

**THE LEGISLATIVE COUNCIL SELECT COMMITTEE ON ABORIGINAL LANDS MET IN COMMITTEE ROOM No. 2, PARLIAMENT HOUSE, HOBART ON MONDAY 10 APRIL 2000.**

**JEFF PHILLIPS** WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED BY PHONE LINK.

**CHAIRPERSON** (Mrs Sue Smith) - Good morning, Jeff. I am Sue Smith, Chair of this committee. Welcome to you from sunny Tasmania. We note your submission of 30 January. The process we have used is we give you the opportunity to speak to your submission, make any other relevant comments, after which time the committee will ask any questions of you just to clarify your submission. We will hand over to you and we will move on from there.

**Mr PHILLIPS** - Thank you very much and thank you for the opportunity. I am a resident of Flinders Island, firstly, and, secondly, my wife is a descendant of a land-holder from Flinders Island. I guess from there I just have an interest in Flinders Island and its future and its affairs.

I would like to firstly emphasise the first portion of my written submission, which was the redefinition of an Aboriginal person. I get a little bit concerned - and I am not a lawyer, I am an engineer - that while we are trying to redefine an Aboriginal person when, after all, the Federal Government has things in place that I think do that and probably get themselves into enough hot water without a mix and match of a further State Government trying to do this. So I have some concern about that.

I would also like to re-emphasise that I think part of this motion is tending to divide the community of Flinders Island into those who are on, if you like, the Aboriginal side and those who are on the Caucasian or white side. I would like to hope and think that I am on either side.

**Mr WILKINSON** - Jeff, can I ask a question there? You said it is starting to divide the Flinders Island community. Have you been over in recent times or since the bill has been mooted?

**Mr PHILLIPS** - We've had discussions, we've phone calls with various people from time to time and in fact I am going down there next week.

**Mr WILKINSON** - When you say the community's divided, is the community for it or against it?

**Mr PHILLIPS** - That is the problem, I guess, depending on which side of the fence you stand. You hear the concerns from the white side, if you like - I am not trying to be racist - of the number of people who seem to be popping up and putting their hands up to say they are of Aboriginal decent.

**Mr WILKINSON** - We were over there recently - approximately five weeks ago - and not all of the Aboriginal community was behind it. Have you had the same conversations with the Aboriginal community to see whether they are for it or against it?

**Mr PHILLIPS** - Not in depth, I suppose, but I know that one or two of the people we relate to know they are not behind it. In fact one of them said that I could put my hand up and claim to be an Aboriginal person, and I don't want to do that.

**Mr WILKINSON** - You say your wife's a descendant of a land owner from Flinders Island, is she a descendant from an Aboriginal or from a European person?

**Mr PHILLIPS** - From European descent. Her father was a land-holder, his father held the same parcel of land and his father settled in Hobart and actually organised the purchase of land at Flinders Island. It

is not an Aboriginal ..., although I did hear that on the other side of the fence I think it goes back to the convicts.

**Mr FLETCHER** - Tony Fletcher speaking, Jeff. It seems to me you're saying that you are generally supportive of land being identified for transfer back to the descendants of Aborigines or the contemporary Aboriginal society so they can nurture their culture and perhaps reinvent a lifestyle. Is that your position?

**Mr PHILLIPS** - No, it's not. I'm not a supporter of land being given back to them. I am supportive that, if they have a case, some sort of an arrangement be made, but I am a supporter that the land is for all, not for one lifestyle or group of people.

**Mr FLETCHER** - What sort of arrangement would you suggest, then?

**Mr PHILLIPS** - I think I put in my submission that if there is some event or some celebration, or some sort of historical celebration, this could be maybe put into the Press in some way to say that a particular community, and probably the Aboriginal community, wishes to celebrate a certain event or passing or otherwise.

**Mr FLETCHER** - Okay. So your argument at the top of page 2 of your submission with regard to aboriginality is really of no consequence. If you don't believe in the transfer of land back to the community, it doesn't matter who is or who is not an Aboriginal.

**Mr PHILLIPS** - Yes, that's what I am saying - I don't believe that land should be transferred back to any party. You could get arguments coming from sealers who say they were there first and so why shouldn't they have a slice of the country. I'm not a supporter of the land being put back to any party; I'm a supporter that the land belongs to Australia and not one particular culture.

