can see, there are middens, artefacts, sites, so it clearly shows that we had occupation on those islands. That is covering the Furneaux group islands, I'm not sure if anyone wants to ask questions on the Furneaux group.

Mr FLETCHER - Can I just ask - if it's outside your area of expertise, just let me know - what special significance do the middens have to you? What's the real worth of the midden?

Mr MAYNARD - A midden site can yield a lot of valuable information: the time of occupation, the types of food people ate. I am not an archaeologist but these are some of the sorts of things that I think they could yield, and proof of time of occupation and proof of occupation by Aboriginal people in various areas.

CHAIRPERSON - If I might extent on that a little bit. Middens are something that the European community are starting to understand but middens are one of the historical issues that you relate to. Should there be some criteria of significance placed on these middens? I ask that question because in some evidence given earlier to the committee the issue of middens came up because in one particular instance a midden actually overrode the right to access utilisation of the Relics Act because of a midden on a road et cetera. And when we asked the question of somebody highly respected and accepted in the Aboriginal community they virtually told us to get off the issue of middens, they're highly boring, you can't block legislation because a midden is found in the middle of a road et cetera. The message seemed to be coming across that communities have to ignore or specify specially significant middens and classify them. Where do we stop in the process of 'here is another midden' so things change.

Mr MAYNARD - I am not sure who that person was, it may have been a personal opinion of that person. If you start on middens, where do you stop? If you get rid of the middens, that's gone. It is telling us who we are, who occupied that area, all those things I just talked about such as what sorts of food. You get rid of the middens, you get rid of the petroglyphs next, get rid of stone scatters and that would be the beginning of it.

Mr WILKINSON - Is it fair to say, if I can, that the evidence was that a midden is a sign of a meeting place - and I forget the exact words - it was like you eat, you throw your remains, the shells mainly as far as these middens were concerned, on the ground, they build up and become a midden. There would be middens all over Tasmania and I think it is a process of saying what is an import midden as opposed to a midden which you could find all over Tasmania as an eating place and a meeting place. It would seem that the evidence was also the middens which are important are the middens where you can trace habitation back for thousands and thousands and thousands of years, they're the important ones. But if you wanted to just say 'a midden is important' the evidence was that just wouldn't be the case because it just could be the sign of somebody treading across the ground, having one meeting, leaving the site there and moving on. So there are middens and there are middens, if you know what I mean.

Mr MAYNARD - Yes. I still think that from the TAC's perspective all middens would be viewed as extremely important.

Mr WILKINSON - Extremely important to investigate how important or, alternatively, extremely important no matter what?

Mr MAYNARD - No, because they are part of our heritage and our culture and they should not be destroyed and roads shouldn't go over them.

Mr WILKINSON - So therefore pretty well a vast majority of Tasmania would come under that package as to what you are saying.

Mr MAYNARD - When you say 'vast areas' of Tasmania, what areas?

Mr WILKINSON - The evidence -

Mr FLETCHER - Tens of thousands of middens -

Mr WILKINSON - Pierre Slicer it was who was talking about it - and I don't know how many there are - but he virtually said there are middens all over Tasmania and it depends upon the importance of the midden, it depends upon how far you can look back to see for how long Aboriginal people used that area as a meeting area, it must have been important to them because they continued to use it over a great period of time as a meeting area. It shows what they ate and it shows for how long they visited that area. They are the important middens but if every midden is an important site you are looking at, as I say, a vast majority of Tasmania. Do you agree with that statement?

Mr MAYNARD - I'd really like to see that, if there is a study outlining all those middens, I would like to look at that.

Mr WILKINSON - I don't think it was a study, that was just a comment.

Mr MAYNARD - If that is the case each one of those middens would really have to be investigated to draw out what you are saying.

Mr WILKINSON - That's what I'm saying, is that why you're saying they're important in order that you can then investigate them to see whether they do become important because of time span in using that area for examining what they ate, examining how they lived, examining their tools et cetera. That to me seems to be the important part of a midden, I might be wrong, but to me it seems to be the important role of a midden because then you can decide whether it's important or not.

Mr MAYNARD - I would agree.

Mr WILKINSON - Can I take you back, when you were talking about - and I hear what you say - that Aboriginal people if they are carrying out part of their culture are upset if they are charged with fishing offences, let us say, because they are European laws and not Aboriginal laws, as I understand the argument. Do I take it that you don't accept - and if you can be blatantly honest with your answer - any of the European laws and the Aboriginal community shouldn't accept any of the European laws into their community, unless of course they are the same as Aboriginal laws.

Mr MAYNARD - All we want is, I suppose you could look at it and say law reform so that we can - we will operate within non-Aboriginal laws, or white laws, as long as we are able to practise our cultural heritage, as long as we are able to do that. I am not sure if that answers your question though, Jim.

Mr WILKINSON - I am just trying to work that through.

Laughter.

Mr MAYNARD - It is a case where at the moment we have to adhere to white laws but in order to practise some of our cultural heritage we may be forced to break some of these laws.

CHAIRPERSON - Can you give the committee some example of the sorts of laws that are restrictive on your cultural heritage now?

Mr MAYNARD - There are certain shells that we'd like to be able to gather. If you want to go fishing inland, if you wanted to take mutton-birds just prior to the season starting or after.

Mr McDONALD - Hunting laws too, certain hunting laws. I think you're allowed to hunt on the land that you have given back to us but, say, if there was no land around close enough, if you lived way out in the middle of woop woop and there was no land that was given back to us close enough to do it, but if you went and hunted on crown land and you were caught you would be charged and prosecuted for it.

CHAIRPERSON - If I might follow that process through, I think it fair to say that European laws on hunting, fishing et cetera only came in because communities had concerns that environmentally we were losing too many animals to hunting or too many fish to the fishing process et cetera. We usually get restrictions on society because of over-use of a process and it is always hard, even within those laws, to keep people within the boundaries. How would you see in the Aboriginal community that you would protect those same environmental values from over-use by your people if you can go hunting whenever you like, you can go mutton-birding wherever you like? Do you have a law within the Aboriginal community that restricts your people so that they protect the environment in the same way?

Mr MAYNARD - Of course we didn't have a problem like that 200 years ago.

CHAIRPERSON - No, but we all live today, that's our problem.

Mr McDONALD - It's more of a commercial problem that is, like the taking of fish and everything. It is a more a commercial problem that was brought in 200 years ago - 200 years ago is where you hunted and gathered for our own means of survival, not to sell or make a commercial profit out of, you could say.

CHAIRPERSON - But you are saying to me that today you would not have in the Aboriginal community somebody who instead of going out to fish as a cultural process would go out to fish under the banner of a cultural process and then use that banner to gather and commercially on-sell for profit or something. You don't have that sort of problem, you believe, in your community, as I would expect we certainly have in the wider community?

Mr MAYNARD - Say, Cape Barren in Franklin Sound - the Aboriginal people on the islands around there go fishing all the time but people know how much to take. You might go and catch some fish and share it out but you know what limits to take.

CHAIRPERSON - So it's a natural instinct within the Aboriginal community.

Mr MAYNARD - I don't know about a natural instinct, it's an understanding. If you want to maintain your culture you've got to know how to preserve it. If you overfish, well as part of your culture you won't be able to maintain a practice.

Mr McDONALD - It's lost.

CHAIRPERSON - Could you inform the committee what areas of the 1995 and subsequent land transfers to ALCT that the TAC may be managing on their behalf? If you could just list, for the record, like Oyster Cove, Risdon Cove?

Mr MAYNARD - I'm not really sure. I think Oyster Cove, Risdon Cove -

Mr FLETCHER - Probably the caves - who's managing the caves?

CHAIRPERSON - No, TALC actually gave us evidence they were managing the caves and Mount Cameron West. So Oyster Cove and Risdon Cove would be your -

Mr MAYNARD - Yes.

CHAIRPERSON - Do you foresee in the proposed transfer under this legislation that the TAC would have any involvement in the day-to-day management of any of those parcels of land proposed to be transferred back?

Mr MAYNARD - Only if people were on the management committees, they would probably have some say.

CHAIRPERSON - And would you like to proffer an opinion on local management within local communities of areas that, for instance, areas in the west/north-west managed locally as against managed externally areas in the Furneaux group managed locally as against managed externally?

Mr MAYNARD - No, I agree with that. I think the TAC's position would be 'Let's support locally managed areas'.

CHAIRPERSON - Support local managed areas.

Mr BAILEY - In relation to Oyster Cove and Risdon Cove, that your organisation manages, what is your vision for the future of those sites?

Mr MAYNARD - We would probably use those for cultural and festival activities but for long-range plans, I'm not sure. That would be up to various committees and probably State committee, I suppose.

Mr BAILEY - I ask that question because I know particularly with Risdon Cove when the debate was on in 1995 in relation to the transfer of that area of land, I had the clear impression that there would be an interpretation centre at Risdon Cove, and that may have been a wrong impression that I had, that it would be an area where Aboriginal culture and language could be preserved and that in itself could bring about a reconciliation where there would be a greater understanding of the Aboriginal culture by the non-indigenous people. At this stage there is no plan for that to develop?

Mr MAYNARD - I have to be honest with you, Ray, I'm not aware of any plans for the future but -

Mr BAILEY - But it is your organisation that is in fact managing that area.

Mr MAYNARD - It is. It certainly is.

Mr FLETCHER - But that's day-by-day management, isn't it, like the conceptual plan is you'd never have to go to ALC, the land owners, to get conceptual plans about future developments perhaps.

Mr BAILEY - Well, I would have thought there would have been a recommendation from the managers to ALC that this development would be in the interests of the Aboriginal community and leading to a greater understanding by the broader community of the cultural needs and the significance of those sites to the Aboriginal people.

Mr MAYNARD - There have been activities that go on those sites where the non-Aboriginal community can come in, they are invited in, and can appreciate what's happening there. We do have a language program constructing our languages -

Mr BAILEY - Yes, we saw that.

Mr MAYNARD - so we do encourage non-Aboriginal people to come in so they can appreciate those things that you were talking about.

Mr BAILEY - What sort of functions or events would they be?

Mr MAYNARD - It would be cultural events - the various festivals - you wouldn't celebrate it but you'd mourn the massacres that happened at, say, Risdon Cove. Music festivals, but with a theme and a focus on your Aboriginal culture and history.

Mr McDONALD - Dramas and theatres in the outdoor down at Risdon Cove. At the moment I'm in a group where we're all getting together at the end of the year to do a big outdoor drama and theatre that

is going to involve various different aspects like dancing, singing - just all drama, theatre and music. That's not just going to be for the Aboriginal community, that's going to be for everyone to come along and have a look at.

Sue put it to Ricky before that what was the TAC's vision; it's not the TAC's vision, it's the Aboriginal communities' vision. They come to us with ideas and with the help of the TAC they make those ideas into fruition, like the community gives ideas to us - not to us, it's their ideas but the community comes to us and have their say and then at their branch meetings they talk to us and we take their ideas back to State committee, have a talk about it, see if we can get funding to make these ideas happen at these certain places and at these venues and sort of talk it away freely up at each level. It is the community that decides what happens at these places. It is certainly not a TAC vision. TAC helps these visions come true, as you would put it.

Mr MAYNARD - It's a community-based organisation and it always has been and the community's forum is the branch meetings. Ideas, like Jay said, are taken to State committee.

CHAIRPERSON - We've had evidence that it's community driven, from community up through TAC or ALCT or whatever different organisations. I think it's fair to say that in some areas there has been a certain degree of feeling of, 'They are distanced from the decision-making', and I'm just trying to get a handle on where the gap in the process is, or if there is no gap, it's just a perceived gap. There appeared to be some frustration about how much input some were having, but that's probably not unnatural in any organisation.

Mr MAYNARD - Every month we have a branch and we promote it really heavily because it's a community organisation. If the community weren't there quite frankly the TAC wouldn't be there. So we try and encourage as many members of the community in so they can have their say on any issue they like. As I say, that then gets put up to State committee and decisions are made there. The State committee is elected by the community.

CHAIRPERSON - So those meetings are held out in the community, monthly -

Mr MAYNARD - The branch is held at the TAC but you send out a flyer to the community, either done by mail-out or taken out by the field officers to the members of the community. They're invited to come in, there's an agenda set up for that but also there are times when they can speak if they want to bring something up.

CHAIRPERSON - How does a Cape Barren islander or a Flinders islander or a Burnie person financially be able to come and put their input in those particular places?

Mr MAYNARD - Burnie has its own branch on the north-west -

CHAIRPERSON - Right, so they send representatives.

Mr MAYNARD - This is how it works. You've got your southern branch, your northern branch and your north-west branch. You've got the north-west branch president, you've got me for the north and then you've got Ben Everett for the south. They have different community meetings, which are called branches, at certain times, and then they take the minutes and all the notes and all the ideas which are then put forward to State committee. Cape Barren Island is a bit of a difficult thing because of where they live, but you can send mail to them and get information from them via phone and fax and so on, through the community centre over there, if they are interested. The community has to have the interest before I can talk or other members of the State committee can do anything about it.

Mr WILKINSON - There's been a lot of talk that the land should be transferred back, but if it's to be transferred back it should be with proper funding so the people can be properly able to manage that land. Do you agree with that proposal that there's, first, not enough funding for you to properly manage the land?

Mr MAYNARD - Oh, yes. Just for instance, say, Clarke Island. It's a far superior alternative to the ... program over there than anywhere in this State, but when you look at the papers and you see \$6 million

given to Ashley and \$40 000 or \$50 000 over there, on a shoestring budget and the way it's operated over there, it's incredible.

Mr WILKINSON - How many Aboriginals in Ashley at the moment?

Mr MAYNARD - I'm not sure; I couldn't tell you off the top of my head, Jim, but I think there's three boys and they actually participate in Clarke.

Mr WILKINSON - There were two over there when we went over there at Clarke, but I just wondering at Ashley as opposed to Clarke because not everybody wants to go to Clarke, do they?

Mr MAYNARD - I couldn't tell you. I know there'd be a couple at Ashley, either north or south. I'd have to get back to you later on that.

Mr WILKINSON - Is it a case where the Aboriginal community says, 'If we want to have the land transferred back we also want proper funding because that's the only way we can properly manage the land. But if we can't get the funding we still want the land'?

Mr MAYNARD - Regardless of funding, we're arguing that that land should be returned. Funding would be good, but the land would be better.

Mr WILKINSON - Then are you saying you don't want the funding because the funding comes by European law and therefore you don't really accept the European law therefore you don't mind about the funding? Is that the type of thing you're saying?

Mr MAYNARD - If you take it a step further back, Jim, where does the funding come from? It generates from the land. Where did the Crown get it from? There's a view, why should Aboriginal people pay for the land when the Crown got it for nothing in the first place.

CHAIRPERSON - To extend on that, do you not believe that in this proposed transfer when you're looking at areas of 4 000 hectares, 500 hectares, and so on, and knowing that you are going to have to, like every other landowner, adhere to all the State laws, environmental laws, weed management, and so on, don't you believe that you may be putting a severe burden on a community if there isn't some funding transferred with it in being able to manage such vast areas? Whilst the Crown, if I might say it, might ignore their own weeds on their own land when it suits them, as soon as it's a private property owner they're coming in and saying, 'Here's the law and you must dispose of these weeds or you must correct these environmental problems of campsites out into the ocean', and so on. That has to be a concern, I think, to the committee and to the Aboriginal community of how all these areas will be managed, just day-to-day issues that will arise without any extra over-and-above plans that the communities may have.

Mr MAYNARD - If we're given the land back, our priority would be to preserve and protect Aboriginal sites on there, the environment and the flora and fauna. If funding was available that would certainly permit those sorts of management practices.

CHAIRPERSON - I think in one of the areas on the west coast there's an area to be handed back and it has already been mooted that it's got severe environmental problems that should be corrected. You would believe that transfer it back regardless rather than transfer it back after problems have been solved and financed by the entire Tasmanian community rather than a specific section of it?

Mr MAYNARD - I think we'd argue to have the whole thing transferred back.

Mr BAILEY - Is the qualification for membership of the TAC the same as for the Aboriginal Land Council of Tasmania?

Mr MAYNARD - Basically the same. Do you want me to go into the process, Ray?

Mr BAILEY - Just whether you are using the same criteria for qualification.

Mr MAYNARD - The criteria we use is a three-pronged criteria: there has to be a direct line of descent, self-identification and communal recognition.

Mr BAILEY - That's as proposed in the bill before us now.

Mr MAYNARD - Yes.

Mr BAILEY - So that's the test that you apply.

Mr MAYNARD - That is the test.

Mr BAILEY - Which is the same as the Aboriginal Land Council of Tasmania; they're using that same test, are they?

Mr MAYNARD - I'm not sure. Did you put that to them?

Mr BAILEY - No, I don't think they did, but I assumed it was probably -

Mr MAYNARD - I wouldn't like to take a guess just in case it wasn't.

Mr BAILEY - There was a court case in relation to the test they were applying, wasn't there?

Mr MAYNARD - Yes.

Mr BAILEY - Of the members that you have, how many would you have who would be registered members?

Mr MAYNARD - I think there are round about probably 6 000 Aborigines.

Mr BAILEY - Who are members of the TAC?

