



ABORIGINAL
PROVISIONAL
GOVERNMENT

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Chairman
House of Assembly Standing Committee on Community Development
Parliament House
Hobart

16th July 2015

Dear Chairman,

Re: constitutional recognition of Aboriginal people

Thank you for the opportunity to comment on this important and long overdue topic of acknowledging the history and place of Aboriginal people in Lutruwita/Tasmania. The initiative is to be applauded.

‘Recognise’ may be a strange word to use in the circumstances. Aboriginal people have always been here and have never really needed to be recognised by anyone to establish that historical fact. The inference is that unless Aboriginal people are somehow proclaimed by white people, we are not legitimate. This has a tinge of white supremacy about it.

To make sense of the good intentions behind ‘recognition’ in the Tasmanian or any other constitution, recognition must be a reference to all that has happened to Aborigines. All our lands were taken at the point of a gun. We were openly hunted down. Whites who slaughtered Aboriginal men, women and children have bridges (Batman Bridge) or streets (Goldie St, Patterson St) named in their honor. There are no monuments to honor the Aboriginal fallen in defence of their lands and people.

Against the odds, having survived genocide, incarceration and subsequent denial of existence, Aboriginal people remain a proud people whose extraordinary story portrays their resilience. Our burial grounds were raped in the hunt for human remains; our people were slaughtered where they stood and were isolated in prison camps far from their traditional lands despite being promised by Robinson, acting on behalf of the crown, they would be returned to their lands. On 30th May, 1883 Aboriginal elders John Smith, John Maynard, Thomas Mansell,

George Everett, Henry Beeton and Phillip Thomas were forced to defend their people's existence on Cape Barren from continual attacks. In that letter (copy attached), the elders pointed out:

We are under no obligation to the Government. Whatever land they have reserved for our use is a token of their honesty, inasmuch as it has been given in lieu of that grand island (Tasmania) which they took from our ancestors.

The manner of redressing wrongs can compound dependency where Aboriginals are forced to go cap in hand to government, begging. How often have Aborigines been reduced to fruitlessly lobbying for justice? A compassionate society relies heavily on its political leadership to express core values of fairness, justice and equity. It is for Tasmania's political leaders to offer genuine negotiations with Aboriginal people to find the mechanisms and the time frames to make those core values real.

Acknowledging the mistreatment of Aboriginal people who have endured so much suffering, loss and humiliation is more aptly described as 'making amends' than 'recognising'. Genuine recognition of all that has befallen Aboriginal people involves providing a remedy. Making vague, token references to a people in a document is not sufficient. The remedy should be about righting the wrongs of the past through return of lands and compensation, and also about the future – finding mechanisms such as seats in parliament, self-determination and cultural enhancement. The initiative undertaken by the Premier and your Committee, Sir, should be seen as a beginning of the task to resolve these fundamental outstanding issues, not as a once off lets-move-on gesture.

Adequately dealing with this historic left-over cannot be merely symbolic, nor should it be seen as trivialising or ignoring the enormity of Aboriginal suffering. Even today the best interests of Aborigines is not determined by Aborigines but by white officials. The Federal and State Minister for Aboriginal Affairs is always a white person, never elected by Aboriginals. Yet he/she has authority to make decisions on behalf of Aborigines, and they call it democracy. This is after 225 years! If Aborigines were not allowed to decide their future in 1803, nor in 1883 and still not in 2015, when *will* the time be right?

What can be achieved by token recognition?

The Australian parliament passed the Act of Recognition in 2013. The States of Queensland, NSW, Victoria and South Australia have all given 'recognition' in their constitutions. Not a single discernible benefit has flowed to Aboriginal people as a result. WA is also considering the move despite former Liberal Minister for Aboriginal Affairs and Reconciliation Chairman Fred Chaney making the case against it on the grounds it is a distraction from dealing with the real issues of importance to Aboriginal people. One can only wonder how much more useless symbolic recognition gestures can be injected into formal documents before people begin to address the real outstanding issues.

Meaningful steps

Tasmania does not lead the way in Australia for its dealings with Aboriginal people. In one form or another, Aborigines have legal interests to around 30% of the mainland land mass. In Tasmania Aborigines have less than 1%. There is no self-determination: the recent arbitrary removal from Tasmanian Aboriginal Centre of its legal aid funds without any recourse to

Aboriginal community attitude, highlights the failure. Aboriginal heritage is effectively owned and managed by a government department. Apart from the courageous move that proved highly beneficial to build a school on Cape Barren for child retention purposes by former education Minister Paula Wriedt, Aboriginal education remains stagnant. Aborigines cannot find funds to participate in the economy as leaders instead of as labourers.