**Mr FLETCHER** - There are artefacts and caves and middens and the like that suggest there was an indigenous people prior to the land bridge, 8 000, 10 000, 12 000, 15 000 years ago, and the links are still there to the contemporary Aboriginal people, people claiming aboriginality. You don't accept that argument?

**Mr PHILLIPS** - No, I don't. I accept there may be artefacts there, yes; I accept that and I accept that a group of people should recognise certain artefacts. But I don't believe that is a strength to transfer land to one group or another. As I said, you can pretty easily go back through history and you can probably find where sealers and convicts have been buried. Does that mean the descendants of their families should have the rights to those lands? I don't think so.

**CHAIRPERSON** - Thank you, Jeff. Do you wish to continue and make other comment?

**Mr PHILLIPS** - No. I think my two arguments are, firstly, the concern about trying to redefine an Aboriginal person; I think the Federal Government is treating that. My second argument is no, I am not a supporter of lands being transferred from one particular group because that one particular group can put up their arguments today, but what do you do next century when another group of totally different, unthought-of direction. So no, I think land is for Australia and for Australians.

**Mr FLETCHER** - Jeff, you have raised another query with me. What if a group of people on Flinders Island or Cape Barren Island - a group of people of the Aboriginal community - were to mount a successful native title claim, go to the Federal tribunal, lodge their claim and be adjudicated to have a fair claim and therefore be granted native title over the land. Would you accept that?

**Mr PHILLIPS** - I suppose I would have to accept it, although I would accept it reluctantly. I guess I have not studied the whole process and the whole mechanism in depth, so I am not an authority on it. I'm as equally as concerned as every Australian about the direction of Aboriginal people in Australia totally, and I guess if they can mount a thing that can be passed through and claimed under a native title, so be it, but I wouldn't be a supporter of it.

**Mr BAILEY** - Jeff, it's Ray Bailey speaking. If I can speak with you about what an Aboriginal person is. Would you like to see the definition widened or reduced in relation to people being able to claim being an Aboriginal person?

**Mr PHILLIPS** - I don't know; I don't think so. I guess there is deep concern, from what I observe and talk about, the fact that people can put up their hands and say they are of Aboriginal descent, and if you can prove to the club that you're one of them, then okay you're in. I'm sorry, and I hate ... talking that way, but those are the comments and the feelings and the sentiments that you get.

In your act of 19-whenver it was referred back to the Commonwealth Parliament Act -

**Mr BAILEY** - Yes, that's right, the definition has been picked up, but I think I should say that that definition was, I think, probably intended to mean that if a person claimed to be an Aboriginal person and that person was accepted by the community, then that person was accepted as being of Aboriginal descent and therefore entitled to Commonwealth benefits. That definition was taken to the court in the Federal Court and Mr Justice Merkel made a determination and determined that the proper basis on which an Aboriginal person could lawfully claim to be that, was that he or she had to prove descent and claim to be Aboriginal and be accepted. So that is now the test that is put into this current bill that we are looking at. It really adopts the manner in which the Federal Court has determined the meaning of the ATSIC act.

The only difference in the bill that is currently before this committee is that the question of onus of proof has been reversed. In the Merkel decision, it was upon those who were alleging that the person was not an Aboriginal person. In this bill the onus is reversed and the person who claims aboriginality has to establish that claim on the balance of probabilities rather than the reverse of that. So it has tightened it to that extent. But the real issue is: should those persons who have some difficulty with descent on the basis that there are no records and they can't get any lineage to known Aboriginal persons but probably are, that they should have an opportunity to join that club and benefit from the lands that have been granted. What do you say about that? Do you think it should be widened or it should be reduced? If there is land to be granted, should there be a fair opportunity or a wider opportunity for those who can't get back to their lineage right through descendancy because of a lack of records, but yet can probably show a degree of aboriginality, should they be allowed into the club?

**Mr PHILLIPS** - If there is land to be granted and they are of Aboriginal descent, then I guess the direction of our nation says they should have access to that land. On those terms one would suggest that it should be widened. May I also say, how many ... make you an Aboriginal person with access to that total thing? What's the percentage, because I'm sure I can trace myself back to an Eskimo, or something like that.