Mr MAYNARD - We do have a mailing list, this is just in the north, of 400 people in the north. I am not sure about Hobart and Burnie but there are clearly 6 000 Aboriginal people who identify as being Aboriginal.

Mr BAILEY - And who are members of TAC?

Mr MAYNARD - There is no real membership.

Mr BAILEY - Isn't there?

CHAIRPERSON - What you are saying is there are 6 000 recognised Aborigines in Tasmania and they have the right to your representation if they wish to participate in the TAC?

Mr MAYNARD - They have the right to use all services and programs we offer at the TAC. Those 6 000 would easily satisfy the criteria, the three-pronged criteria.

Mrs SILVIA SMITH - Do they have full voting rights in any elections?

Mr MAYNARD - Oh, yes.

Mrs SILVIA SMITH - Including the ATSIC election?

Mr MAYNARD - Yes. Our definition of aboriginality differs to that of the Commonwealth, as you have probably worked out. The onus is on the person to prove that they are Aboriginal rather than the Commonwealth definition where the onus is on someone else to disprove that you are.

Mrs SILVIA SMITH - I just wonder if I could go on to the issue of traditional burials and cremations from your statement here. I see that you agree with what is contained in the amendments in schedules 1 and 2. But I am interested in what your comment is on the third paragraph there: 'Aboriginals on

mainland Tasmania have available only small areas of Aboriginal-owned land on which to perform burials and cremations' - and that I understand. But you go on to say: 'Aborigines seek legislation to enable them to conduct traditional burials and cremations on crown land areas outside Aboriginal lands. I just wonder if you could expand on what you're actually pointing to there?

Mr McDONALD - I will give you an example. If I was from the Ben Lomond tribe and that's not on proposed land that you've handed back at all; I'm an Aboriginal, I know I am and I want to be buried or have a traditional burial cremation on the crown land at Ben Lomond because that is where my ancestral remains are. That's where they've been buried, that's where they've been traditionally cremated and everything. I want to also do that. That's along the lines of what we're trying to say, that we want to be able to do what our traditional people have done, been buried, where cremations have been -

Mrs SILVIA SMITH - Actually then you're really specifying only on crown land, where you identify on crown land that you want to have access for burials and cremations on crown land only as opposed to any private land that might have been Aboriginal land, that's what I'm getting at.

Mr MAYNARD - Traditional burials and cremations apart from the land already returned, like Jay's explained, that if you trace his ancestral links back to Ben Lomond why shouldn't he have that right to be able to be traditionally buried or cremated there rather than on one of the islands.

Mrs SILVIA SMITH - Yes, I just wanted to get it a little bit further explained.

CHAIRPERSON - Any other questions from the committee?

Mr MAYNARD - Is there anything on aboriginality, the test of aboriginality or anything?

Mr FLETCHER - I am going to talk with you in private, I need to do a bit of private research on that rather than examine it here.

Mr MAYNARD - That criteria, we've been using that for the last eight years or so.

Mr FLETCHER - I get caught up, Rick, between my role here in asking questions and taking my evidence and my role in wanting to say what I think and asking you to challenge that or prove me wrong or argue with me about it. I think I'd better just ask you questions and get you to give evidence and we'll argue about it in private some time later or discuss it in private some time.

There are other aspects I would like as an individual to understand that I don't presently understand.

Mr MAYNARD - Could I just say, there are people from the Dolly Dalrymple mob that can have a clear line of descent but on some occasions we do knock back from the TAC. We don't let them use the services because clearly they don't have enough evidence to say that they are. There is no disputing Dolly was Aboriginal but for the six or seven generations up until now they never identified so we see that as a broken link, once you've lost it you can't recapture it.

CHAIRPERSON - It isn't the genes in your body, it is the cultural processes you've been involved in over those generations, even if society denied you access to those cultural traditions, say, over three or four generations.

Mr McDONALD - As long as you are continually identifying as an Aboriginal, yes.

Mr MAYNARD - There's an unbroken link between the Aboriginal communities, they've always maintained that identity. For example, people on the islands, Cape Barren Island, Flinders Island, always maintain that identity, maintain certain cultural practices.

Mr FLETCHER - My memory goes back further than yours, Rick, I'd reckon, but there was a period of time when people weren't recognising, identifying their aboriginality at all - and strong active people in the community now. That was a difficult time, I understand, but 30, 40, 50 years ago it was very

much a taboo subject and disgracefully or regretfully or whatever else, but people didn't want to know about their aboriginality.

Mr MAYNARD - Where were these groups, Tony?

Mr FLETCHER - I can say the Huon which I know about and Circular Head which I know about, there is no doubt in their aboriginality.

Mr MAYNARD - There are families down there who have maintained and can pass this criteria, maintained their identity. Even if, from the Furneaux group for instance, if people wanted to hide their aboriginality you couldn't run away from it because the non-Aboriginal community knew who you were.

CHAIRPERSON - And the person who didn't know of some particular circumstance and has discovered they have Aboriginal heritage, have traced the heritage, have learnt about those traditions, who feel a pride in it and want to be recognised as Aboriginal, where do those people sit?

Mr MAYNARD - Hypothetically, this is a person who, say, 50 -

CHAIRPERSON - Stolen children, say didn't know at three years of age because they were removed and put into a totally different society and in later life knew there was always something there and have found that process, no right to be accepted in the community.

Mr MAYNARD - In our community, say it was myself, I was displaced or stolen from my mother, brought up as a non-Aboriginal person, 45 years of age now, the continuing connection is the community's knowledge of me. It can never be lost. That is the connection, because we know who this person is, and even if they did not want to know about them being Aboriginal we have that knowledge that they are. So displaced children and stolen children from Aboriginal parents, the continuing knowledge is that connection.

Mr BAILEY - But if they weren't there in the hard times, would they now be accepted?

Mr MAYNARD - They would be, because if they could definitely prove that they come from an Aboriginal parent who was one of the 6 000 that is always identified as being an Aboriginal person. That link is our knowledge of them where, as I have tried to explain with the Dolly Dalrymple mob, for six or seven generations no one identified, and then all of a sudden someone comes in and says, 'I'm Aboriginal. I found out the other day, did some research'. Can they be Aboriginal overnight or the last couple of years?

Mr FLETCHER - I guess the issue there, Rick, is if they have the genetic link and they find out, for whatever reason they haven't known before, and they want to claim that, then surely they have to be well along the way. I have just worked on this problem on the mainland, as a matter of fact, through an association in the last few weeks, and the person wanted to identify because they wanted to get some special funding for a child for education, so that was the motivation behind doing that, and I had to say 'No, as far as I am concerned that's not a motivation. I can't introduce you to people and try to use influence in that area'. But if that person was simply to say, 'Look, I understand now that I am of Aboriginal descent and I want to identify that and be proud about that', surely no one should say to them, 'No, you can't identify with that. You can't be proud of that fact'. I think that is wrong.

Mr MAYNARD - We are not saying that you're not Aboriginal - everyone has a right to an identity - but we have a criteria for people to pass. If that person you were just talking about, just say hypothetically that they were 30 or 40 years of age and then found out recently, a couple of years, that they were, and they found out they had this heritage, to me how can that person be Aboriginal? I mean, they are, but they have been brought up in the knowledge that they are not for quite a few years. There has to be some sort of criteria or test, because we have got into huge problems from the Commonwealth definition, we really have. There are less resources to go round to service a genuine community.

Mr FLETCHER - But isn't the only reason we've got into trouble with the Commonwealth test is that there is money available? If it was an equal society, regardless of race, colour or creed or background, origins, and there were no welfare incentives to be in any one group, then it wouldn't matter, would it? Like, if a person were to claim their aboriginality they would claim it and be proud of it.

Mr MAYNARD - We don't see it as a matter of boosting our numbers up to get extra resources or money. We just want to service the Aboriginal community that can pass that criteria.

Mr WILKINSON - So in short are you saying, the person can say, 'Yes, I am an Aboriginal', he still knows his identity, but really what's happening is even though he is saying it he is not being accepted as far as the TAC is concerned or ALCT is concerned.

Mr MAYNARD - We are not saying they're not Aboriginal.

Mr WILKINSON - I know you're not, but you're saying they're not accepted as far as obtaining benefits or whatever.

Mr MAYNARD - Not our services, but they can go to Centrelink, they can get their Abstudy, they can go to the Legal Aid Commission, they can get all the other benefits, but because they haven't passed this criteria -

Mr WILKINSON - One of the problems is with that though, the Legal Aid Commission will say, 'No, you go back to Aboriginal Legal Aid'. There's the hiatus there.

Mr MAYNARD - But is that absolutely correct, because sometimes if we have a conflict of two aboriginal parties, the Legal Aid Commission has never knocked them back?

Mr WILKINSON - It takes time.

Mr FLETCHER - Do you mind if I ask you a personal question? How do you see yourself? Do you see yourself as a Tasmanian Aborigine or an Aborigine who happens to be a Tasmania, or an Aborigine and nothing else?

Mr MAYNARD - This is my personal view?

Mr FLETCHER - Yes, how do you feel about yourself?

Mr MAYNARD - I am an Aboriginal person. I am not indigenous but I am Aboriginal.

Mr FLETCHER - So you're not a Tasmanian, Australian? It is a deep question. I'm struggling to understand this. We are talking about land and the Tasmanian people as individuals already own 60 per cent of the total land mass of Tasmania. As a Tasmanian, do you see yourself as a part-owner of that land, of that 60 per cent land mass?

Mr MAYNARD - First and foremost I see myself as an Aboriginal person, and I see us as being in a very unfortunate situation as an Aboriginal person, and look at a lot of non-Aboriginal people who have done very well at the cost of our misfortune.

Mr FLETCHER - Yes, well, my question I suppose, my in-depth question -

Mr MAYNARD - Is too deep for me, Tony.

Laughter.

Mr FLETCHER - Are you a Tasmanian? Obviously you are a Tasmanian.

Mr MAYNARD - Born in this land now known as Tasmania.

Mr FLETCHER - As a Tasmanian you already own in equal circumstances with all other Tasmanians 60 per cent of the total land mass.

Mr MAYNARD - But we will always be treated as second-class citizens if we don't have our land returned and we are not allowed to practise our cultural heritage. That's how I see it.

CHAIRPERSON - Okay. Thank you very much for your submission and your attendance here this afternoon. It has been appreciated. Thank you.

THE WITNESSES WITHDREW.

THE LEGISLATIVE COUNCIL SELECT COMMITTEE ON ABORIGINAL LANDS MET AT HENTY HOUSE, LAUNCESTON ON THURSDAY 9 MARCH 2000.

GINNI WOOF WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIRPERSON (Mrs Sue Smith) - Welcome to this afternoon's hearings of the Aboriginal lands select committee. The process we use is that we ask you to speak to your submission, after which members of the committee will ask questions if they have any. So we will pass over to you.

Ms WOOF - I have written a little bit more simply because the submission we sent in was very short because we didn't have very much time to do it. I will actually be expanding a little bit on it, but the central core of what I'm going to say is actually in the written submission.

Tasmanians Against Racism welcomes this opportunity to add our support to the Premier's proposed reconciliation package. Tasmanians Against Racism was formed in 1998 in response to the increased public expressions of prejudice and divisive comments that were made following Pauline Hanson's maiden speech in Federal Parliament. We were formed to provide a forum for like-minded people to discuss issues of racism and to take action on issues of racism that we saw in the community. As a group we support any individual, community group, organisation or government that is willing to take action that we see will overcome discrimination in the community.

Tasmanians Against Racism supports the proposed amendment to the Aboriginal Lands Act which would return a further eight and possibly ten parcels of land to the Tasmanian Aboriginal community. The return of the land would demonstrate the Tasmanian Government's commitment to implementing the recommendations of the Royal Commission into Aboriginal Deaths in Custody in which the dispossession of their land was acknowledged as being of significance in the disadvantage and disempowerment of indigenous Australians today.

The return of land to the Aboriginal community would also acknowledge recognition that Aborigines did indeed possess the land at the time of white settlement. Handing back the land would therefore support the High Court's Mabo decision which overturned the concept of terra nullius. The parcels of land proposed to be handed back are rich in the physical evidence of past Aboriginal occupation which supports the relationship that Aborigines have with this land and the significance of this land to them. We feel it is important that the existence of prior arrangement with regard to access and leases will be unaffected by the proposed land handbacks and that these facts need to be better publicised so as to allay the fears of those in the community who perceive such a proposal as unfair and discriminatory.

Tasmanians Against Racism also support the recommendation that the determining of Aboriginal identity should be the responsibility of Aboriginal people and not the responsibility of either government or the judicial system, neither of which can be considered to be fairly representative of Aborigines. We also support the recommendation that Aborigines should be allowed to hold traditional burials and cremations as this would be another opportunity for Aboriginal self-determination. We believe that in approving the reconciliation package proposed by the Premier, the Tasmanian Government will further indicate its commitment to the self-determination of the Aboriginal community and will provide opportunities for enhancing community harmony.

Mr FLETCHER - You referred to the concept of terra nullius and obviously flowing from there is the High Court decision with regard Mabo and Wik and then the Commonwealth legislation which established the native title legislation to apply as a standard for assessing the claims of all Aborigines

in Australia for native title. Do you think that law should apply equally to Tasmania as it does to every other Aborigine?

Ms WOOF - I do.

Mr FLETCHER - Okay. So logically Tasmanian Aborigines ought to make a claim for native title.

Ms WOOF - Unfortunately there are so many problems involved with that because of the removal of the Tasmanian Aboriginal population so effectively from their land in the nineteenth century. So in Tasmania there needs to be some consideration made to the historical impact of white settlement in Tasmania.

Mr FLETCHER - Isn't that true also of generally Australia? Only 50 per cent of the claims made are successful for Aborigines nationwide.

Ms WOOF - Yes.

Mr FLETCHER - So if Tasmania were to make a claim and be unsuccessful, how would they be different to other Aborigines in other areas who are unsuccessful?

Ms WOOF - In all those areas where white settlement was particularly effective, such as the south and the east of Australia, there needs to be more consideration put on the historical considerations.

Mr FLETCHER - So contrary to your previous advice to me, you don't agree that the law should apply equally to all Aborigines.

Ms WOOF - It's a difficult one because I have problems with parcelling Aborigines into just one group. I suppose that's my biggest problem. We're talking about different Aboriginal communities rather than just Aborigines.

Mr FLETCHER - I see. So you're asking me to discriminate between different classes of Aborigines.

Ms WOOF - No, not different classes - different communities. All Aboriginal communities have different aspirations, and I think it's unfair just to say 'Aborigines' rather than recognising the existence of many different Aboriginal communities.

Mr FLETCHER - You force me to go back to the earlier proposition, your earlier statement that you believe the national law should apply to all Aborigines was not a correct statement. You don't believe that at all.

Ms WOOF - No, I will take that back.

Mr FLETCHER - I see. Where claimant parties or groups are unsuccessful under the national native title legislation, they do have a further right to make a claim for funds. There is \$50 million a year available to purchase land to offset their disadvantage. Do you believe that ought to apply to Tasmanian Aborigines?

Ms WOOF - It would be the purchase of freehold land that would be of significance to the Aboriginal community, yes.

Mr FLETCHER - Correct. Do you believe -

Ms WOOF - If there is the opportunity for that; if the land cannot be handed back in some other way, I believe any opportunity should be made available for the Aboriginal community to have ownership of their land.

Mr FLETCHER - If you don't agree that the native title legislation as a national piece of legislation ought to apply to, say, Tasmanian Aborigines in this case, what criteria would you apply to determine what land ought to be transferred? Do you have any idea about if it's not Mabo or Wik criteria established by the High Court, what should replace that?

Ms WOOF - Unfortunately I really didn't have the opportunity to go into this. I am speaking for a group and I have to be very careful that I don't say things that the group that I represent would believe in. So I really feel that I can't answer these questions because this was not the brief that I was actually given by my group, I was just asked here to support the proposed package.

Mr WILKINSON - On behalf of your group.

Ms WOOF - On behalf of my group.

Mr WILKINSON - You can if you want to, and if you feel safe you say, 'This is not the belief of the group but it's my belief that such and such'.

CHAIRPERSON - Yes. If you wish a personal opinion and you quantify it before you give the personal opinion, it is taken as differing.

I refer back to your submission and you made a comment that changes proposed in the reconciliation package will further enhance the position of Tasmania's indigenous people without threatening or disadvantaging non-indigenous Tasmanians. There is one community in Tasmania where 20 per cent of the land in that municipal area with these proposed changes and the 1995 handover, 20 per cent of that community's land will have been transferred to Tasmania's indigenous people. Do you believe that is a fair distribution, that that community carries 20 per cent of Tasmanian's obligations?

Ms WOOF - As no changes will be made to lease arrangement and access arrangements to that land, I really see that it wouldn't be considered to be unfair. The community will still have access to the land, shack owners will still be able to use their shacks. According to my reading of the proposed amendments, no changes will be made to existing arrangements as far as access and lease, so there is going to be no change in the land except that it is recognised as being Aboriginal land.

CHAIRPERSON - You made another comment that you strongly support the Government's position because it will enhance the position of indigenous people in the community. Can you expand on that, give me examples of how the 1995 transfer and now the 1999 transfer will enhance the position of indigenous people?