Yet Tasmania has taken small but significant steps beginning with land rights in 1995-2003. Tasmania remains the only State to have compensated the victims of the stolen generations in 2006. Clearly these steps, while positive and welcome, are not enough. Premier Hodgman is talking of resetting the relationship with Aboriginal people.

The lands returned to Aboriginal people are less than 1% of the lands taken. There is no logical reason for not handing ownership of crown lands such as the world heritage areas and the east coast areas such as Bay of Fires and Mt William National Park back to Aboriginal people.

An economic base could be established by following the NSW precedent of setting aside land taxes for Aboriginal people over a period of years. Moneys generated would provide real opportunities to generate further income from land rights. As the moneys would be reinvested within Tasmania, the government would be effectively banking the money for a time until it is regenerated within the local economy.

The Aboriginal Lands Act should be amended to incorporate self-determination. There is no provision for Aboriginal people to take full responsibility for activities on Aboriginal lands.

The Tasmanian constitution as a mechanism for change

The Australian constitution is the source of Australian democracy. It distributes power between the national and State parliaments, the executive and the courts, and guarantees elections. Apart from originally excluding Aboriginal people from being counted, the national constitution does not grant Aboriginal people a particular place in Australian democracy. Aborigines are left to compete as a minority of 500,000 people whose interests are generally seen as subordinate to those of the current 23 million Australians.

The Tasmanian constitution does not alter this situation. Nor will symbolic words that merely acknowledge well-known facts such as 'Aborigines were here first'. The Tasmanian constitution could nevertheless be one vehicle for meaningfully addressing the historical imbalance of white/Aboriginal relations in Tasmania.

It is true that the makeup of parliaments should reflect the people they govern. There has never been an Aboriginal representative in the Tasmanian Parliament in the sense of being put there by their own people. Under the weight of numbers, it is impossible for Aborigines to elect one of their own while white Tasmanians easily elect their own, and expect to do so at every election. One direct way to provide for representative democracy in Tasmania is to amend section 22 of the Tasmanian constitution. A new subsection 3A could provide for a 6th electorate made up of Aboriginal people able to elect 3 members to the Parliament.

Another possibility is to amend section 45 of the constitution which provides for equal powers between the two House of Parliament. A new subsection could be added that preserved certain powers exclusively in an Aboriginal body. Areas could include Aboriginal

heritage and culture generally, and for local planning and revenue raising to apply to lands returned to Aboriginal people.

Who decides?

Many reasons can be advanced for and against constitutional recognition. But in the end who decides is a crucial issue, more important than which particular proposal is to be put forward.

Brennan J in *Gerhardy v Brown* [1985] HCA 11 at para 37 asked what is 'advancement'? He went on to say: *"'Advancement' is not necessarily what the person who takes the measure regards as a benefit for the beneficiaries. The purpose of securing advancement for a racial group is not established by showing that the branch of government or the person who takes the measure does so for the purpose of conferring what it or he regards as a benefit for the group if the group does not seek or wish to have the benefit.*

The wishes of the beneficiaries for the measure are of great importance (perhaps essential) in determining whether a measure is taken for the purpose of securing their advancement. The dignity of the beneficiaries is impaired and they are not advanced by having an unwanted material benefit foisted on them.

An Aboriginal community without a home is advanced by granting them title to the land they wish to have as a home. Such a grant may satisfy a demand for land rights. But an Aboriginal community would not be advanced by granting them title to land to which they would be confined against their wishes."

A proposal that confers a benefit on Aboriginal people will always be viewed favourably by Aboriginal people. How then can constitutional recognition confer a benefit that is capable of being welcomed? The answer lays in substantive or real change rather than symbolic change. Recognition is achieved through the conferring of a benefit desired by Aboriginal people. The constitution may be the mechanism or it might be legislation or administrative measures.

The steps outlined above dealing with dispossession, disempowerment, poverty and self-determination are much more likely to be welcomed by Aborigines than incidental words in the Tasmanian constitution. A treaty honouring the pledge made by Robinson as agent of the colonial authority would also be welcome. There may be similar ideas that dignify the response to the trauma, suffering and humiliation Aboriginal people have endured.

None of these options should be put in the too hard basket. If something is worth doing, it is worth doing well. Constitutional recognition itself is not the key issue: making amends to Aboriginals through constitution recognition or some alternative mechanism is the real challenge. Success in making amends casts Tasmania in a better light, as a more inclusive State, where the original people are not politically sidelined, nor their entitlements ignored. Such worthwhile objectives encourage social harmony based on mutual respect between two peoples: one people takes responsibility to correct errors made by their forebears while the other graciously accepts restitution on behalf of their forebears.

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