**Mr BAILEY** - You wouldn't want to live there, though, would you.

It really isn't a question under the provisions of the bill of what percentage there is, it is a direct link back to being a descendant of a person who has been proved to be, on the balance of probabilities, an Aboriginal person. So it's any descendant of such a person.

**Mr PHILLIPS** - You have a greater knowledge of the matter than I; my only argument was, I suppose, beware that we're not conflicting with Commonwealth direction in the definition -

**Mr BAILEY** - The only difference is the onus of proof from what is now the Federal Court's interpretation of the meaning of the definition in the ATSIC act. Thank you.

**Mr WILKINSON** - Jeff, in relation to reconciliation, do you want to endeavour to define reconciliation? If you do, can you?

**Mr PHILLIPS** - Hang on a minute, I'm an engineer. Reconciliation - can you help me with that a little bit?

**Mr WILKINSON** - Sure. While you're thinking, you hear time and time again, not only in Tasmania but in the Federal Parliament, that the transfer of land is going to assist with the process of

reconciliation. It is a word that is bandied around a lot, but a number of people have difficulty in defining it. What I am looking for is a fair definition of what reconciliation is. If you are able to assist, that would be helpful; if you are not, I can understand because a Supreme Court judge down here said if he could define it properly he may win a Nobel prize. I just pose the question to you.

**Mr PHILLIPS** - I think I might have to bow out of that one.

**Mr FLETCHER** - I'd just like to wrap up your position, Jeff. You say you are conceptually opposed to the transfer of land to the Tasmanian Aboriginal people, however if the process of assessment was open, transparent and rigorous - something like the native title assessment process - then you would have greater confidence in the outcomes.

**Mr PHILLIPS** - Yes, I think that's probably a reasonable summary, but just a sort of carte blanche giveaway of land - and I think one of them is on one of the birding islands - why should the Aboriginals have access to that? My son's grandfather was out there trying to dig out mutton-birds beside them, so who's got rights to that?

**CHAIRPERSON** - Thank you, Jeff. If I might pose one final question to somebody who quite evidently has a great affection and affinity with Flinders Island and is to some degree an ex-patriot, taking a snapshot into the future, if land was to be transferred in the Furneaux group, which would put 20 per cent of the Furneaux area into Aboriginal community hands, what would the snapshot, in your opinion, of the Flinders community be into the future?

**Mr PHILLIPS** - In a few words, I think you are helping to create a division in the community.

**CHAIRPERSON** - Thank you. Thank you, Jeff, for the time you have given us this morning and for the time you took to put a submission in to the Legislative Council Select Committee. We wish you good morning again from sunny Tasmania.

**Mr PHILLIPS** - Thank you very much for the opportunity, and it's sunny in Melbourne too.

**THE WITNESS WITHDREW.**

**THE LEGISLATIVE COUNCIL SELECT COMMITTEE ON ABORIGINAL LANDS MET IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART ON MONDAY 10 APRIL 2000.**

**Dr CASSANDRA PYBUS** WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

**CHAIRPERSON** (Mrs Sue Smith) - We welcome you this morning, Dr Pybus. I note your information of 16 March 2000 and your particular desire to address the committee, particularly on the question of aboriginality. I do apologise for the fact that we are running substantially late but it is important on the last day of our hearings to try to ask every question we feel necessary.

The process the committee has used is that they ask you to speak to your submission on the particular issues, add anything to it you feel necessary and then the committee will ask any questions they feel they need to expand on. We will pass over to you and allow you to address the committee.

**Dr PYBUS** - I think I might perhaps identify my interest. I am a historian and for the past several years I have been specifically working on race relations in colonial Australia. My first book, which was published in 1990, was also on race relations in Tasmania. I gave evidence as an expert witness at the case referred to, which was the Federal Court case which was heard by Justice Ron Merkel, and as a subsequent to that case, because of issues that Justice Merkel himself raised about why was it that there were so many people identifying as Aboriginal or ticking the box on the census form when the historical evidence would suggest that that large cohort couldn't possibly exist, I found this a paradox and it is a paradox that I have been particularly interested in exploring. I currently have signed a contract with a publisher for a book which is probably going to be called 'The Other Blacks', which is actually focusing on the extent of Afro-American basically and Indian population in the first five decades of colonial settlement of Australia.