Ms WOOF - By giving recognition of prior ownership of the land such legislation also gives recognition to the position of Tasmanian Aborigines within the local community that they are the first people here. I think that with continuing education many Tasmanians are coming to realise the significance and the importance of the contribution that Tasmanian Aborigines have made and are making to Tasmania. The handing back of Clarke Island, for example, is a good example of how the Tasmanian Aboriginal community is making use of land that has been handed back in a very creative fashion, offering opportunities for young Aboriginal offenders to undertake their custodial period not within Risdon, not within a western prison system.

CHAIRPERSON - You spoke earlier about different Aboriginal communities when you were answering a question of Mr Fletcher. Do you believe in the transfer of land, considering your different Aboriginal communities and how they are different, that the land should be transferred to recognised Aboriginal communities within the area where the land is transferred or transferred to the State's statutory body, as is currently the position?

Ms WOOF - That is not something I would like to comment upon because I think that is a decision that needs to be made by the Aboriginal communities themselves as who wants to take responsibility for the land.

CHAIRPERSON - Yes, I might say they are making that a little bit difficult in their diverse opinions as well. Thank you. Do we have any other questions from the committee?

Mr WILKINSON - Can I just ask one about reconciliation. What you hear a lot about because it is part of the process of reconciliation, I don't know whether you said you might have used it as well, what is your definition of reconciliation? You hear that word thrown about a lot but people find it difficult to define.

Ms WOOF - I think that is the big problem because really we should almost be talking about conciliation rather than reconciliation because reconciliation suggests a coming back together again of people who have been separated by some form of disagreement. It is probably hard to find an example where the conciliation occurred in the first place. My personal understanding of reconciliation is the process by which the wider Australian community provides and welcomes opportunities for the Aboriginal community to become self-determining.

Mr BAILEY - To what degree of certainty do you place on that for self-determination? In what areas do you see that occurring?

Ms WOOF - I suppose the most significant one, which is one that is proposed in the legislation, is determining aboriginality; I think that is very important. Self-determination in the way that communities are organised and run; self-determination as far as representation in the Government and in other organisations as well; self-determination that allows for improved health, education and other opportunities.

CHAIRPERSON - You made a comment, self-determination in their representation in government and other areas, are you advocating that Aboriginals should elect Aboriginals to State Parliament or local government?

Ms WOOF - This is a personal opinion of mine but I do personally believe that like the New Zealand government we should have government positions that are specifically for our indigenous community to offer the opportunity for better representation.

CHAIRPERSON - You don't see that opening a door then when I have a right to walk away from my responsibility to all the community, be they Aboriginal, Italian descent, whatever, because Aboriginals elect Aboriginals and thus it is not my responsibility?

Ms WOOF - No, it shouldn't be because you're there to represent your electorate, whoever they are.

CHAIRPERSON - But we've had Aboriginals, under your scenario, electing Aboriginals specifically.

Ms WOOF - No, the idea that there are designated placed within government, not necessarily only elected by Aborigines, but the opportunity for better representation in parliament.

Mr BAILEY - In relation to self-determination, do you believe it reasonable that the Supreme Court should have a role to play as a final arbiter which is a non-Aboriginal institution?

Ms WOOF - That is a difficult one as well and I don't think I'd like to answer that question.

Mr BAILEY - I don't know the answer - that's why I thought I'd ask you.

Laughter.

Mr WILKINSON - You're not going to be marked on your answer.

Laughter.

Ms WOOF - I know but, as I say, I feel I have to be very careful in what I'm prepared to talk about and what I haven't prepared in advance to talk about. It is no good getting myself bogged down into comment about areas that I haven't boned up on recently.

Laughter.

Mr FLETCHER - Are you concerned about the level of racism in Tasmania?

Ms WOOF - I am.

Mr FLETCHER - Examples?

Ms WOOF - A recent example would be in late December a visiting Malaysian student was racially abused at the First Basin in Launceston in front of many witnesses who took no action and when he reported the incident to the police there was no action taken there, that is one example.

I work with international students at the University of Tasmania and we have frequent comments and complaints by students of perceived racist behaviour by members of the community towards them as they are just going about shopping, walking around town and things like that. So I do see it as a very big problem.

Mr WILKINSON - Is that in the north of the State that you are talking about?

Ms WOOF - I am talking specifically about the north of the State because this is the area that I'm working in but I'm sure that it is happening all over Tasmania.

Mr WILKINSON - It surprises me. I'm president of SISTAS (?) now and you don't hear much of it in the south of the State.

Ms WOOF - I think that one of the biggest problems that I have encountered is that many of the international students will speak to me, I am a tutor, they will talk to me person to person but when I ask them to report it they won't do it. These things are happening but most of them are going unreported. I think the number of cases that have come up in front of the Anti Discrimination Commission since it was set up is indicative of the level of discrimination that is actually occurring in the community.

CHAIRPERSON - Thank you. Any other questions from the committee? Thank you very much for your submission, your time has been appreciated.

THE WITNESS WITHDREW.

THE LEGISLATIVE COUNCIL SELECT COMMITTEE ON ABORIGINAL LANDS MET AT HENTY HOUSE, LAUNCESTON ON THURSDAY 9 MARCH 2000.

JACQUELINE TOBIAS WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIRPERSON (Mrs Sue Smith) - Thank you, Mrs Tobias, for your representation to the committee and your appearance here this afternoon. The process the committee uses is that we ask you to make a presentation to expand on the submission you've made and at the end of that presentation the committee will ask any questions they believe are relevant. I do remind you that we have a 2.30 p.m. time line before the next person is to give evidence but we are starting a little bit early for the first time today. So if you'd like to make your comments.

Mrs TOBIAS - I've since learned that my son-in-law - I don't know because my daughter's just doing the family tree - can claim Aboriginal descent but as he's about one-sixteenth or one-whatever it is - his stepfather was Aboriginal - the Kings, they go back. Now, I look at it this way: the world was made for everyone and no-one has a choice of birthright? Did anyone have a choice of where you were born?

Mr WILKINSON - No, but I must admit it's a beautiful place to be born.

Mrs TOBIAS - Definitely, I agree with you. I mean, I've lived in three States and I've been in Tassie the longest - 21 years. I look at it this way: according to the Red Indians the land does not belong to us, we belong to the earth. The American Indians had no qualms about us going to America and they did help us a lot but what they couldn't understand was why a person had to buy land - we went over there, took the land and sold it and they couldn't understand why it was sold. They said you couldn't buy it any more than you could buy the sky or the air or whatever and another thing they couldn't understand was why we fenced our property off. If we've gone over there and settled down like everybody else they couldn't understand it.

To me the term 'Aborigine' means 100 per cent full-blooded. I'm a 100 per cent full-blooded English person - a Pom, if you want to say that. If I was to go home now I'd be classed as a second-class citizen because refugees and all that are put up at a \$400 a night hotel, which is a fact. We wouldn't be able to claim the dole for two years if we went back so we'd be classed as second-class citizens. Now the Earl of Spencer, Princess Diana's brother, my family was brought up in Wonsworth - now he holds the title of the Baron of Wonsworth. Could I go back and ask him to get off my land because that was my territory for centuries? The answer would be no.

I've got no qualms about the Aborigines but there are none full-blooded in Tasmania. Therefore when they accuse us, the white settlers, of taking their land, they're also speaking about their own ancestors, their own white ancestors, because they are of mixed race. Now, if you read my letter properly you will find that the whalers and all that were here long before we had settled in 1803 and the only reason we settled here was because the French were flying around like they were in the First Fleet - and therefore we settled here but we never took the land because to invade a country first you had to be at war with them - as you know with Germany and you know your history - and also that there is something that you need in that country.

As you know, Captain Cook only stayed 48 days so he didn't invade, he only stayed there to repair his ship. He found it was very unsuitable but anyway we used to send our convicts to America. I wish I'd had a convict relation - I mean, quite often they did quite well, rather than sitting at home with no dough or nothing and no chance of improving themselves. The convicts were clothed and fed until

their term of office, given 35 acres, the First Fleet, and they're doing quite well, as you know, some of them that came here - the three exiles - there is a story called that. First they went to Sydney, then the first lot went to Norfolk Island, then they came here. As I say, I wish my family had come out here then because it was so good out here that they got their husbands and wives to commit a crime so they could come out here to join them.

I can't understand why after 200 years you would want to start giving back. I don't know if you read that but within 50 years there would be no Aboriginal blood in them in Tasmania - I'm only talking about Tasmania. So therefore legally it will revert back to the white people and if you look at a map of Tasmania we did not overtake all of Tasmania - one-fifth of it is national parks anyway. What gets me annoyed is up the coast along the beach where there was rock that had been there for centuries. People had had access for 200 years, nothing's been said about it - that was made by nature, it wasn't made by man and most of the artefacts that are in caves that have been found have found by white travellers and they wouldn't know it was there until it was brought to the attention of the white settlement - or should I say European settlement. But how can you claim something that was made by nature - I mean, how can you say England invaded - how can you honestly say you're an Aborigine? We can't go back and say 4 000 years who was here, we only go by books - and it's a choice of birth; it goes back to birth. No-one has a choice, have they? And if God made the world - and I'm not being nasty - this world was insects and animals long before mankind, so who would have the right to this world? Are we now going to get a little bee come up and say, 'You trod on me', or an ant? I mean, this is ridiculous. Fair's fair. We're all Aborigines from our place of origin and we have no choice. I suppose we'd all look back and say we'd like to be born Prince Charles, wouldn't we?

Laughter.

Mrs TOBIAS - Why wasn't I born rich? Why was I born poor?

You remember the Flying Doctor. The ... that was given to them 45 years ago, that's made by nature and it is going to stop the tourism. I am a Pommy and it annoys me ... none of my bloody business - excuse the expression - but I look at it and say, 'What about the Australian-born?' It's splitting the country up. In fact I've heard people say it's amazing we didn't kill the whole blooming lot.

The only invasion we have had in Australia was on 19 February 1942 when the Japanese bombed Darwin, came over and as you know there were so many prisoners wasn't there and they definitely said if they had stayed here there would be no Aborigines left today. As I stated in my thing if it wasn't for the British you would not have the Aborigines of Tasmania here today of mixed race.

What I have written I don't think anybody else, not being funny, could write the truth of what I've said. I've thought of it; I've thought long and clear about this statement - years I've thought about it. I would say that to any country that was demanding land if I was the head of the United Nations or something - the Aborigines want to keep going to them - shouldn't do anything unless they actually live in that country to understand. Like the Serbs they went to Yugoslavia in 1253 in Turkey the Moslems took over. You see you have to look at history and people don't look at history.

If you tell the truth, read the truth, how can you go wrong? That is what I can't understand. I'm not worrying about me, I've got no grandchildren. I couldn't care. But I am a person who believes in honour, I believe in fair play and all men are born equal.

As for the Aborigines saying they are ill done by, they get \$2.2 billion a year for health and education - that is a fact. They go to university and Drysdale free of charge, I do know that is a fact because I know people who do go to university. They also get \$10 million a year for health and education, to travel, except that the five of them - which were half-castes, Dodson's, have a white father; the other lady has an Irish father - and they travelled to see the Queen. Not even I could go and see the Queen. You see, it's splitting it up. Reconciliation to me, it won't stop there because reconciliation to me was 1967 when they were given the vote and given citizenship. They won't be reconciled because they won't have a bargaining power to do that.

Mr FLETCHER - Do you think it is unreasonable that the descendants of the ancient people, the original inhabitants of the island, who claim their aboriginality and want to strongly identify with their

aboriginality and have the remnants of a culture, ought to be provided with some land to nurture and practise that culture? Do you not agree with that proposition?

Mrs TOBIAS - No, because you could say that to all the world. You could say that to any country in the world. The Red Indians are still on the land - I have videos at home to prove it -

Mr FLETCHER - The difference clearly there was -

Mrs TOBIAS - I know that.

Mr FLETCHER - the Red Indians had a treaty -

Mrs TOBIAS - Not all of them had a treaty.

Mr FLETCHER - Oh, yes.

Mrs TOBIAS - No, I have the videos at home if you would like to look at them.

If you give them back their land are they going to go back to their culture of living like that? Are they going to give up white man's ways? Like the Red Indians in Arizona they are still living and inter-marrying their own kind. They are 100 per cent full blooded. They also have a casino now - there are only two allowed in America and they are allowed the third one. They are getting on well with the whites. They are supporting themselves; they don't live on white man's money at all. It's like me. If I want to go back to my English heritage, yes, then I would go back to England. I would live in a little English house in a little English village.

They have not been practising in Tasmania for the last 200 years. They have been amalgamating with the white people. As according to Wik, I believe - if you believe it - they said if they continue to live on the land of the last 200 years then they were entitled to receive it back. How can you go in the outback? I haven't had the opportunity to go. But if they are still practising what they did in the last 200 years I would say yes.

Mr FLETCHER - So you are saying that any claims for land rights ought to be made through the Federal jurisdiction under the terms of the High Court, either Mabo or Wik?

Mrs TOBIAS - I think so.

Also, I didn't agree with the judges. There were seven judges but they're not - what annoys me - selected by the people.

Mr FLETCHER - So you prefer the American system?

Mrs TOBIAS - I think anything to do with public relations or public entities should be either by the people, a comment or a vote - anything that deals with public things, judges should be elected by the people. Do you know what I mean?

Mr WILKINSON - They have to have a bit of a background in law though somewhere.

Mrs TOBIAS - Yes. To me, after 200 years it is splitting the odds. It is making people sick and tired of it. We need to talk about the bad backgrounds.

For people who come to Australia - I know what I have been through - I've been through a war; I got bombed out. I was evacuated as one of the stolen children. When you look at just me. If you came back to London your mum and dad were dead, they were bombed. We were flattened to the ground. I lived through war. I have Crohn's disease. I said in my letter to somebody, 'Did I get that illness to do with your bowels through the bombs?' For five years we were bombed night and day. What about the people in Europe? Look at the history of the world and compare it with Australia, this is a lucky country - except for Darwin.

Look at everybody's life. How can you honestly say that we have had a perfect childhood? How do we know that sitting around here your father might have belted the living daylight out of you?

Mr FLETCHER - We've had a better childhood than those who were killed.

Mrs TOBIAS - Yes, they did. There again, as I said -

Mr FLETCHER - It is a relative matter, isn't it. I think your proposition is interesting but it has to be focussed to the submission that we have before us.

Mrs TOBIAS - If there were stolen children in this country, right, why didn't they go back? I was a stolen child taken up to Leeds with my sister. There were still bombs up there so why the English Government took us up there thinking we were safe, we weren't, but we were picked out at the town hall and we went to live with an old couple. She couldn't cope with two of us because she had never had two children - my sister was about 5 and I suppose I was about 8. So I was taken off to another home, a pensioner, she was deaf and I was sick every night. She couldn't cope with me. I was put in - what do you call - a child centre for runaways. The first lady wrote a letter - because there were no phones in those days - and told my mum that I was taken away. She didn't know where I was. My mother borrowed money to come up to find me, to look for me and she found me. Now, if these children were taken away, why didn't they when they were 15 years or 16 years or whenever they would start work, go back to their place of origin? They had a chance of living in the country or going back.

There were 1 000 children or more who were taken to Canada during the war and the Germans torpedoed the boat because they thought it was just an ordinary boat - you know Merchant Navy - and those children never came back.

If you look at history, the 16th and 17th century, the English and the French where they saw children or people in the street they were sent over to America to populate America. So if you really go back in history, not just Australian history, you will find they were worsely treated off.

Mr FLETCHER - Yes, there have been some bad times.

Mrs TOBIAS - Terrible times, but we can't go back in the past.

Mr FLETCHER - No.

Mrs TOBIAS - I can't go up to Germany and say, 'Look, my illness was originated from you' - to prove it and even if I could - 'You bombed my house and bombed my granny's and everybody like that and I want compensation'. I have had this illness for 30 years. It wouldn't have made me forget what I have gone through and all they could have done was pay my medical fees but money won't compensate me. It has wiped out 30 years of my life that I couldn't even go on a holiday because I have to know where toilets are. I was lucky to get a holiday in 1995 and 1998 in all the years I have had this illness, because I suddenly sit here and I suddenly have to go. I have to know where the toilets are. You can't go in a coach because somebody else might need the toilet. It is a terrible disease, it is a hidden disease - and I am not just talking for myself.

Now did that go because I was a stolen child? Did that go because I was bombed out? Listened to bomb fire all night and every night. You couldn't sit down because you heard the bombing. All that trauma and how can you say give them ...? We've wiped it out. You can't wipe out a memory.

It is about 2 000 we should start from the beginning. The whole world should start getting peace to everybody. Say look we are going to start the new -

Mr FLETCHER - Millennium.

Mrs TOBIAS - Yes. We are all going to get together. I think the best thing we will get together is that there was no - most of the wars are started by religion. Do away with all religious schools.

Laughter.

Mrs TOBIAS - I am religious; I used to be a choir girl. I do think for the world. This is where trouble starts. I went to school up to 1949 there was a Jew - I didn't know it was a Jew, what is a Catholic? Kids don't know religion.

Laughter.

Mrs TOBIAS - I know it is an awkward position. You should never talk about politics and religion. It's a good job we're not eating because that is what I was taught at school, you should never talk at the table otherwise you get indigestion.

Mr FLETCHER - They are the only two things that matter in life, don't you agree? If you want to talk about them, go for it.

CHAIRPERSON - Thank you. Any other questions of Mrs Tobias?

Mrs TOBIAS - You just ask me. I don't know if I can answer any.

CHAIRPERSON - Have you finished, Mr Fletcher?

Mr FLETCHER - It is not up for me to give my opinion. I have some difficulty with your propositions but anyway you have given them well and you have spoken to them well and I understand where you are coming from.

Mrs TOBIAS - I hope you do.

Mr FLETCHER - I do.

Mrs TOBIAS - Did you understand?

Mr BAILEY - I certainly understand where you are coming from.

Mrs TOBIAS - I'm not very good expressing myself. My daughter has to type it out for me because the brain is there and I talk in shorthand sometimes and you are supposed to know what I am talking about. So this is the first time I've ever stood up.

Mr FLETCHER - Good on you.

CHAIRPERSON - I think we have your message very clearly, Mrs Tobias.

Mrs TOBIAS - I'm not begrudging anybody in the world. I just think it would be nice - I think it would be nice if every Sunday in the park everybody had a sing song with the band and you would bring people together. We could all have a sing song. It would make the world a better place.

Mr FLETCHER - We have about nine months before the next millennium starts so you can start to spread the message.

Mrs TOBIAS - Thanks for listening. As I said, I have read the world's history and I used to communicate with a lady in ... and I have his book on Prince Charles and he wrote back. Dear Exquisite Lady - So I must be something. Thanks for your time for listening.

THE WITNESS WITHDREW.

**THE LEGISLATIVE COUNCIL SELECT COMMITTEE ON ABORIGINAL LANDS MET AT HENTY HOUSE,
LAUNCESTON ON THURSDAY 9 MARCH 2000.**

Mr E DWYER WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIRPERSON (Mrs Sue Smith) - Thank you, Mr Dwyer, for your communication to the committee that you wished to appear and make some relevant comments. I apologise for the fact that we have kept you waiting but it is important to attempt to allow everybody to complete their evidence if possible. You have been sitting in the audience so you probably noted we ask the individuals or organisations to make their comments and then the committee will ask any questions they see relevant. We will pass over to you.

Mr DWYER - First, let me say, I think you have a job ahead of you but I can't really see much of a way out.

As I said in my submission, I don't like the idea of politicians being elected and then saying give any part, any small group, any group really, any part of Tasmania just because they feel sorry probably. That aside we did have that High Court case, the Mabo case - and I thought there were big cases after that - where they worked out a system they could go through to apply for land if they had the right, or thought they had, the right criteria. I can't see why Tasmanian Aboriginals can't go through that same system, unless of course they think they probably wouldn't get

I know the Premier is a Victorian who is also an Aboriginal Affairs, not minister but he is in charge of Aboriginal Affairs. I am one of the ones who voted, I think it was around 1968, to give Aboriginals the same equal rights as everybody else in Australia. I think the way things are going - and it seems like John Howard is of the same opinion now - that reconciliation is going to be a long way off the way things are going at the moment. Instead of Aboriginals now being discriminated against, I would say ordinary Tasmanians, whether they be Irish as mentioned here earlier or anything else - we have things such as there was a job advertised from the University of Tasmania on 8 January that is an Aboriginal position or even Torres Strait Islander can apply which is all right, except it says down the bottom, 'We are an equal opportunity employer.' I certainly don't see how I could apply for it.

What I am really here for though is the lands legislation. The islands - and they're huge islands - Cape Barren Island is a huge island itself and I am wondering why other islands like Clarke Island - although it had in the paper the other day about Clarke Island being between Cape Barren Island and Flinders; it is actually below Cape Barren Island - why they'd actually want another island there that they say is part of their land, the north-east tribe, but you can't see Clarke Island from the land, so they couldn't even know if it was an island.

I did put a letter in the *Examiner* to that effect and it was answered by Michael Mansell. He obviously knows what he's talking about but he says they don't have to actually occupy any land to be owners of it. I don't know how he worked that one out. But going on the islands, they weren't on any of those islands when Europeans came but he says they were owners of it for some reason.

I have fished around those islands and it worries me that once they get a huge tract like Cape Barren Island and they have their own flag, I guess they could almost call that another country then and have fishing rights out 200 miles, or whatever it is these days. It hasn't come to that, but it could.

I have worked with quite a few Aboriginals: Stan Sadie and Brian Mansell; Jack Sadie; Daryl West, I played with him. At that time, 25 years ago, to me they were just other Tasmanians; they never said anything different, they might have felt different. Probably I am a descendant of convict Irish too but I don't call myself Irish. I don't really think, without a vote from the whole of Tasmania, to say whether we should give land, especially - I think I have it here in one of these, this is *Aboriginal People of Tasmania* by Julia Clark, I think she was something to do with the museum - it is the Aboriginal land claim and they have Oyster Cove now and Wybalenna, quite a few of the mutton-bird islands, part of Cape Barren Island. The bit that worries me of course is compensation for the dispossession of land in Tasmania, which I guess is all the land in Tasmania - I don't know how we'd ever pay it - and the return of ownership of crown land not being used by white's or compensation for crown land. In the same lot of land claims at the moment they really want national parks and to me a national park is a park for all Australians not just Tasmanian. They say they will give people access but they don't mention there will be a charge to go in. There is a charge at the moment, but they can stop access for any reason they can think up anyway. Mount William is a huge national park - I lived at St Helens and been there a lot.

Listening to the last speakers, aboriginality has always had me tricked really. It is probably true when they say they know who but I think it was Tony who said that it is really a problem when they want to say themselves - but then again you get back to who.

This is again from the *Mercury*. You people, especially from down that way, would have read this but Michael Mansell had quite a big write up in there about the Aboriginality of people. This is only from the newspapers, it's not saying that they are a hundred per cent correct of course. He said: 'In 1996 figures there were just over a 1 000 votes' - this would be from the Land Council, regional council. And he said, '600 of them were white folks'. So which ones are going to get the say on who's going to be Aboriginals? It could be the ones they are calling 'white' at the moment. I don't know how they're going to do it. I don't think you could let them do it themselves, it would have to be an independent.

Mrs SILVIA SMITH - I was just wondering if I could perhaps get your opinion. I guess what I'm trying to get at is you talked about in 1968 there was a vote to give all Australians, including Aboriginals, equal rights. In your opinion - this has been brought up before and I just wanted to hear your opinion - do you foresee perhaps that governments of this day and age are moving towards setting up a similar system to apartheid that we had in South Africa? Because you are saying that the white people, the European community, are now being discriminated against and you talked about an advertisement.

Mr DWYER - That's the way I feel exactly, yes. Young Aboriginal people, I think they are taken now, I don't think it's just a courts decision. I think they can be taken to Clarke Island, on those islands themselves, not to gaol. I wonder why ordinary white youths eighteen or under, I don't know why they can't all go to the same place or another island, that Cape Barren Island is a huge island.

Mrs SILVIA SMITH - So you're getting a feeling that there's a bit of discrimination perhaps?

Mr DWYER - I think there's a lot of discrimination, there's even Austudy and Abstudy -

Mrs SILVIA SMITH - That the Aboriginal people are being discriminated against and that the European community are being discriminated against, vice versa?

Mr DWYER - It was definitely that the white people were discriminating against the blacks in South Africa but here it's going the opposite way now. We've got a small minority group that - they even get Abstudy - that's another thing I haven't looked into, but I could never understand why one group should get Abstudy and another one Austudy. Why don't they get the same? I assume they're all Tasmanians.

Mrs SILVIA SMITH - Your ideal then would be to move more towards an integrated society, as we're a very multicultural society, that everyone is treated absolutely equal?

Mr DWYER - Well, you've got to treat all the others equal whether they're Chinese - one of my relations is part Chinese, she was born in Australia, and they would be her grandparents, I guess. To me they're Tasmanians. I always say Tasmanians before Australians myself. I don't think there should be any discrimination. Discrimination is a word and if it's discrimination it's discrimination. You can't say, 'We'll let that go because so and so, or because they're women, or because they're -'

Mrs SILVIA SMITH - And on the issue of giving land back, do I detect that you have a concern that perhaps all crown land, for example, would in the long-term future somewhere be returned and that access to the rest of the community could become very limited?

Mr DWYER - Yes, that is a concern. They say, which is easier to do, that they guarantee access for them. They mightn't even be the ones there in ten years time or something, there might be another lot there and they can just say, 'We didn't guarantee it'. But crown land would be a lot of Tasmania and even national parks - I'm dead against national parks being given to anyone.

Mrs SILVIA SMITH - So you'd like for it to be in public ownership and continue that way?

Mr DWYER - Yes, I would.

Mrs SILVIA SMITH - What about when we have sites - and we know that in some of these areas there are very special sites of very special significance, for example, the carvings and paintings on walls and on rocks and even caves, the middens that are on the beaches - how would you suggest that we protect those because that's history and it's Aboriginal history and they have a real tie to those portions of land? Could we look at only those areas or not at all?

Mr DWYER - No, I think we should keep them protected - probably more protected than they are at the moment - but I don't know whether actually giving the areas to the Aboriginal community, which will probably get some - I hate saying whites and blacks -

Mrs SILVIA SMITH - So do I, that's why I never use the terms.

Mr DWYER - No, Mike Mansell doesn't mind. Some people get their backs up because they've been used to going through these areas probably. They'll probably do something stupid because of that, whereas it's got to be policed and I don't think the Aboriginal community can actually police them enough myself. We've got Parks and Wildlife, I don't see why they can't still do what they've always been doing. But yes, I believe they should be protected. Wybalenna, I go along with what they've done with Wybalenna actually, they're doing well there.

Mrs SILVIA SMITH - So you agree that some areas perhaps are significant -

Mr DWYER - Oh, for sure.

Mrs SILVIA SMITH - and should be vested into a group, perhaps the Aboriginal people of Tasmania, to look after and protect those heritages?

Mr DWYER - Yes, for sure. Because I was a fisherman, it's not going to affect me much now, I've retired. Because of another government decision on quotas I ended up retiring. I think you might have been on that committee were you, that quota system for crayfish?

Mr WILKINSON - No, I wasn't.

Mr DWYER - I know Mr Schulze was; he was very good. We got a very good hearing there and although it didn't come out the way I wanted -

Mr FLETCHER - It's doing all right now though I think, isn't it?

Mr DWYER - Yes. Those who stay there it'll definitely be all right and better for the industry. My argument was probably wrong then, it's probably wrong now too.

Laughter.

Mr WILKINSON - I wasn't going to say that. I was one of the people who argued for quotas and went against you at the time.

Mr DWYER - Well, you could've been on the right track. It was just that I was at the period where I couldn't invest more in it to keep going so I left it to the others. Yes, that's worked all right and Legislative Council I thought did a very good job then, the committee members.

CHAIRPERSON - Other questions on Aboriginal lands. I don't want their heads to get too big, Mr Dwyer.

Mr WILKINSON - You started with your submission and spoke about your concern with the fishing rights and other rights. Is that one of the real concerns that people have out there in the community? That is, are they saying that they concerned about this because they believe it's a creeping process and part of that creeping process is that there's going to be a claim for fishing rights at some later stage.

Mr DWYER - I think that is a concern because when the Liberal Party it was at the time gave back those first few pieces of land down Hobart way - Risdon Cove and a couple of others - they said then they had no other pieces in mind at that time and of course there's a change of government and then there's another heap and then whether a change of government or this one goes on more with Rocky Cape and Mount William.

Mr WILKINSON - I'm trying to understand if it's more of concern - 'I can understand some or all of these areas but what I'm really worried about is if these areas are transferred back then there's going to be more'. Is that the major concern? I'm trying to understand whether it's the concern of these lands or alternatively the concern of what may occur at some later stage, as you've mentioned the fishing rights.

Mr DWYER - It's a bit of both really. Some of those lands - it irks me a bit when they say giving them back because they weren't on those islands when the Europeans came so I don't really get it when they say it's giving them back to them. The other parcel at West Point where the Aboriginals were, they would be historic sites. I think they've got to be looked after properly, for sure, but I am concerned that the next thing - and like I said, the Liberals said they had nothing else in the pipeline at that time, the next thing of course will be Rocky Cape and probably other national parks and I just wonder where it will end. I take it that I'm probably the silent majority on this sort of thing; other people I've spoken to have voiced their concerns about this, but I doubt whether they'll come here. More people should because the Government doesn't always get the real concerns of the wider community. It will go further, I'm sure of it. It might take a while; it's been a fair while now, I have to admit that, since that book, that lands claim - 20-something years, I think.

Mr WILKINSON - There have been some questions asked in relation to it, that's why I thought I'd have a look at it. I think the answer from Pierre Slicer, who is a judge in the Supreme Court, was that that was really an ambit claim with not a lot of thinking being put to it and it would seem that that's been taken up and put in that book.

Mr DWYER - Yeah, quite a few of those - I think they've got fourteen areas now.

Mr WILKINSON - That was all crown lands.

Mr DWYER - Yeah, there's thirteen pieces now with Oyster Cove. A lot of those they wanted in that thing they have now got. I don't know about ambit claims but it's probably only the crown land ones that they haven't got at the moment.

CHAIRPERSON - Thank you, Mr Dwyer, for taking the trouble to make your presentation to the committee.

THE WITNESS WITHDREW.

THE LEGISLATIVE COUNCIL SELECT COMMITTEE ON ABORIGINAL LANDS MET AT HENTY HOUSE, LAUNCESTON ON THURSDAY 9 MARCH 2000.

TONY BROWN WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIRPERSON (Mrs Sue Smith) - Welcome to the hearings this morning. The process we have been using as a committee is that we ask those who are making a submission to speak to the committee, after which time the committee will ask any questions to clarify anything they wish to about the submission. We will hand over to you, reminding you that 9.30 is the time-line for your time with us this morning, and I note you have very succinctly listed in order particular issues you wish to speak about, so we will hand that over to you, and away you go.

Mr BROWN - Okay, thanks very much, ladies and gentlemen. It is a pleasure to be able to address you on this very important issue. Of course I have given you a fairly extended list and, as I say, it appears that we are short of time, or will be limited. The first question I would like to ask of the committee is where do we stand by way of parliamentary privilege, for arguments sake, as we speak here? I realise we are protected from legal interference by a third party. Some of the information I will be presenting to you has already been presented to the media. They are not prepared to release this or present or print, if you like, some of the stuff that I have spoken to media people about. The core of the question is, where do I stand in relation to parliamentary privilege in this regard?

CHAIRPERSON - My interpretation is that you don't have any protection of parliamentary privilege. Everything that is given in evidence in public will be printed as public hearings. You do have the option, of course, though, of requesting a private hearing, and under those terms your information is kept private and confidential.

Mr BROWN - That's not what I read here. It says quite clearly here that there is a parliamentary privilege situation there in that information. That's all I'm asking.

Mr FLETCHER - Where are you quoting from there, Tony?

Mr BROWN - I was quoting from information I was given. It is somewhere else. It's in the other envelope somewhere. But there was something in relation to - I'm giving a hearing here under parliamentary privilege. That's what I'm saying. For argument's sake, if there is a third party sitting here, under this parliamentary privilege, as I believe it, I have an immunity, if you like, to legal action from that third party.

CHAIRPERSON - That's why I'm clarifying this for your benefit, Tony. You do not have parliamentary privilege unless you request to be heard in camera.

Mr BROWN - Isn't this in camera?

CHAIRPERSON - No. At the moment it is a public hearing. You can make the request for in camera, in which case we clear the public and you then give your evidence in camera to this committee, and therefore they have your information but it is kept within the confines of the committee.

Mr BROWN - If we proceed at this point in time and there are issues of major concern - and there are - what is the process then from the committee viewpoint?

CHAIRPERSON - You may commence in the public arena if you wish and, when you get to certain sections of your evidence, request in camera.

Mr BROWN - Oh, right, I see.

CHAIRPERSON - That's your option too. So you may divide it into 'I have some issues I wish in camera further down the track' and we can move into camera at that stage, and your other evidence you can give in the public. But I am forewarning you, for your own legal benefit, that public hearings are just that - public hearings - unless you request in camera, and at the moment I believe we do have a member of the media in the audience, as is their right.

Mr BROWN - Okay, fine, sure. So we will continue on then. As I say, if I think we should be in camera on some of these issues, then I will fore-state before proceeding.

CHAIRPERSON - Yes, thank you. At that stage I will then ask the public to remove themselves.

Mr BROWN - Fine, okay. Then what I intend to do is basically brief you on the agenda that I sent you on 7 February 2000. As you see, there are a lot of issues there to be contended with, so I will be very, very brief.

First and foremost, the core Aboriginal community of Tasmania. I personally believe that many law-makers do not understand this core Aboriginal community within Tasmania. The core Aboriginal community in Tasmania, of which I am one, are the Cape Barren Islanders, the people who were recognised by royal assent, evidence here, for argument's sake. And, by the way, these people, it is said, would become extinct. They are the hybrid breed. I am one of those people. Both my parents were Cape Barren Islanders. My grandparents were Cape Barren Islanders. I was taken away from that community by government policy after the death of my mother and my father beforehand. Over the last years, since the Federal inquiry into the separation of Aboriginal children, I have undertaken extensive research into the Cape Barren Islanders and, believe you me, the story is untold and there is a lot of cover-up. What I would say to you is first of all I have evidence here to present to this inquiry in relation to identification of those core people that I am talking about.