That is my expertise, if you like, and I specifically asked to address the committee because I was concerned by stories that I had been reading in the press about various Aboriginal groups in the south and in the north-west who were claiming to be excluded from various processes, who were setting up their own organisations, and indeed in the case of one organisation in the south, making land claims. I felt that this kind of media exposure could reflect poorly on the legitimacy of the Aboriginal community's claims in Tasmania, especially outside of Tasmania. I am aware of the fact that there is a lot of concern in both the non-indigenous and indigenous communities outside Tasmania about what is going on here and I have a concern as a Tasmanian, non-indigenous Tasmanian, that we need to be careful that we do not bring the question of Aboriginal reconciliation into some disrepute by drawing too long a bow, if you like, in terms of who might legitimately be seen to be the recipients of any acts of reparation that the community wishes to make.

My evidence to the Federal Court case has not substantially changed despite the fact that I have a much more historical basis for the kinds of things that I said then and that is that it is relatively easy in my view - and I might say that I have discussed at length with both Lyndal Ryan and Henry Reynolds - it is that indigenality in Tasmania, descent from an indigenous person in Tasmania, is relatively easy to establish because of the unique and terrible circumstances of the near genocide of Aboriginal people in Tasmania in the early nineteenth century. The fact that, because they were seen as being of such official and scientific interest, there was an extraordinary surveillance of Aboriginal and part Aboriginal people in the nineteenth century so the likelihood that non-Aboriginal people have, as it were, slipped through the net, is very low in view and it is not only my view.

Mr Justice Merkel did accept the evidence that was tendered to him about oral histories of Aboriginal people, particularly in the Huon and Channel. He was referred to a book called 'We Who Are Not Here' - which some of you may have seen. At the time I pointed out to Justice Merkel that that book was written as part of a project that was managed by my company and that it was an oral history project of people in the Huon who identified as being of Aboriginal descent. At the time the book was published I raised with the person who wrote it the gross historical inaccuracies in the book in relation to people claiming descent from two women whose archival records clearly show they are white convict women. One of the things about white convict women and men was that the first thing that happened to them when they arrived in the colony was that their descriptions were taken down. So not only do the birth certificates indicate that these are Irish women but also we have clear descriptions of them; they cannot be in any way, shape or form seen as being Aboriginal people.

The fact is that an oral history has grown up in the Huon and Channel to the effect that they are and there are various reasons why this might be. But I was - and I think every historian of Van Diemen's land is - concerned that this kind of oral history has been given some credibility by Justice Merkel, who by his own account didn't know anything about Tasmanian colonial history. I think also in relation to Justice Merkel's judgment, because I heard it raised here earlier this morning, Justice Merkel makes it very clear in that judgment that he is referring to the ATSIC act and that his judgment only refers to the ATSIC act and also to the ATSIC election of that particular year. So that one person who was excluded by Justice Merkel in that act stood again for the next ATSIC election and once again went to the Federal Court. That court case was never heard because the ATSIC election would be held before the judgment could be bought down and the judge indicated on that case that these Federal Court cases can only apply to the operation of the ATSIC Act for the purposes of that election. I had discussions at the request of the members of the Federal Electoral Commission who were a party to that act concerning the question about aboriginality in Tasmania and they expressed to me, certainly off the record and in private, their view that what is needed for ATSIC is an electoral roll and that the Commonwealth Government is unwilling to do this because they can see that there would be political problems. But from a point of view of administering the ATSIC act they were quite candid that there is a problem of the number of people who are claiming Aboriginal status who would not meet the criteria if they were ever made to but ATSIC does not apply it's criteria, it simply has it, and they would be the first people to admit that that is a problem.

One of the things that concern me in terms of what I was reading in the paper and also in terms of some of the questioning I heard here this morning was that I do not believe that the rulings on ATSIC, the act that governs ATSIC, or the way in which ATSIC administers their electoral role is an appropriate way to go because everyone knows that it is open to abuse and is being abused. The same thing is true in relation to other Commonwealth rights and benefits such as Abstudy and that is commonly acknowledged. But until such time as the Commonwealth Government is prepared to have an open, transparent and accountable process for making judgments about who is and who is not Aboriginal I suspect that these issues are going to continue to bedevil Commonwealth projects. I therefore was very pleased to see that the State Government was planning to follow Justice Merkel's recommendations which are the questions of aboriginality should be determined by the Aboriginal community.