First and foremost, there was a proclamation put in place on 14 February 1881 in recognition of the Cape Barren Islander community as it was then, and in fact under that proclamation the government of the day set aside approximately 6 000 acres of land on the western side of Cape Barren Island in a line in a perimeter from the eastern point of Long Island through to the high tide mark on the eastern perimeter of Thunder and Lightning Bay. This proclamation and this land was set aside under the Wastelands Act. The idea of it was to in future set up a reservation in honour, if you like, of the Cape Barren Islander people. This land was set aside under the Wastelands Act 34 Victoria No. 10, and in fact nothing happened further from then on until a full-blown legislation was put in place, and that was in 1912 when legislation in Tasmania was developed for the Tasmanian Aboriginal people. Now this is a significant document, and people have not seen it. I don't believe people have seen it in its true context. Prior to that there was a preamble developed to that legislation. Now I have been trying to obtain that preamble to have a look at it. In fact all the information I've got has basically come from the Parliamentary Library of Tasmania, and this preamble does not appear to be in existence. I would like that question to be looked at.

As I say, these people are not recognised today. They are being used for all they are worth. Everything that's ever happened in Tasmania since the 1960s right through to the present day has been on the backs of the Cape Barren Islanders. There are many people out there today who are falsely claiming to be of descent from or connected to these people, and I can guarantee you many of those people cannot be traced. I have done a lot of research on this. Today there are no more than 50 of our people alive. We want some protection. It is strange to me the Government in the past want to protect a 10 000 year old Huon pine in the south-west of the State, but they won't protect their core people.

Furthermore, to get away from this, I say this simply: if Lunnabengunna or Luckalurra walked out of the bush today, they wouldn't recognise the people like Fairley Gardner, Michael Mansell, Clyde Mansell or Heather Sculthorpe, but they would recognise the people like the Tony Browns, the Uncle Melvyn Everetts, the Auntie Winnie Everetts. And, by the way, this core Aboriginal community in the early 50s, as I understand it, from the University of South Australia under the guidance, I believe, of ABSCUL, they sent people of academic qualifications through the Cape Barren Islander community to research these people. In fact in the South Australian University, as I understand it, there is a photo

album there with, I think, 100 photos of my people, my mum and dad, my grandparents, of these 50 people I am talking about, and we have not seen it. As a community people we have seen bits and pieces of it. I would like to see more of it. I would like the Government to do something about obtaining that material that belongs to us. Get it back here in Tasmania where it belongs.

Now I will go on to agenda B, and I will talk about problems within the contemporary Aboriginal community. Of course the major problem in the contemporary Aboriginal community at the moment, ladies and gentlemen, is the identity crisis that we've got. The majority of people in this State who are claiming to be of Aboriginal descent, they come through an ATSIC act, a Federal act, impeding on our State, impeding on us. Do you people understand the legislation pertaining to aboriginality under the Federal act, under the ATSIC act? There is a gate there big enough to drive your horse and cart through. We've seen a Federal court case where it is still up in the air. We have seen a Federal court case where people have come along to this inquiry and claimed that they have had their aboriginality proven by this Federal court hearing on aboriginality which came out of the 1996 ATSIC Regional Council elections. Now I will tell you a bit about this Federal hearing. The fact of the matter is the onus was placed on the counsel for the petitioners to prove beyond all reasonable doubt, based on evidence placed before that court, that they were not of Aboriginal descent, and they could not. But yet they are still being given the opportunity to stand up under the ATSIC act. It is up to you people by way of this land bill to do something about this recognition. I would like to see it. I would like to see it done on that issue of aboriginality - I will go into that a little bit further in E.

I will go to C - Tasmanian Government's recognition of the Aboriginal community in Tasmania. Now I will tell you something, and I believe this inquiry came out of a meeting with Mr Bacon, myself and the core Aboriginal people. There were 10 of us. It was born out of the fact that, as you probably recall, back in early 1998, it was stated by the media that 10 or 12 lighthouse sites were supposed to come up for lease. I think they were being leased by the State Government off the Federal Government, and they were going to call expressions of interest. So a few of us in the Aboriginal community got together and thought, okay, why don't we see whether we can do something for ourselves and see whether we can approach the Government on a one on one, and see if we can come together and develop some sort of situation, see if we could make some progress. We met people from the Parks and Wildlife Service. In fact I think it was a Bob Tyson with, I think, Parks and Wildlife, I am not sure. We met him on site at Eddystone Point, because these core people that I talk about, that is their tract of land. That is where this Lunnabungunna was. Lunnabungunna, Mallawaginna, chief of the Ben Lomond north-east people, and they were on Cape Barren Island.

We made arrangements to see the Premier, talking about that issue that I explained and quite a few others. We met with the Premier on 15 December 1998 in his building on the 11th floor. Well, it was unbelievable. Of course I made the arrangements with the Premier through Dr Rosemary Sansford to go ahead with that meeting, and I arranged the agenda as such. One main part of our agenda was the fact that we did not want the Office of Aboriginal Affairs' manager, Mr Rodney Gibbons, there. So we arrived at this meeting. The first bloke that walked through the door on the Government side was Mr Gibbons. We sat around the table like we're sitting here now. Uncle Melvyn Everett got up and he spoke freely as an Aboriginal to Mr Bacon, and he said directly to Mr Bacon words to the effect that 'we gave you under our agenda a situation where we said that we did not want Mr Gibbons at this meeting'. Well, Jim Bacon and Mr Gibbons went down under the table. You should have seen it. Unbelievable! They came up, Rodney Gibbons looked at Jim and Jim looked at Rodney, and Mr Gibbons looked to Uncle Melvyn, the elder, and said, 'No way, I'm not leaving.' You know what happened? The old fellows got up and walked out. That's what happened. But the thing that I'm trying to stress to you about identity is this: two days before that meeting took place, Rosemary Sansford phoned me up, and you know what she said to me? She said, 'Hey, Tony. What do we, as the Government, what do I tell Jim Bacon to say to the Aboriginal elders?' Well, how do you think I felt? It was unbelievable, and that will live in my memory as long as I live, to the day I die, to see how our Office of Aboriginal Affairs, the Minister for Aboriginal Affairs in this State, not knowing and not understanding the core Aboriginal people. It is pathetic and, believe you me, I have reminded him of it in writing.

Let's go on. Now the Aboriginal Lands Act No 2. The Aboriginal Lands Act of 1995, in the development of that Lands Act there was very little, if any, consultation, as I understand it, with the

Aboriginal community as a whole and with the Government and with their legislators. Within that act there is of course a problem with once again the aboriginality aspect of it. I don't know why we can't get away from that. I really think it is now time for the law-makers to do something constructive. What I would like to see - and I will tie in here E, Aboriginality - is this: why can't we set up a DNA database for Aboriginal people in Tasmania, Tasmanian Aboriginal people alone? The genetics are there, these people are small, and I have indicated to you quite clearly that we have a situation where these people can be freely and easily identified by way of legislation under acts of government, under schedules of government, within the Cape Barren Island reserve. We have the core there. We can no longer, I believe, look back to the full blood Aboriginal people. We've got to look to the descendants. They are the people today who are alive and well who you can talk to. You cannot go and talk to the full bloods, can you? No way.

Okay, back to the Lands Bill here. There was a little bit of a problem in a couple of aspects of this, and it is in relation to management of the land by the elected councillors. I am talking about financial management. Quite a few people in the community have said to me, 'Okay, we know that Koori Consultants under the principal of Mr Clyde Mansell who was the coordinator elected council member managing the finances and the Council for Aboriginal people', and people are giving me the impression - of course they may not be totally informed of the fact that he is a director of a company. If you look at the pecuniary interests in this document, in this legislation, it is pretty clear-cut.

CHAIRPERSON - Just a minute, Tony.

Mr BAILEY - I am just wondering whether, if we are talking about pecuniary interests and so on, that ought to be in camera.

Mr BROWN - Okay, fine, I agree to that.

CHAIRPERSON - Do you wish to move into in camera now?

Mr BROWN - Yes.

CHAIRPERSON - I would ask members of the public to please leave. If you would like to wait out there, we shall call you back as soon as possible.

THE LEGISLATIVE COUNCIL SELECT COMMITTEE ON ABORIGINAL LANDS MET AT HENTY HOUSE, LAUNCESTON ON THURSDAY 9 MARCH 2000.

CLYDE VINCENT MANSELL AND DARYL ARTHUR WEST, ABORIGINAL LAND COUNCIL OF TASMANIA WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.

CHAIRPERSON (Mrs Sue Smith) - This morning we welcome you, Daryl, as chairperson of the Aboriginal Land Council of Tasmania and Clyde, as coordinator. We do note from your submission that you wish to give verbal evidence to the select committee. We will ask you to give that evidence now and then the committee will ask any questions they deem appropriate.

Mr MANSELL - The way we are going to approach it today is we will have a document to give to you at the end of the presentation and we will be providing other documentation about the subject matter. What I want to do is go through the process of identifying issues like the proposed amendments in relation to how they impact on the council and the Aboriginal community at large and just talk to those points and then move into talking about some of the issues that have arisen out of the evidence that has been given, that I am aware of, in relation to areas like Wybalenna and so on, in an effort to once again provide the committee with some background information of how the council has approached our role in those areas.

Firstly, I would like to talk about the proposed amendment in relation to the issue of aboriginality. The amendment, as you would be aware, clearly identifies three specific categories that we believe, in discussions with the Aboriginal community, should be adhered to - that is, Aboriginal ancestry should be achieved; self-identification as an Aboriginal person; and the communal recognition by members of the Aboriginal community. There seems to have been some misinterpretation of what this amendment is all about. In fact, the amendment as such is about returning to the Aboriginal community the dignity and right of determining who is in fact eligible to be part of their community. What it is about is taking that obligation away from the Chief Electoral Officer, because as the act stands as it presently is, the Chief Electoral Office is charged with the responsibility of ensuring that people who seek entry onto the roll for the purpose of participating in the elections - either by standing as candidates or voting in elections - meet a given criteria.

In 1995 the Chief Electoral Officer chose to bring together a group of Aboriginal people from throughout the State to determine the eligibility and I was in fact one of those members on that group. We believe that there is an obligation on the part of government to consider the definition of 'aboriginality' in terms of returning that right to the Aboriginal community. That is what this amendment is really all about. It may in fact in long term have some impact on the question of determining aboriginality in relation to the Commonwealth definition. As you would be aware, the Commonwealth have a three point definition which talks about the requirements and it states that a person must be of Aboriginal descent, must identify as Aboriginal and must be accepted by the community - that is, the Aboriginal community.

Whilst on the surface that doesn't seem to provide too much of an issue for the Aboriginal community, in fact the bureaucratic response to that legislation has been that non-Aboriginal bureaucrats will use those three point definitions to determine a person's eligibility to receive a service from a particular department. It's got nothing to do with the reality in point three of the Aboriginal community having involvement in that. So in a round about way what it's done is it's opened the doorway for people to abuse the system and we believe that there is clear evidence that the Commonwealth definition has not achieved the outcome that it was meant to achieve. In fact there was a consultancy carried out by Koori Consultants in 1996 in relation to the issue of aboriginality and the Aboriginal community quite clearly

said that aboriginality should be based on: a person or family's ability to show a link with their Aboriginal ancestry through an accepted family name; their continued identification over a period of generations; and recognition of their aboriginality and their association with other Aboriginal people and families of the local Aboriginal community - that is, within the local geographic area.

We have heard people talking about the local community and the right of the local community to determine who their own is. We agree with that, we have no issue with that at all. In fact, under the proposed amendment, there would be a requirement on the Aboriginal Land Council of Tasmania to ensure that they develop a set of clear guidelines which would be negotiated in consultation with all Aboriginal groups in Tasmania if they were willing to participate in the process. In actual fact there is, I believe, a very clear indication that it would be the responsibility of the intended roll coordinator to ensure that they take evidence from the broader Aboriginal community in relation to making a determination on a person's eligibility to be placed on the roll or participate in the elections.

Just following on from that, only last year ATSIC began to revamp the process under which the determination of aboriginality is brought more in line with the decisions from the recent court case that was referred to by the evidence given to you previously. What they were doing is looking at how their criteria can be adapted to better provide for the ability of the Aboriginal community to make the final determinations. I have referred extensively to that in the paper that will be given to you.

It seems to me that what ATSIC have finally done is acknowledge that they see that their criteria has failed and that they are now looking to find a solution to how they will provide the Aboriginal community with the ability and, as I said before, the dignity to determine who in fact are eligible members of our community.

I now want to talk about the other sections, the other proposed amendments, and in particular the land that is proposed to be returned. You have heard evidence about Cape Barren Island. I think that whatever is said, there must be a recognition by the Government of the association with Cape Barren Island of Aboriginal people. You've got to consider the evidence that can be presented in relation to the occupation of the area which dates back 4 000-5 000 years, at least, and the evidence of Aboriginal people re-establishing contemporary links with Cape Barren Island in 1789. I've heard evidence of dates of 1790-on when the non-Aboriginal community have argued that they were in occupation of those islands. In reality, Aboriginal occupation of those islands goes back far earlier than that period. It talks about 1789.

Other Aboriginals settled on Cape Barren Island as a part of the process of being removed from the outer islands - Clarke and Badger Islands and those areas - back in 1860. Then in 1881 the Government of the day put in place the reserve on the western end of the island. In fact, the history of the island tells you that the first Aboriginal representative body was set up on Cape Barren Island in 1897 and it was the intention of that body to pursue the issue of land and land ownership on behalf of the people on the island. History will show you quite clearly in documented evidence that petitions in relation to ownership of land, both on Cape Barren and the surrounding islands, have been a part of the history of the Aboriginal community ever since.

Cape Barren Island was discussed as a part of the 1971 land discussions and it was also part of the 1995 discussions. It seems to me that we are beginning to experience once again a similar response to what happened in 1995 in that we have the non-Aboriginal residents on Cape Barren Island talking to the Aboriginal community representatives through a body like ALCT and saying one thing and making commitments, and on the other hand wheeling and dealing other outcomes. I believe you've been told that there were no discussions between representatives of the Aboriginal Land Council and non-Aboriginal people who may have lease interests on Cape Barren Island. In fact I have evidence here and copies of communications that will show that Michael Mansell and myself did visit Cape Barren Island on 27 April 1999 and talked to leaseholders in terms of saying to them, 'This is the proposal. We hope that we can work through this in terms of taking everyone's interests into account', and reassuring those people that it was not the intention of the Aboriginal community, as far as we understood it, and the Aboriginal Land Council to disassociate those people from their lease holdings. In fact we made it quite clear to Mr Fuglsang that what we were about was assuring them to the best of our ability that we would encourage them to continue with their lease activities on the land that they presently hold.

In a letter dated 29 June 1999, on behalf of the council, I also wrote to Adrian Jones and Rhonda Davis in relation to their lease holdings on Cape Barren Island in an attempt to provide them with information about the negotiations and to give them an opportunity to make comment and express any concerns that they may have. To the best of our ability we have tried to negotiate a reasonable and sincere outcome where those people don't feel, and I use the term disenfranchised, unlike the Aboriginal community.

I suppose from what I understand people have been saying in relation to Clarke Island, there is not too much concern about Clarke other than the issue of local management. I'd like to just brief the committee in relation to the history of Clarke Island and how it has come to be used as it presently is. Clarke Island was purchased by the Indigenous Land Corporation in 1997 as a result of a proposal presented to them by the Aboriginal Land Council of Tasmania when we were looking to overcome a very delicate situation where the alternate to Ashley program or alternate to prison program, as I think it was then designated, was occupying some area on Badger Island. Because of, I suppose, the concerns of the leaseholder at the time and for the want of a better description, the eagerness of the Aboriginal community in relation to finally having Badger Island returned to their ownership, there was a situation that created some issue and in an attempt to solve that, the Land Council tried to identify an alternate location for the prison program, the alternate to prison program, and we identified Clarke Island as a possibility. It so happened that the island was for sale at the time and we negotiated the sale through the ILC. It gave the Land Council an ability to once again provide to the Aboriginal community a recognition of both their historic and contemporary association with that island and we believe that it has achieved great outcomes.

Mr FLETCHER - Was that a freehold or a leasehold title, Clyde?

Mr MANSELL - It was a leasehold title. So the ILC, on behalf of the Aboriginal community, purchased the lease, which was for 21 years with about 17 years to run.

Mr FLETCHER - On about half the island?

Mr MANSELL - On about three quarters. There is in fact a reserve on a section of the island - a quarter of the island, roughly. So, as I say, there doesn't seem to be too much concern in relation to Clarke Island. But again, it's about trying to provide the Aboriginal community the facility for them to regain lost connections, in particular with that island. You visited the island when you took evidence on Flinders, you visited Clarke, and I understand that you saw first hand the appropriateness of the program that's being run there.

Vansittart Island, I suppose, is one that we need to provide other evidence about. There is clearly archaeological evidence of the connection to Vansittart Island, and that in itself dates back thousands of years.

What people have to remember is at the time, thousands of years ago, the Furneaux islands formed that land mass which joined the land that we now know as Tasmania to the mainland of Australia, and Aborigines occupied all of that area at some point in time. It was as a result of cultural and environmental changes that Aboriginal people may have wandered off and on to other areas of land, but in particular Vansittart is also a very important area for the time line in history for the Aboriginal community, in that it was the second island where Robinson put the traditional Aboriginal people onto as part of taking them from the mainland from their traditional lands to Wybalenna. In fact, despite denial of the existence of graves on the island, we believe there is very clear evidence that there are Aboriginal graves on that island. They may not be identified by headstones but the recorded documentation clearly shows that there are Aboriginal people buried on the island. We also understand that Lucy Beaton was in fact born on Vansittart Island, which at the time would have been known as Gun Carriage.

In the evidence presented to you on Flinders Island, you heard from private landowners that they had no communication about the proposed handover. Once again, that is not quite factual. In fact again, Michael and I spoke to the Holloways during a trip to Flinders Island on 12 and 13 July 1999; we also tried to make contact with the Robinsons but were unable to contact them. Again, that approach was about saying, 'Can we work through the differences of opinion?', and that's been the approach of the

Aboriginal Land Council from the announcement of the proposed return of land. We have endeavoured to the best of our ability to try and alleviate, where possible, concerns that people may have. In some cases we can't do that, and we have told people that, but we have tried to achieve it.

I suppose that in relation to Little Dog, the evidence again presented to you by interests on the island, talk about the ownership or association with the island by the non-Aboriginal people. Right throughout that association, Aboriginal people also have had continued associations with that island; in fact my father was one of the last two sheds that worked in a commercial basis on the island. I recall as a young fellow going there on a yearly basis with the family and participating in the mutton bird industry. The fact that the land and the ownership of the land in white man's law was recognised to those people, didn't divorce from the Aboriginal community our cultural ownership of that. We may have in fact worked for white people, but it was our cultural ownership, and that is what we refer to when we talk about islands like Little Dog.

I believe very strongly - and I am sure the council agrees, and from my discussion with members of the council, they do - that the handing back of the small area of land on Little Dog will not impact in any way on the relationship that non-Aboriginal people have with the land. I have heard some comments that if the land goes back to Aboriginal land, it will devalue the land - make of that what you want.

Goose Island. I think again there is very clear evidence that Goose is an important link to the history of the Aboriginal community in that it was in the 1800s that Governor Ducain met with the Aboriginal community from around the islands, on Goose, to discuss the very issue of the return of Aboriginal land. I think the use of Goose Island by non-Aboriginal people is minimal, in fact it is a reserve, I understand, at this time. The return of Goose Island will not impact in any great way on non-Aboriginal people, but it will impact on the ability of the Aboriginal community to assume ownership and of our history, because I think it is very important. If you look around the non-Aboriginal communities throughout the world, ownership of land is a part of a communal thing, is a part of a cultural continuance. Why is it then different for the Aboriginal community?

Mr FLETCHER - Clyde, before you go away from the group of islands in the Furneaux group, I would like to clarify my thinking and your thinking in regard to these matters. You seem to be building the argument that that group of islands were part of the land bridge in ancient times. During that period of ancient times the total area was occupied by Aborigines and therefore there is plenty of evidence of artefacts dating from those days and that is reason why the land ought to be returned, am I correct in assessing it that way?

Mr MANSELL - That is the starting point, Tony. We then need to look at that in the context of the history of the association.

Mr FLETCHER - You don't think that because that land was abandoned for something like 4 000 years and was not occupied by Aboriginal people for a very, very long period of time - a period of time I and you can't understand, I guess; I can't understand 4 000 years - that doesn't weaken your claim at all?

Mr MANSELL - I don't think so.

Mr WEST - I don't think so because I think parts of these islands in the straits now were under water. How can human beings live on it if it's under water? I was lucky enough to do the survey of those 46 islands with Sim and Gates, and every island we went to we found Aboriginal sites. On Vansittart, there is that much archaeological evidence there. Goose, it's probably one of the richest places on the islands - I don't know why, because they had a well or water, I'm not really sure. Aboriginal people going probably the last ice age - 16 000 to 18 000 years ago were walking that land and the only reason that they did get off it, was because the water came over it and you cannot live under water - well, I can't anyway.

Mr MANSELL - And/or they would have moved to areas -

Mr WILKINSON - You can walk on it though, Daryl.

Mr WEST - Also in Robsons' journals on the east coast: Aboriginals standing on the east coast looking out towards those islands and saying that's where they go when they died. Even then when the water had risen the Aboriginal community of this State will say that's where they go when they died - even religious ties there as well.

Mr FLETCHER - If it is true, if your argument to me or to the committee is that there ought to be a return of this land on the basis that there was an occupation 18 000 years ago, the land disappeared under the water for 4 000 years then came back again, but there was a presence over all that land, therefore your claim for a return of the land is legitimate. You would have to then claim, with ten times the aggression, that the whole of Tasmania, which has never been under water and has been occupied throughout all that time, ought to be returned to you. Surely the claim for all of Tasmania island is much stronger than that one.

Mr WEST - We would like to but we have to look at this realistically. We are looking at bits of land; the community come up and tell us that they are interested in one back, like Cape Barren, like Badgers, Babel Island. When I was a kid - I'm going back 100 years or so - all my family was brought up all over those islands - Badger. There's Aboriginal graves in the last 200 years all through those islands. Even though since the land bridge we've had contact with all these islands, not so much Flinders but all these other islands because they didn't have fences so the stock didn't run off. Those islands really are part of the Aboriginal -

Mr FLETCHER - I have to say I have great difficulty, personally, when you mount a claim based on an area of land that was occupied then disappeared below the sea for 4 000 years and was totally unoccupied and then comes back again. You say that there are artefacts there and obviously that land - and then was occupied by European people after 4 000 years of abandonment and then not long after occupied by Aboriginal people as well - that that is specifically Aboriginal land. I have a difficulty with that argument.

Mr MANSELL - That I think would be true if the argument is based solely on that prior occupation. What we are talking about is establishing that traditional Aboriginal people would have moved across that land, would have had occasion to occupy that land. As a basis of saying then as a part of the community evolving and the invasion of the land by white people, consider that the Aboriginal community has in some way regained a link by the sorts of stuff that Daryl talks about, the more contemporary history with the Aboriginal connection with those islands.

I suppose if the Aboriginal community was unreasonable, it may in fact take on your argument about the right of the community to claim the whole of Tasmania. I think the Aboriginal community have been very sincere in their approach and said, 'Look, we recognise that there are areas of this land in Tasmania that non-Aboriginal people have assumed ownership of and we recognise that fact.' But in doing that we say, consider the ability of the non-Aboriginal people to return to the Aboriginal community some land in Tasmania that has a significance to the community. Goose Island fits into that because it has a very clear significant connection in terms of the fight for the Aboriginal community for land. That is what we say, we ask you to consider those things.

Mr FLETCHER - From my perspective - and I don't speak on behalf of the committee - I believe that there could be claims for all of Tasmania, therefore if I accept your claim on the basis that you are putting now, then I would later - if I want to be consistent and be logical - accept your claim when you make a claim for North Hobart oval or Elizabeth Street, or wherever it happens to be.

Mr MANSELL - Tar and cement, Tony.

Mr FLETCHER - That may not happen but I want a logic or a rigour about the process. I have to say I'm struggling to find it but that doesn't stop me from searching. I am asking you, I suppose, and my question to you in relation to this land bridge area particularly which has disappeared, was abandoned for 4 000 years, is now the subject of a claim or an application for transfer, what are the special values, post 1790s, that mark your claim for the land as way above any other persons' claim for that land?

Mr MANSELL - Surely the traditional ownership of that land must be recognised. I know that brings into debate the whole question of native title and all that but surely when discussing identifying

eligibility for land claims, you have to consider that in fact Aboriginal people would have established prior occupation of those islands, whether it dates back 40 000 years or not, and what we are saying is consider those things.

Mr FLETCHER - Yes.

CHAIRPERSON - If we may continue on because this debate has moved off specifics of the islands onto generalities; we will go back to generalities at the end of the process.

Mr MANSELL - Sorry, I probably allowed that to happen too. West Point Aboriginal site - the significance of West Point should not be questionable, in fact the West Point Aboriginal Reserve is recognised for its significance under the National Parks and Wildlife Act and surely the return of that land to the Aboriginal community should be seen as a part of - and we've heard the term bandied about quite freely, 'reconciliation', should be seen as part of the reconciling of the Aboriginal community in terms of our cultural and cultural heritage links to that area of land.

We know that there are issues that need to be pursued in relation to West Point Aboriginal area and I want to address those individually. The shacks at West Point - right from the beginning the Aboriginal Land Council of Tasmania acknowledged that the determination of whether shacks should be considered under the Crown Land Shacks Sites Act and we acknowledge that if the title had been returned prior to that then those shacks would be excised from the title.

However, we do realise that prior to the land coming back - and we understand that it was the intention of National Parks and Wildlife, if not the intention of government, to review the location of those shacks in terms of their impact on Aboriginal heritage. We also understand that in fact National Parks and Wildlife was preparing to implement the removal of those shacks and the Shack Sites act came along and the shacks were viewed in a different way.

We understand that in fact there is a recommendation being put to the appropriate minister in relation to those shacks being made freehold. The point we make about that is, if those shacks are made freehold prior to or after the land being returned to the Aboriginal community, then it would be a very demoralising act for the Aboriginal community. In fact what it would do is say, once again, we don't trust you or it would be a use of political blackmail in that it would be a blatant use of political power to enforce white rights over Aboriginal rights. Because prior to the discussions about the area coming back to the Aboriginal community, there is an acknowledgment by the authorities that those shacks in fact should be removed. The Aboriginal Land Council believes that for those shacks to be turned into freehold would be, as I said, nothing short of political blackmail.

We have in fact spoken to members and some shack owners from West Point and we have tried to assure them that if the shacks remained and were left as leaseholds, then we as a community would adhere to that and we would try to be best of our ability to work in with those shack owners. Again, there has been no final decisions or outcomes from those discussions but at least we are trying to negotiate a reasonable outcome.

The boat ramp or the illegal boat ramp should I mention - again, we have heard evidence that the importance of the area in terms of shell middens and so on is recognised and acknowledged. The boat ramp in fact destroyed or partially destroyed one huge shell midden and it was the intention of the authorities to close that boat ramp anyway. Daryl and myself met with a group of people at West Point on 10 January this year. We talked about shacks and we talked about the boat ramp. We believe that we can find an alternate location within that area where boats in fact may be launched. We talked to a couple of people who told us that they regularly launch their boats, or did, off the illegal boat ramp. We will say to them look, please understand the Aboriginal community from this point of view. As far as the destruction of the midden, then we will protect that, we will stop interference. But it is not about closing things off completely, it is about saying can we find an alternative. At least there was acknowledgment, between the groups, that the discussion should continue on that.

Public access. The council has already agreed that roads should be designated public access and we have clearly agreed that the issue of public access at West Point extends to use of the beach and so on and those things are intended to be set in place.

Sundown Point. Again, that the proposed return of Sundown Point is in itself a final recognition of the importance of the area.

The only concern that we have and that is being brought to our attention by land managers is the intended changing of the title from low watermark to high watermark. Whilst we agree that there may be a solution to that, we are concerned that what it is about is an intent to extend the rights of non-Aboriginal people to drive off-road vehicles up and down that beach at their own free will, without the consideration of the protection of the petroglyphs. We believe that it would be unmanageable for the Aboriginal community to allow those off-road vehicles to access along the beach. So we are very concerned about that.

We understand that in 1991 the Arthur Pieman draft management plan recommended that vehicles exit the beach at the southern end of Bottle Creek. The land council would see this as a possible alternative to the proposed access, right down to the southern end of the beach and it is something that we believe ought to be considered because it would take away then the ability for those off-road vehicles to impact on the petroglyphs. We believe that should be a consideration and if that is a consideration, then the issue of title going to the high watermark becomes non-existent.

The other issue at Sundown Point is, of course, the issue of the shack which remains within the area. Again, we believe that this shack, if it is to remain, must remain on leasehold rather than being freehold.

The other issue, which Daryl has just reminded me about, the proposed boundary on the eastern side of Sundown Point, we believe is inside the area where the remains were returned, that were brought back from overseas. When was that, Daryl?

Mr WEST - Four or five years ago.

Mr MANSELL - We were always of the opinion that the title would go across to the road and it seems - and Daryl is the expert in this area, not me - that the actual intended boundary is some 15 metres towards the beach and doesn't take in the area where the remains were returned. For that reason, we would think that maybe the title ought to be extended that amount -

Mr WEST - Another 200 metres at least.

Mrs SILVIA SMITH - Is there any way of proving that the remains are outside.

Mr MANSELL - Yes.

Mrs SILVIA SMITH - Have you done anything about that?

Mr MANSELL - We went down and had a look and again I don't know the actual site. Daryl was a member of the group that took the remains down there and he believes quite clearly that -

Mrs SILVIA SMITH - Have you approached the Government on this issue?

Mr MANSELL - Yes, we did and it was suggested that maybe we ought to raise this in this forum.

Mr WEST - It's mainly all that apart from where the petroglyphs are on the river - all the other is just sand dunes anyway, they wouldn't even run cattle on them - but we'd just like another 200 metres to protect the burial sites on the eastern side. As I said, it's all sand dunes through there so I see no problem with that.

Mrs SILVIA SMITH - Just before we go off that I wonder if I could just clarify that, Daryl, just a fraction further because I don't understand. The burial site - the remains, were they cremated remains or actual remains because that would make it easier to decide where they are, wouldn't it?

Mr WEST - They actually were buried in graves. There were quite a few but I'm not too sure how many now but I could ask -

Mrs SILVIA SMITH - That would be easier to designate where.

Mr WEST - Why we buried them there was because we thought Sundown Point Reserve went right out to the road and until I got down there with a map - we were shocked.

Mr MANSELL - Trial Harbour - again, I think Trial Harbour is fairly straight forward. The only concerns that we have in relation to the proposed title is that the existing road through the land to the campsite beyond the title is causing real damage to shell scatters and there are very visible artefacts on the road and we believe that something needs to be done in relation to that. The other concern is that the existing camp, which is inside the camping area which is inside the proposed title, has in fact caused some damage to shell middens and so on, so consideration of that is something that needs to be undertaken.

Now what I would like to do is just spend a little time on giving you some information about some of the areas that have already been returned to the Aboriginal community and I'm getting a little war weary from some of the stuff that has been bandied around. Wybalenna - it concerns me that particular argument is being put to the committee in relation to the final determination of the local manager for Wybalenna. In actual fact, ever since Wybalenna came back to the Land Council we have endeavoured, to the best of our ability, to overcome the issue of local management; in fact we have had several communications, several meetings with the parties concerned and, in particular, the Flinders Island Aboriginal Association. We have also had several discussions and meetings with the Flinders Island Council. To the best ability of the council, we believe that we had arrived at a decision some time ago about the management of Wybalenna; in fact in communications to the Flinders Island Aboriginal Association on 8 December 1998, we made it quite clear that once the land was returned they would be the local managers.

Mr WILKINSON - Who's this?

Mr MANSELL - The Flinders Island Aboriginal Association. Again on 21 April 1999, we wrote to them about the issue of local management and we said that we believed we understood that they were to be the local managers. We also talked about the obligations under the act in relation to the management committee having representation from the Flinders Council.

On 12 July 1999, again, Michael Mansell and myself from the council met with representatives from the Flinders Island Aboriginal Association in an endeavour to try to sort this matter out. The meeting was later joined by the Flinders Council Mayor, Lyn Mason, and Councillor Helen Cooper. As a result of that meeting, we all countersigned what we thought was the solution and it clearly, from our point of view, identified FIAA as the local management group. In fact, in point 2, it talked about the management of Wybalenna and the formation of a joint management committee, so again we thought the matter had been solved. I present to you also evidence about that meeting - some notes.

We also wrote to the chairman, Mr John Clark, on 24 August 1999, reiterating our opinion that the matter had been solved. The issue of local management of Wybalenna is caused through unrest, I suggest, between the organisations on Flinders Island - that is, the Flinders Island Aboriginal Association and the Flinders Island Council and it's little to do with what the Aboriginal Land Council has been trying to achieve. It's unfortunate that people tend to forget arrangements when it conveniently suits them.

CHAIRPERSON - Clyde, you are tabling this evidence at the end?

Mr MANSELL - Yes, these will all be tabled to the committee.

CHAIRPERSON - Thank you.

Mr MANSELL - The Aboriginal Land Council of Tasmania has clearly indicated to both the Flinders Island Council and the Flinders Island Aboriginal Association that we acknowledge the Flinders Island Aboriginal Association as the local managers. They have a legal interpretation of the act, which we believe is not right, and they keep pursuing a matter of one particular section of the act. They say that

we, the Land Council, should divest all its powers to achieve local management. We believe that it is not the case.

But for all intents and purposes, we believe that the Flinders Island Aboriginal Association are the local managers of Wybalenna. We have told them on several occasions 'Get on and manage it, we have no issue'.

CHAIRPERSON - Could you expand a little bit on your interpretation of manage.

Mr MANSELL - Yes. It has always been the impression of the council that management in relation to land means they have the day to day and ongoing management of the area. We have experienced that with other organisations, the Cape Barren Island community in fact has local management on One Back Point. They get on and manage it. All they need to do, as required by the act, is to meet certain requirements - that is, set up a group or contact the Land Council about their interest in managing land and we confirm their position. That's as far as we are concerned what management involves. We don't see ourselves competing with local managers, in fact we try to complement local managers as much as we can.