That brings me to the issue of what I would believe constituted the Aboriginal community and I would say again, that as a non-indigenous person that is not for me to say. However, as a historian, I can say with a good degree of certainty in my own mind that it is fairly easy to determine questions of Aboriginal descent in Tasmania and that those people whose affidavits were referred to me for my historical analysis who claimed Aboriginal status by virtue of being on the ATSIC roll could not sustain it. And, indeed, in almost every single case, had the problem of tracing their descent to Europeans who arrived in the colony around the 1830s and Europeans who were nearly always a convict and therefore had clear descriptions of them as being of European descent, which is not to say that the great majority of convicts who arrive in the colony or indeed free people are entirely of European descent. That is the other issue that I think that to be taken into account. My research has shown that 1 per cent of the convict - and that is a conservative estimation - that 1 per cent of the convict population is Afro-American. We can probably presume that there are about 500 or 600 people of colour who are not Aboriginal in the colony up until 1850 and that amongst free settlers the percentage is probably considerably higher than 1 per cent - for example, in the archives on Friday I was looking at the arrivals from Norfolk Island on the *Lady Nelson* and it will come as a surprise to the committee, I am

sure, to discover that ten of those people who then went to take up land grants in New Norfolk, Sandy Bay and up the Derwent Valley and the Norfolk Plains were either African or Indian. And on the 1818 muster for Hobart, I have been able to identify twenty people who are not of European descent and who are in fact either what is called lascars, which are Indians, or Afro-Americans.

Now, the question that we have to ask is what happens to these people? They marry Europeans, they disappear into the community as far as the officials are concerned. Unlike indigenous people they are not being scrutinised, they are not under surveillance, the police don't keep an eye on them unless they are convicts, so they do not actually disappear because physically they are very noticeable. And indeed their children are likely to be, but for all intents and purposes there is not the word 'Negro' written after their name or 'a person of colour'. You have to really search often to find this and it seems to me that stories I have heard about, for example, an Aboriginal community that survived on Bruny Island probably derived from the fact two African convicts who were then emancipated went and took up land grants on Bruny Island - both had very large families I might add. Another case I've often heard about is that there were Aboriginal people on the east coast of Tasmania who had obviously not been rounded up by Robinson. This is one that has often puzzled me but I was interested to see when I was looking for an African transporter from the Cape colony whose name was Skippio Africanus which is a grand slave name, so therefore again quite a good name to track.

**Mr WILKINSON** - It wouldn't be hard, would it.

**Dr PYBUS** - I discovered a magistrates bench book from around Swanport which had a number of entries for Skippio and his companion, who was also described as a man of colour. They had tickets of leave and they were living off the land around Swanport in the 1840s. They appeared in front of the magistrate on several occasions for taking kangaroo without a licence. What you have here is a couple of black fellas living in the bush, but they are not indigenous people.

I think that a lot of what we have picked up in the oral history of Tasmania may refer to people of colour who are not indigenous people. The question it seems for all of us to grapple with is, if you have grown up believing that you are descendant from a black person, if you know that to be the case, if it has always been known in your family - and indeed this is the story that one hears, 'It's always been known in our family.' - that there are photographs of people who clearly look to be darker than would normally be expected for a European community. If you have genuinely believed that your ancestor was black but you cannot find a way to tie it to the known indigenous population in Tasmania before 1840, I think that this is all a perfectly understandable circumstance, but does that therefore mean that you have the right to claim indigenous status and the reparations that these land transfers represent? This is where my problem is. My problem is that we have to be able to make a distinction - and I might say this is not just a Tasmanian issue; this is an issue Australia-wide. You may or may not know that Australia's most distinguished indigenous writer, Mudaroo Nungah, has now been discovered to be descendant from an Afro-American runaway slave who came to the colony of New South Wales in the 1860s. He wasn't to know that that was the case but research into his family background has proved this to be the case. Bobby Sykes, likewise, is probably descended from an Afro-American.

They are nevertheless important and critical people within the black community of Australia, the difference is they are not indigenous people. I think that Aboriginal communities wish to make a very clear distinction between questions of being black and questions of being indigenous and this is something that we have to grapple with in Tasmania too, where blackness is perhaps a problematic issue for us because the Aboriginal community of Tasmania is one that is a community of descent.