Mr FLETCHER - Do you provide them with money to manage?

Mr MANSELL - We have in fact, where it has been requested, given groups money to take on activities. The Wombat Point management group applied to the council for a grant of \$2 000 to develop some roads to the area, we gave that to them. In recent times the Tasmania Aboriginal Centre applied to the Land Council to carry out some activities at Risdon Cove, for which they recognised as the local managers. They didn't have funding to do it, we gave them some money.

You must remember that we operate within a shoestring budget, we have \$85 000. What we have always said to them is 'If you want our support in relation to applying for additional funding anywhere, we will always give that'. We have given that to other groups and we will give it to all groups.

CHAIRPERSON - Who does the future management plan? These areas are supposed to have a management plan.

Mr WEST - That is what I was going to bring up. Flinders Island and the Flinders Island Council will send a management plan to ALCT. TALC has done it, the Centre's done it for Risdon Cove and Oyster Cove ... windows guidelines to the act. The first thing that goes wrong with that we say, 'Right, go for it'. We've got other things to worry about than worry about Wybalenna. The day Bacon gave us Wybalenna back on Flinders Island, I verbally gave the Flinders Island Council - Maxine Roughley and Mr Clark - I told them there and then that they were managers of that, Wybalenna.

It is a pain in the butt. Every time we have a meeting there is this letter from Wybalenna saying, 'Why haven't you given ...?' We have. There is a fight going over there behind us between FIAA and the Flinders Island Council, we don't want to be a part of that. When we got Wybalenna back, we gave a guarantee to the upper House that we would have Flinders Island Council as part of Wybalenna. We have kept our obligations and I think that is now a fly in the ointment.

Mr MANSELL - We've tried to keep them anyway.

Wybalenna is to our best ability in fact should be functioning as agreed to in our commitment to the Legislative Council. As a matter of fact I spoke to both Maxine Roughley yesterday and Lynne Mason from the Flinders Council by phone and there was an indication finally that the groups will be coming together on nineteenth of this month to discuss, along with other issues, the management of Wybalenna. Unless there are questions, that is where we leave that particular thing.

Mr FLETCHER - Just on that, financing of your management objectives is a big question. You said your revenue income was \$85 000 a year. Does any of that come from the State Government?

Mr MANSELL - That all comes from the State Government.

Mr FLETCHER - All from the State?

Mr MANSELL - All from the State Government, Tony, yes.

Mr FLETCHER - And you don't have any other revenue sources?

Mr MANSELL - No, we've only - on one occasion we have been able to access some funding through ATSIC to run some special projects. What usually happens, and this is where I think confusion may stem from, the Land Council has always said that to the best of our ability we will immediately return to the local community management because by doing that we in fact open up funding sources for them.

We, as a statutory body, are not really accepted through ATSIC to receive funding, we can only tap into special grants for funding, mainly through the State Government. We in part see that by getting the management back it will alleviate some of the concerns about achieving money. And we have always said to groups and we have proven it, where possible we will complement them. If they want support from us about their management roles we will give that in writing to suit applications.

CHAIRPERSON - Thank you, continue.

Mr MANSELL - Big Dog: there has been a lot of evidence presented to the committee about Big Dog. Unfortunately I think that once again ALCT has come under a question in relation to our role on Big Dog Island, particularly in relation to things like the local management.

We again have played the role of saying to FIAA, in relation to the local management, it has always been ALCT's opinion that the management of Big Dog Island should involve the very people who have activities on the island, the mutton bird shed owners. We believe that if that group in fact identify FIAA as the local managers, we don't have an issue and we haven't had an issue with that very fact.

What we have said though is, 'Rather than just run off and establish yourselves as the local managers, what we think you need to be considering is what are the management issues. So let's sit down and talk about that with shed bosses and yourselves so we can work through that'. There was an attempt to get some funding through one of the government departments to have that meeting, we haven't been able to do that yet. So in reality what we are trying to work through is the process of identifying the local managers on Big Dog Island.

There has been suggestion that the land council has done nothing on Big Dog Island in relation to other activities. Again I present to the committee evidence which shows that in fact we spent some \$35 000 on the homestead at Big Dog Island to bring it up to a state where it could accommodate elders and people who want to go back to the island. The Tasmanian Aboriginal Centre spent some \$75 000 on construction of a jetty. So there have been activities going on, and ALCT in the four and a bit years that we have had involvement on Big Dog Island, have sponsored the cutting of tracks. We have employed, where possible, local Aboriginal people to do that.

Mr WILKINSON - Can I have a look at that, please?

Mr MANSELL - Yes. You will get a copy of this, Jim. Badger Island itself has been a real central point in relation to ongoing management. I don't know whether the committee want to ask questions about Badger, but it is a concern for the Land Council that people will come to a forum like this and make comment about the way the Land Council have operated in relation to Badger Island. The one point I make is that the council has always tried to take into account all the parties, and sometimes we have found ourselves in deep water, even from the Aboriginal community, in relation to the granting of a grazing licence to the present licence holder. But we have said, until the community shows the Land Council that the intended use of Badger Island is totally inconsistent with the farming operation, then we will continue to grant the lease because we believe that, whilst the impact of sheep on the island raises concern, at least there is occupation there. So take that in mind.

The Land Council also is obliged in determining leases and licences on Aboriginal land to consider the obligations under the Aboriginal Lands Regulations 1998, and we in fact have always considered those

in terms of continuing grazing activities. We also developed in 1998 a management strategy paper for Badger Island, which sets out to identify long-term objectives for the Aboriginal community. This paper came out of a Statewide meeting that was held prior to the life of this council, and identified strategies about the long-term use of Badger Island. I present that to the committee too.

One final point I make about Badger Island is that we are dealing with, in this case, an individual who has had the free rein on this land for a long time without constraint, and it is very difficult on some occasions to negotiate suitable outcomes. Yesterday I received a phone call from National Parks and Wildlife, who in turn had received a phone call from two Forestry towers up the north-east reporting huge volumes of smoke coming out of Badger Island and they were very concerned. I rang the local police on Flinders Island and inquired as to what they thought the issue was, or the condition of the fire. The local policeman went up to Hawker's Lookout and rang me back in about 20 minutes and said the entire northern and western end of the island is ablaze. This is despite the Land Council approving burning only on the western side of the island. I am also led to believe that the State Fire Authority will be talking to the lessee about the non-application for a burning permit. . So it is those sorts of issues that the Land Council has to deal with, and I think we have dealt with it very successfully.

Premangana - Tony would acknowledge that we have had several conversations in relation to Premangana. It has always been the intention of the Aboriginal Land Council of Tasmania to attempt to find a solution in relation to the issue of public access at Premangana, taking into account the obligations under the act. We of course have had differences in relation to freedom of access down beyond the existing car park, and in actual fact we did, we thought, arrive at a solution to that by agreeing to the hardening of the track down to a turning circle, established roughly 100 metres from the beach, and allowing traffic to proceed down there but not beyond that point, except in cases of emergency and management activities. Unfortunately that could not be completely negotiated with the managers for the area, the Tasmanian Aboriginal Land Council, and since then we have been trying to find a solution. On 11 February this year the two land councils met, and we proposed to the other land council that a solution to it might be not putting in a gravel road as such, but only partially hardening where there has been impact, but putting in a turning circle down closer to the beach, and as a means of providing access beyond the existing car park. I noted in the paper all the points of discussion. We agreed, there was agreement between the two land councils.

I then discussed this issue with the Mayor of Circular Head on 28 February, and his indication to me was it's not Utopia but it's something the council may in fact be able to live with, and he undertook to organise a meeting between both land councils and all the user groups for Premangana, so we could establish agreement on the principles that the two land councils have agreed to, and signing off from all parties. I rang the Circular Head Council yesterday to see what was happening and, whilst the mayor was not available, I did get a call from his secretary who said that he wanted me to fax through details of the points agreed to in the meeting of the two land councils and he would continue to pursue the organisation of a meeting. We were hoping that that meeting would be held before this committee got along but it doesn't look as though it will be.

Mr FLETCHER - I could make a statement in relation to that but it's got nothing to do with the committee, so I won't.

Laughter.

CHAIRPERSON - For the record, Clyde, perhaps you could name the current members of ALCT and the areas they represent. I understand they're elected from different areas.

Mr MANSELL - You're calling my memory back now. We've got Rob Purden from Flinders Island; Denise Gardner from Cape Barren Island; Clyde Mansell and Daryl West from Launceston; Michael Mansell and Corrie Fullard from Hobart; Grant Maynard from the north-west coast - we've had two members resign from the north-west over the life of the council and the recently resigned position will not be filled because of the closeness of the next election and that was a determination made by the Electoral Office. So we only have one representative from the north-west coast as such.

Mr BAILEY - Are those people all descendants of the Cape Barren Island families?

Mr MANSELL - They are all Aboriginal people from Cape Barren and Flinders. It could be argued that I'm from Flinders too - I was born on Flinders.

Mrs SILVIA SMITH - Could I just have a breakdown on the disbursing of the funding? Just a generality of course, not the fine detail.

Mr MANSELL - The council employs on a part-time basis Koori Consultants, which is my company, to administer the affairs of the council. They pay a set fee, an hourly rate, to the company and we administer the affairs of the council. Funds are used for travel purposes for council members to bring them to meetings; we use other funds for administrative activities like phones, all that sort of stuff; we pay rent on the office that we occupy within the Tasmanian Aboriginal Centre. The basis for the council making that decision was in part to create a situation where people could come in and have regular contact with the council; we have no other association with that organisation other than renting an office from them.

CHAIRPERSON - If I might expand that just a little bit and perhaps Daryl may be the person to answer this, but I'll leave it in either hands. What sort of delegated authority do you have as coordinator? I ask that question because it has been put to us on several occasions that individuals have negotiated with Clyde in good faith and then when things of course move back into the structure of ALCT things can change because ALCT may have a different path to tread. I want to clarify, if we can, the delegation that the committee gives to you to act on their behalf in negotiating with leaseholders and proposed leaseholders et cetera - if you can give us some information.

Mr MANSELL - As I understand it it is no different to any other employee of an organisation of this nature in that my responsibility is finally back to the council. I have no delegation to make any commitment on behalf of the council other than to negotiate outcomes and I've always operated on the premise that whatever agreed points may come from a conversation that I may have with a representative of the committee or whoever, the final determination on any matters go back to the council for confirmation and it's usually passed through a motion at meetings and so on.

Mr WEST - As Clyde said, he's just got the day-to-day running of the office and after some meetings we might say, 'Clyde, we want you to do this, this and this', but Clyde doesn't off his own back say, 'I'll guarantee you this or that'. If he's got to make a decision on the run, most of the committee are in phone contact.

Mr MANSELL - And there is an executive structure - Daryl is the chair, Michael Mansell is the Secretary and as the coordinator I keep regularly in contact with those two on these sorts of issues, but all must go back to the council for final approval.

CHAIRPERSON - Thank you. Another question, if I might, going back to the process of roll coordination that you spoke of earlier in your submission. We note that the amendments say that there must be guidelines et cetera set up in coordination with the chief electoral officer but in the process of a person perhaps not being accepted, the amendments allow that a person who is aggrieved by a decision of the roll coordinator may lodge an appeal with the council, the very council that all the way through the process they are dealing with. In a lot of other instances if you go to appeal, you go to an external tribunal who hasn't been the organisation you have dealt with all the way through. Have you got some comments to make as a council on the particular process here in comparison with some other examples we could put forward where another tribunal takes an overview of the whole process?

Mr MANSELL - The proposed amendments also provide a mechanism for further appeal beyond the council. It would seem to me though that a logic response would be similar to the one that was carried out in 1995, that it would be sensible for the roll coordinator to use the knowledge of the Aboriginal community and in the first part a decision would be made based on the evidence of an appeal. Then, as happened in 1995, a determination would be made, the person would be given a right of appeal and that would go to, not necessarily the council as a single entity, it may be that the council draws in other knowledge.

Mr WEST - About two and a half months ago all the Aboriginal groups, or most of them, got together in Launceston and we looked at the subject of aboriginality. At the moment we have got an Aboriginal

committee in this State looking at this and I see their role when they set up a committee and come back to us and all the Aboriginal community and businesses accept this and that would be - because we need something from the Aboriginal people. I'm sick of white people saying - I get embarrassed when I see so-called Aboriginal people on TV speaking for me; it's very embarrassing and I think it's about time the wider community give the Aboriginal people the right to say who's Aboriginal or not. I think if we get this through this State, I think the Commonwealth and other States will be looking at it in a few years, I really do.

CHAIRPERSON - I put forward to you that through the process, it is council, council, council, and you made the comment yourself that the council may go to the wider Aboriginal community for advice. Thus, I put a proposal: would it not be more transparent perhaps if an appeal went to Aboriginal elders, for instance, rather than the council so that it was seen as an external group to the council that has set the process up all the way through. Would you like to make a comment? It stays within the Aboriginal community but beside it.

Mr MANSELL - I don't want to be drawn into debating the rights and wrongs with the Aboriginal community in determining aboriginality, but I suppose the point that I make is that the latest move by ATSIC itself recognises that the process of having Aboriginal organisations, community organisations determine aboriginality is flawed in that in the first place you don't necessarily have to be an Aboriginal person to set up and incorporate an Aboriginal organisation, and in fact I think there's very strong evidence that that is the case in some instances in this State. So in fact you continue to allow people outside the community to make determinations.

Just in your question about drawing on the expertise of other bodies, in every debate or every discussion or every meeting that I have had in relation to the Aboriginal community, and determining aboriginality, I have always said I believe that yes, local Aboriginal people know who their members are. It would be unrealistic of a body like the Aboriginal Land Council of Tasmania to assume that we ought not take into account the considerations of those people, and that would be the case.

Mr WEST - Another point, too. I think people seem to forget, they think we're like the mainland. Flinders Island Aboriginal community, most of them would be first or second cousins, and the same on Cape Barren and the same down the coast; the same with Clyde. I think most of us know who are the Aboriginal people in this State, and when people say 'local Aboriginal group', I was born and bred on Flinders and I know every Aboriginal across the island or mostly in the State. I can't see anything wrong because I would like to see in these elections, not division Flinders, I'd just like to see eight people elected from Tasmania. Clyde and Mick and them are all against it, but that's just my thinking.

Mr FLETCHER - Daryl, there has been significant evidence and I accept the reality of the situation, that when Robinson rounded up the Tasmanian Aborigines and took them to the various islands, winding up at Wybalenna, he missed some and it's accepted he missed Fanny Cochrane-Smith and Dolly Dalrymple. Do you accept that he missed others as well, that there would've been other Aboriginal women living with white people or hiding in the bush, or whatever, that they didn't go to Wybalenna eventually? Do you accept that proposition?

Mr WEST - Yes, in some respects, but I think you'll find that Fanny Cochrane-Smith and some of the others did go to Flinders but came back and went to Oyster Cove, and after they came out of Oyster Cove, that's where they went to. Yes, I have no problems about that, as long as it can be proved, that is

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Mr MANSELL - That's the central question, Tony.

Mr FLETCHER - But why would you want to deny a person their heritage. If you say there are these people but there are no records to fundamentally prove it, no written records, but the people look Aboriginal, claim their aboriginality and are proud of that fact, why would you want to say to them, 'You're not Aboriginal?'

Mr WEST - I've never said to anyone that claims to be Aboriginal and looks like an Aboriginal and colour like an Aboriginal - what is the colour of an Aboriginal? People say you've got to be black, that's a load of crap. Anyone I feel is genuine that looks like an Aboriginal, I've got no problems with, but

there are people I see on TV saying they're Aboriginal and they make me cringe and crawl. There must be half the white community out there know they're not Aboriginal, and it makes us feel bad. They're just white people ripping off the system.

Mr MANSELL - It's the failure of the process that has caused the heartache for the Aboriginal community.

Mr FLETCHER - This has obviously been a core question of the committee's work, and if there was an easy answer to the problem it would have been solved a long time ago, and there's no easy answer to the problem. I have a fundamental belief that people ought to be able to understand and be proud of their roots, no matter where they come from. I've said I'm bog-Irish poor convict background in my particular case, and other people are of different ethnic backgrounds. But there are a lot of Tasmanian Aboriginal people who are descendants who, for whatever reason, haven't been part of the hard school of the last 25 or 30 years, but still want to claim their aboriginality. They are descendants of these people who weren't gathered up by Robinson or didn't go to Flinders Island. I can't accept that Robinson got everyone, or I can't accept that everyone wound up on Flinders Island.

Mr MANSELL - I don't think that's the basis of an argument either. It's about whether or not you can suddenly become something, isn't it? Whether you one day see yourself as being Mr Normal, living out there in suburbia, and all of a sudden because documented information comes to your attention, you suddenly assume the ownership of the hardship, of the denial, of the racism and all those things that the Aboriginal community has faced. That's the crux of the issue, surely.

Mr FLETCHER - I'm not sure. You seem to me to be saying there that being Aboriginal is being a club, and you can only be part of the club if you win your spurs in the hard times.

Mr MANSELL - No I'm not, Tony, I'm not saying that at all. What I'm saying is, can you suddenly become an Aboriginal person just on the basis of a bit of paper?

Mr FLETCHER - If you are a descendant of an Aboriginal person and you recognise that and claim that, and the other people in the community recognise that, you are.

Mr MANSELL - You don't have an issue. If you meet those criteria, you don't have an issue, but if you can't show your Aboriginal ancestry then how do you become Aboriginal?

Mr FLETCHER - I think this is the problem because there are people in the community, we have both agreed -

Mr MANSELL - And that's the issue -

Mr FLETCHER - We have both agreed that not everyone went to Flinders Island or went to Cape Barren Island, so there are those who escaped that net and for whatever reason they don't have any written record of their aboriginality.

Mr MANSELL - I don't know whether we're agreeing on that or whether we're agreeing on the point that they don't have written evidence or oral evidence.

Mr FLETCHER - Didn't you agree with me that not every Aborigine was gathered up by Robinson and went to Flinders Island?

Mr MANSELL - Yes, and those people who didn't go through that process that identify and show their Aboriginal ancestry, their recognition and their communal acceptance, we haven't got a question against. It's those people who can't show their ancestral link and their continued or recognition as Aboriginal people that we have a question mark over. It is as simple as that.

Mr WILKINSON - In some ways you are damned if you do and you are damned if you don't, aren't you? I keep bringing it up because beforehand a number of people were being recognised as being Aboriginal people which when it was looked into were found not to be Aboriginal people and I keep bringing up the fact that I acted for a person who was an Indian and who received Aboriginal legal aid.

There was no aboriginality at all in that person. So I suppose what you are saying - and tell me if I'm right because I'm trying to struggle with the same question - we have, as some say, government-created Aboriginals who have increased the amount of Aboriginals because of the Government definition and what the Aboriginal people are doing is endeavouring to try to find out where the base is: who are the Aboriginal people and who aren't.

Some people are going to be hurt as a result of that and they are the people who are the people that Robinson missed and who because of the fires - especially in the south, your Snug area, your Cygnet area, Nicholls Rivulet et cetera - they are the people who find it difficult to show this document because it was burned in the fires and they are the people who we have seen already and who are going to be hurt. There is not much you can do about that other than continue to investigate by reaching into the oral history, I suppose.

Mr MANSELL - Yes.

Mr WILKINSON - Is that right?

Mr MANSELL - I think you are getting close. I was going to make the point that it is very difficult for non-Aboriginal people to understand it just because of the complexities of the very issue.

Mr FLETCHER - That's your judgment that it's very difficult for non-Aboriginal people to understand that.

Mr MANSELL - I think it is - maybe, Tony.

CHAIRPERSON - Thank you. Just a moment I think Daryl was going to make a comment.

Mr WEST - I just thing in the early days when we started the Tasmanian Aboriginal Centre we played the numbers game and if people came and said they were Aboriginal, we would probably put them in the books and we, at that stage, needed the numbers game to get funds from the Commonwealth Government. Now it has come back to bite us in the bum. People are sick and tired, as I said before, people running around spouting aboriginality who everybody in the community knows are not Aboriginal.

Mr FLETCHER - Daryl, is there are different between an Aborigine and a descendant of the ancient people?

Mr WEST - I'm not getting into that, thank you.

Mr MANSELL - Good try, Tony. It's a debatable question in itself, isn't it?

Mr FLETCHER - I don't know, that's why I am asking you.

Mr MANSELL - I know people who live out there in society who do have the ability to show evidence, whatever it is, that they have a link. Those people may have found that out. They don't suddenly change and choose to recognise with that because they live their life histories but there are other people who use anything they can to take gain of, in this case, the so-called funding for Aboriginal people.

It is those people, as Daryl said, that have caused heartache for the Aboriginal community. The very people who need the services and the funding cannot access it because these other people - and in some instances are in control.

Mr FLETCHER - Clyde, what you are saying to the committee there is that the determination of who is and who is not an Aborigine is really determined on the amount of money available to provide the services to the group?

Mr MANSELL - The Commonwealth definition has resulted in that. That is what we are saying, yes.

CHAIRPERSON - I am aware that the time has well passed, considering we did not think we needed that particular amount of time and it may be a necessity for us to speak with you further, but if we could just have a couple of points clarified because I am aware there are others in the public area who have submissions to give.

I noted in one of the submissions that ALCT came to an agreement with the Circular Head Council and the minister in an area of dispute and then those commitments were not lived up to. Comment was made that perhaps ALCT and TALC, who were managers of the area, were in some conflict. Can you confirm whether that is a correct statement and if it is, how you would overcome the fact that you are the landowners, you designate management to another group, then when an issue comes up, such as does there naturally, an authority deals with the landowners and in this instance it appears to have created problems?

Mr MANSELL - It did. In fact that commitment that was made - the withdrawal from that was caused by the response from the Aboriginal community, broader than just the local managers. In fact they, through the local managers, argued very strongly against ALCT making the decision. And like all the elected bodies, we are governed by the attitude of our electors and the act and what we tried to do was to work through that process.

The outcome of the meeting that was held on 11 February this year is the end the result or is closer to the end result where we have agreement between, in this case, the titleholders and the local managers about the issue of hardening a track.

CHAIRPERSON - So the agreement wasn't signed, it was just reached and no signatures and then you went back to your community.

Mr MANSELL - We hadn't reached the signature stage as I remember.

Mr WEST - No, just talking about the first.

CHAIRPERSON - I am talking about the agreement early 1999. We have a copy of the agreement, it doesn't show signatures.

Mr MANSELL - We never actually got to the signing stage.

CHAIRPERSON - So the agreement wasn't signed?

Mr MANSELL - No.

CHAIRPERSON - It was just agreed to and never reached the signature process?

Mr MANSELL - Again, like all negotiations we had to - the Land Council, as I recall, was directed by the community.

CHAIRPERSON - The other question I would like some information on is you were a member of the Aboriginal Land and Cultural issues working group?

Mr MANSELL - Yes.

CHAIRPERSON - It was the responsibility of that working group, again, to communicate with particular organisations within the Aboriginal community. Can you give us an outline of how that process was worked through considering the make-up of both groups?

Mr MANSELL - I can't, all I can say in relation to that is that the activities of coordination for that group was carried out by the coordinator, Michael Mansell. I am aware that he wrote on several occasions to organisations throughout the State, inviting them to be a part of the process. Some organisations, including Flinders Island Aboriginal Association and so on, indicated that they couldn't participate because of lack of funding. The actual working party itself was not funded, so we had no means of getting them funds. There was an attempt to get some funds, as I understand it. You would need to confirm this with Michael, but it's my understanding that we tried to get some funds out of the

Aboriginal and Torres Strait Islander Commission to bring the groups together. I don't think that was ever achieved, I'm not confident on that.

CHAIRPERSON - But originally some on that working group were nominated by organisations. For instance Deloraine Aboriginal and Cultural Association nominated someone onto that process.

Mr MANSELL - Yes.

CHAIRPERSON - I am trying to work out how Cape Barren islanders, Flinders Island Aboriginals, South Eastern Tasmanian Aboriginal Corporation, Mersey Leven et cetera, what process was used that they were involved in to nominate onto the Premier's working group.

Mr MANSELL - You would need to talk to the Office of Aboriginal Affairs, I think, about that.

CHAIRPERSON - Thank you very much. As Chair, I do again make the statement we do reserve the right that we may wish you to come forward again to the committee. It has been a very worthwhile time that we have spent this morning and we may in the future need to approach you again and prevail on you for your time.

Mr MANSELL - Just in closing, I forgot to mention that there are in fact in existence some management plans for some of the areas. I don't have copies of those, but I could talk to the people -

CHAIRPERSON - If you liaise with Sue as to the copies that you do have, or some we could perhaps photocopy while you are still here, and we do appreciate the presentation you have made this morning. Thank you very much.

THE WITNESSES WITHDREW.

THE LEGISLATIVE COUNCIL SELECT COMMITTEE ON ABORIGINAL LANDS MET AT HENTY HOUSE, LAUNCESTON ON THURSDAY 9 MARCH 2000.

TAPE MALFUNCTION ON FIRST TAPE.

Mr WILKINSON - It would appear the Aboriginal people can't look at a Mabo claim, they can't look at a Wik claim, and therefore in Tasmania we are saying, 'Yes, look, the Aboriginal people walked the land before we knew about it, and they want it back. They can't claim Mabo; they can't claim Wik, therefore what criteria do we look at before there is to be a transfer of land?

Mr CLARK - I don't know that I have the answer to that.

Mr WILKINSON - Otherwise it could be seen as just tokenism.

Mr CLARK - It could be seen as tokenism, but you are actually giving back rights that were wrongfully taken, in my opinion, in the first place. If these Aboriginal people had had control of those pieces of land for the last 200 years, for instance, they would probably be in a much better economic situation than they are today, and would have developed their own infrastructure over time, whether it be in farming those areas or cultural tourism or whatever. So I see them at this stage being at a disadvantage to be suddenly given back the land without the means to develop their enterprises.

Mr WILKINSON - But what about the criteria to get the lands in the first place?

Mr CLARK - It needs to be identified that those areas are of cultural significance to them, and were used by ancestors to a significant degree, and I am sure there are plenty of those criteria with these pieces of land that are being presented. Am I wrong?

Mr WILKINSON - No more than the rest of Tasmania.

Mr CLARK - Sundown Point and Mount Cameron West, for instance, have some of the oldest primitive art in the world. That is of real significance to them to see those rock art works being defaced by local vandals who have a chip on their shoulder about access to recreation grounds. That is very distressing to me. So too at Wybalenna and Flinders Island when the gravestones were removed so that their ancestors couldn't be identified. That sort of bigotry and racism I find quite shameful.

Mr FLETCHER - The only real proven instance of vandalism on the west coast petroglyphs and the like was when the Museum and Art Gallery of Tasmania cut a piece out and brought it down to the museum. The rest is all allegations since then -

Mr CLARK - The spray-painting and things like that?

Mr FLETCHER - and to lay that on local vandals, I think, is a bit presumptuous.

Mr CLARK - Oh, I see, right. It probably is presumptuous, yes. Well, regardless of that, I don't think it would be an Aboriginal person who would have defaced those petroglyphs. That is yet to be proven, but no-one has any proof in this case.

Mr FLETCHER - No, that's true.

Mr WILKINSON - If you were a detective you wouldn't go there first, would you?

Mr CLARK - No, I wouldn't be looking at them first.

CHAIRPERSON - If I might put it to you, Mr Clark, particularly when you made the comment that there should be some funding transferred with land, do you believe then that we may be better to look at the transfers of 1995 and be saying that these areas should be funded management plans in place et cetera and get some economic activity where it is proven as having some long-term benefit? Other areas are spiritual, of course, and as such they have been transferred back for a different purpose. Do you believe less land, more funding, might be a scenario that should be looked at?

Mr CLARK - I wouldn't want to go backwards on the amount of land that is being transferred, but I would definitely say more funding. There may be some areas, but I am not an expert on it. My information comes from Buck Brown who is a heritage officer and surveys sites for cultural significance.

CHAIRPERSON - Right. I put another scenario to you: West Point Aboriginal Site, it is proposed 580 hectares, give or take a little bit, to be transferred. In this there are 38 artefact sites, 36 midden sites, 3 stone arrangement sites that have been identified. Is it necessary to transfer 580 hectares of land to ensure you protect those particular things?

Mr CLARK - It seems like a big parcel of land. It is over 1 200 acres or so. Not knowing the site, I would feel underqualified to express an opinion on it really, but maybe these areas need a buffer zone around them as far as access goes. If it is just to be preserved for its wilderness values or for whatever values, then that is one thing, but whether it is capable of being farmed or pastoral land is another. I'm not very helpful in that area.

Mr FLETCHER - I don't think I have a question, but fundamentally I believe your proposition is very sound. I think there is a great deal more value in transferring land for cultural development opportunities to empower the group or the local group in the future than just the transfer of land for the sake of transferring land. So whilst I don't have a question, I have a lot of sympathy for the proposition you put forward.

Mr CLARK - The market research and visitor information questionnaires all indicate there is a very high level of interest in indigenous cultural tourism, especially from Germans, Japanese and Americans. But Australian tourists also are very interested. There are a couple of Aboriginal interpretive services in Tasmania, but nothing that is really accessible to the tourist market. It is sort of on a stop/start arrangement and is more geared towards the domestic tourism.

Mr WILKINSON - With your submission, when you speak about the elements of the project and you have five points, to some degree it is what is happening in North Queensland, isn't it, just north of Cairns. I can't think of the name. That is the type of thing you're looking at, is it?

Mr CLARK - Yes, that's right. It's up to the Aboriginal community to decide which elements of their culture they want to share with tourism but, from what I sense, they are very willing to share and there is not a great deal of their culture that they would want to keep private. But that is up to them, I feel.

Mr WILKINSON - Karanda is the place I was thinking of.

Mr CLARK - Yes. There is one at Uluru, too, called Kutikinja and there is a very large one in Halls Gap called Brambuck, and they are very successful models. After this cultural meeting one of our first tasks would be to do a short study tour of those centres and glean what we can from them the pitfalls and ways of overriding obstacles and things, yes.

Mr WILKINSON - I suppose they are business projects solely manned by Aboriginal employment?

Mr CLARK - Probably not exclusively. It would largely be the best person for the job, but I think definitely there would be preference given to Aboriginal people if they are available. For instance, it might not be possible to immediately find a business manager who is Aboriginal, but on the other hand people can be trained into those positions, and that is what gets me excited: it's jobs for kids. And it is not just talking about the next five or ten years. We should actually be looking 20 years hence, and I can see that these plans are fairly ambitious. It's quite a considerable building, and it is not a cheap price tag either, but I would see it to be a real indictment of the process if we built something that was

quickly outgrown, and all the indications are that this can grow into something really hopeful for the Aboriginal community.

Mr WILKINSON - Can I have a look at those plans again, please?

Mrs SILVIA SMITH - Just while Jim is having a look at those plans you might come up with some more questions. I just wonder if I could explore a little bit your comments on reconciliation in the State of Tasmania. It's a very well presented document here. Could you just let me in on - perhaps your personal opinion - of where the reconciliation process is at this point in Tasmania according to your opinion and how you see the granting of tracts of land furthering that process? Have you got a personal opinion on this?

Mr CLARK - I see this amendment bill as being really optimistic and at last - I breathe a sigh of relief every time I see something positive like this being done. Aboriginals' connection to the land is really significant, a lot more than you would say for a lot of white people - farmers may be an exception. A lot of people do have a strong relationship to the land and of course a lot of Aborigines who live in urban set-ups have maybe lost that connection, but it's largely what the culture is about, deriving sustenance from the land and that their spiritual home in a way the land that they are connected to. I have been in my area for 25 years and I feel a connection to the land and it's not that I'm saying I'm a white fellow and I want a Dreamtime too, but I just think these things aren't subject to race in a way, although in the Aboriginal communities case no-one can say that they are Aboriginal apart from an Aboriginal. In some ways I feel disadvantaged in this process being white in that I have a limited scope of expressing my opinion because I am white. It's not to say that I'm disrespected in any way, I feel a lot of respect and I have been invited into this process and I'm very happy to be in it, but no-one else has the right, for instance, to represent their culture, as far as I'm concerned, in cultural tourism and I think it should be their domain.

Giving back the land is a way of recognising their ancestral tie to the land but also saying, 'We want to take a step back and try to make amends for the prejudice and injustice that was perpetrated on that race over the last 200 years' and this is a really great opportunity and I always look ahead to the young children who are coming on now and hope that that will give them, the fact that they can grow up with an ambition to become a cultural guide and they get that job because they're Aboriginal whereas largely, in this social set-up today, they will not get that job because they're Aboriginal. I know there are lots of messages in place for antidiscrimination and that sort of thing but it's not very often a situation where an Aboriginal will get a job because they're Aboriginal unless you are in Riawanna at the university or some other body within Tasmania. This presents a real opportunity for young Tasmanian Aborigines to aspire to an occupation which recognises and celebrates their culture. I think that really adds a lot to self-esteem and pride and probably the undoing of a lot of the social ills that seem to frequent that race as well.

CHAIRPERSON - Have you seen any examples, Mr Clark, since the transfer of land in 1995 where some of those aspirations are being carried out amongst our younger Aborigines?

Mr CLARK - No, I can't think of any. I know that Flinders Island people, after the giving back of Wybalenna, their next step was to have their own Aboriginal interpretation centre on Flinders Island. I don't know what steps they have gone through to attain that, but that seemed to me a similar sort of thing - 'Now we've got some land, now we've got some status, let's use that and let's get some economic independence from that'.

CHAIRPERSON - Thank you, Mr Clark, for your presentation today and for the information which you have given us on the dream of many in the Deloraine area, both from within and external to the Aboriginal community.

Mr CLARK - I don't actually know where it's going to go from here.

Mr FLETCHER - Do you have a planning background?

Mr CLARK - I have a background as a theatre director - that's my qualification - but I regard myself as a community artist in that I'm often running a festival or bringing together 50-member casts in a big

community theatre arts project and that sort of thing, so I'm used to dealing with people and I guess I perceive myself as a leader in my community in certain areas - in the arts, for instance.

CHAIRPERSON - Thank you very much.

THE WITNESS WITHDREW.