I guess that that's what I would have put on the table and perhaps people could ask me questions about it. I should say that I see myself as having no particular barrow to push in this matter except that I can see down the line for not just Tasmanians but for Australia generally that this whole issue of indigenality is going to be one of the big controversial issues for the twenty-first century and it is something that we are going to need to grapple with.

**Mr WILKINSON** - Can I start the ball rolling by not talking about aboriginality but reconciliation, that's an area I have been interested in over the last month or so. We've heard a lot that the transfer of land is going to assist in 'reconciliation'. That word has been thrown around a lot during the submissions and what I have been endeavouring to look at is a fair definition for reconciliation, firstly.

Secondly, how do you believe the transfer of land can assist this reconciliation? Are you able to assist with that?

**Dr PYBUS** - Along with my colleague, Henry Reynolds, we take the view that the Aboriginal community of Australia has been very clear about the importance of land and the need for a recognition of their rights to land. In Tasmania, I have no doubt that the parcels of land that have been identified are of major significance to the Aboriginal community and I think that this is a community, perhaps more than communities perhaps in the north of Australia, that needs these kinds of significant land masses in order to reaffirm themselves. One of the great things that we have in Tasmania of which we non-indigenous people, particularly like myself who are sixth generation Tasmanian and therefore can track our descent to the usurpers of the land, that in amongst the amount of concern and shame perhaps that we might carry for that there is a real pleasure on my part that the Aboriginal community has survived. For a community to survive a process of genocide is a remarkable thing and that community needs our help as non-indigenous people to cohere and to go into the twenty-first century with a sense that they are survivors and that they do carry on their own traditional sense of themselves, albeit as a modern people and certainly not a people who can any longer relate to the original tribal groupings that Mr Fletcher mentioned earlier on.

**Mr WILKINSON** - It is important for land to be transferred for reconciliation.

**Dr PYBUS** - Yes.

**Mr WILKINSON** - Are you able to assist with the definition of 'reconciliation'? There it is just sitting up there in lights, 'reconciliation', how do you define it?

**Dr PYBUS** - I think that reconciliation is a very emotive and very personal thing so all I can do is give you my emotive response to it which is that reconciliation is something that is necessary for us as the non-indigenous people to give something back since we have taken all the time. It has been such an uneven process, it has been a process of taking and giving. We never gave, we always took.

The other thing that is striking and remarkable about indigenous people in Australia is their capacity to continue to give and even to forgive, I might say. For my purposes, as a long-standing Australian who is very proud of being sixth generation Australian and as somebody who has studied Aboriginal history and who has close relationships with the Aboriginal community, I would say that it is for us to give if we want some reconciliation since we have done all the taking. My family arrived here and were given a huge land grant on Bruny Island of land that belonged rightfully to Truganini's people. They may have frittered that land away, they may not still have it today but it is the basis of the status that my family hold in this community. I have never had to give anything back for it and neither has anybody else in my family. The fact that my government is prepared to do this is a source of huge pride to me.

I might tell you that amongst people who work in the area of reconciliation Australia-wide it is a source of considerable respect. I think that people are hugely impressed with what the Tasmanian government is prepared to do without having to go to the Native Title Tribunal. Of course, the South Australian government many years earlier did a similar thing in relation to the Pitjantjatjara people. I think not to have to go through the Native Title Tribunal is the way to go in these matters.

**CHAIRPERSON** - If I might expand on that to some degree. In 1995 the Aboriginal Lands Act transferred land as part of reconciliation. There is a proposal, the amendment act, to transfer more land. Your response to a community who says, 'What about in 20 years time, 25 years time?' How long do we continue to transfer land under the auspices of reconciliation?

**Dr PYBUS** - I suppose that that is exactly the reason why I asked to come and talk to you because I was deeply alarmed at the reports that I read in the *Mercury* about a group of people whom I considered to be not of Aboriginal descent identifying parcels of land and saying, 'We're going to ask for this land to be transferred.' My own experience over a period of ten or twelve years in this State has been that the Aboriginal community, as I understand it to be, has identified the land that they want transferred. They have identified the land that is significant to them and I don't believe that this is an endless process. It may be an endless process if you continue to draw such a long bow that anybody



who wishes to stand up and call themselves Aboriginal can be admitted to the process and who then says, 'Well, of course my family has always lived in the south of the State and I'd like to have' -

**Mr WILKINSON** - Bruny Island.

**Dr PYBUS** - Bruny Island, that's right. To be perfectly cynical about the process, I can call myself Aboriginal and put a claim on Bruny Island. It would be an extremely vexatious thing to do but there are people doing this and I could do it on the grounds that my family have been here since 1829. There were Aboriginal people on Bruny Island in 1829, I could very readily be descended from one of them. I think that we have to be hard-headed about this.

**Mr BAILEY** - Dr Pybus, in the Shaw and Wolf case in which you gave evidence, evidence was given that blacks were working for Mr Clarke, the Chief District Constable for Hamilton, for a Mr Young, and that was in 1843. Do you think that is possible that they would have been there?

**Dr PYBUS** - I think it is quite likely that there were numerous natives of New Holland, as they were often referred to in the records - that is, Aborigines from the mainland, who were in Tasmania in the 1840s. As I have already said, there were numerous blacks who were not necessarily indigenous Australians also. I think we do have to be careful about who we are talking about here. In 1843 there were certainly Aborigines from the mainland working in Tasmania; there were half a dozen Aboriginal convicts transported here. People did bring Aborigines from the mainland down to Tasmania, they often did not stay here or they often did not survive but you would not need to presume that these are Tasmanians.

**Mr BAILEY** - But you couldn't conclusively presume that they weren't?

**Dr PYBUS** - I can actually.

**Mr BAILEY** - You can?

**Dr PYBUS** - I will, yes. It just flies in the face of everything I know about the operation of the process of removal to suggest that any Tasmanian Aboriginal people have been permitted to continue to reside on the mainland.

**Mr BAILEY** - What about the 20 or 30 men and women who were sighted in the Huon River area in 1853?

**Dr PYBUS** - Yes. Those people - the first two things about that, there is no contemporaneous account of that; that account is an old man remembering which is then recounted. I remember seeing this when I was a child, he tells that to somebody as an old man and then it is reprinted again. There is no contemporaneous account of it. It is quite clear to me that those are the people from Oyster Cove who used to go hunting in the Huon Valley on a regular basis, that these are not Aboriginal people who have somehow again slipped through the net.

**Mr BAILEY** - His evidence was that when travelling up the Huon River in 1853.

**Dr PYBUS** - That's right, that was his evidence.

**Mr BAILEY** - That's a specific date.

**Dr PYBUS** - That's right.

**Mr BAILEY** - Do you believe that Robinson collected all the Aboriginals in Tasmania?

**Dr PYBUS** - No, I don't believe that Robinson collected them all. I think there was a kind of process by which a number of people conciliated - to use the appropriate nineteenth century term - and that I do believe that there were pockets of Aboriginal people who were not conciliated by Robinson in the early 1830s who may have survived in Tasmania as late as the 1850s, possibly in pockets on the west coast. We know that William Lanney's family did survive until they gave themselves up to Robinson's son. I do not believe however that they survived in the settled districts of the Huon under any circumstances

because at the time Robinson went through the west coast the people he came into contact with were healthy and living a sustainable lifestyle. That was not true of the people in south eastern Tasmania.

**Mr BAILEY** - Your evidence in that case - and if I can quote - 'Dr Pybus gave evidence of her historical records and it shows that there were no Aboriginals present in the Huon and Channel areas after 1830. She states that the absence of Aboriginal people in the area was established by the fact that George Augustus Robinson, when rounding up the Aboriginal tribes to take them to the island settlement, having taken five Aboriginals from Bruny Island, found no Aborigines on the trip across the country from Recherche Bay to Port Davey'. That is a big area of land and you wouldn't be suggesting that he would have had an opportunity to have seen every person or animal that was moving in that area. It seems a long bow to draw, that just because he walked through there and didn't see any that there might not have been any there.

**Dr PYBUS** - Yes. If that was all that you were dealing with I think that would be a very long bow to draw but where is the evidence to the contrary, where is the evidence to suggest that there are Aboriginal people in this area?

**Mr BAILEY** - But by the same token there is no evidence to say that they weren't there, if you adopt that principle.

**Dr PYBUS** - Historians don't adopt that principle actually; historians adopt the principle of what we can know we know from contemporaneous accounts. As I said at the very beginning, we have a problem with absolutes, right, all historians have a problem with absolutes. You can't absolutely say that this was the case, however, there is no evidence to the contrary, not just Robinson, everybody else who travels through there. The people who call into Recherche Bay where Aboriginal people always used to come down to the ships and then suddenly they weren't there anymore. The likelihood -

**Mr FLETCHER** - There's anecdotal evidence to the contrary but no contemporaneous evidence to the contrary, I think that's what you are saying.

**Dr PYBUS** - Yes. The anecdotal evidence is very difficult because these stories become like folk dance. Certainly there is some anecdotal evidence that Aboriginal people survived in south-eastern Tasmania. However, I have seen no trustworthy evidence that people claiming Aboriginal descent can show that these are the people that they are descended from. Unfortunately they have family trees that show them to be descendent from European people. This is a problem and the way around this problem is to talk about illegal adoption. I have a lot of difficulty with that.

If I was dealing with somebody whose family tree kind of just stops abruptly - as often happens with the stolen generation - there are no explanations as to who this person may have been descended from. I haven't been presented with any of that evidence so far. It is one thing say there is anecdotal evidence that there were Aboriginal people still in south eastern Tasmania. I would say I and every other historian are deeply suspicious of that evidence. However it is drawing a massively long bow to go from there to a whole lot of people in 1999 or the year 2000 saying, 'We're Aboriginal' because I always heard stories that there were people still left here. I mean, we're talking about important matters of policy here and they've got to be determined on something a little more substantial than anecdotal evidence and suggesting that for some reason the formal records of your births, deaths and marriages have been tampered with.

**Mr BAILEY** - But would you agree that those people claiming aboriginality who are only relying on oral history would find it very difficult when there's no documented evidence to support that proposition?

**Dr PYBUS** - I do agree that they find it very difficult but I can only say again that the questions that were referred to me and that were referred to that you have in front of you from Mr Justice Merkel's hearing in that case they did have very clear family trees. They inserted other people into those family trees, you will agree -

**Mr BAILEY** - I don't because I don't know.

**Dr PYBUS** - If you were to read the transcripts of the evidence this is indeed what happened. The evidence was given very clearly by the State Archivist about this issue. The question is, are you going to accept that there was wide-scale, illegal adoption of Aboriginal children in the 1830s and 1840s - who knows where they could have come from - into families, thereby explaining why there's a whole lot of people who apparently are descended from Europeans are descended from Aboriginal people? I think that if you start accepting something that cannot be verified by the record, that runs totally counter to the births, deaths and marriages record, then it's open slather.

Of course, if the whole of Tasmania wishes to call themselves indigenous people that might solve the problem; we could all be part of the Aboriginal community, but I don't think that's what anybody has in mind and it would be a gross insult to the survivors. I regard a lot of this talk as a gross insult to them, I might say - 8 000 people who somehow survived in south-eastern Tasmania - because it suggests that the horrendous processes that are so well documented that took place in Tasmania didn't happen or if they did happen they didn't have the appalling consequences that indeed we know they did have.

**Mr BAILEY** - What about the half-caste women of Aboriginal and European descent that you referred to as having worked in households as servants or as prostitutes or as live-in partners? Do you think it's possible that people could be descendants of theirs and therefore not be able to trace their ancestry back because of a lack of documented evidence perhaps?

**Dr PYBUS** - Well, there are a group of young women who are described as half-caste who I cannot entirely account for - and I said so in my evidence - so therefore it is perfectly possible that there are people who are descended from those young women. However, I haven't seen any evidence of that, I would have to say because, again, you have a situation where there aren't too many unrecorded births. I'm not suggesting that unrecorded births don't happen but there are not all that many unrecorded births. Also I suppose the question that I would have to ask about this is if we are now talking about people who are descended from half-caste women in the 1830s and 1840s who have had no identification as Aboriginal people, have no involvement with the Aboriginal community but who suspect, guess, hope, that their great-great-great-great-grandmother may have been a half-caste girl who has not been identified in the colonial records as such, I would have to say, 'What claim does this person have to be a member of the Tasmanian Land Council? What claim does this person have to land transfers in Tasmania?' Again, to go back to my original metaphor, I do think that it is drawing such a long bow.

**Mr BAILEY** - If it were possible for DNA testing to establish some degree of aboriginality, how would you feel if a number of the people that you would find as not being of Aboriginal descent and who had been denied these rights and privileges only to be restored or regained through DNA testing? As a historian, how would you feel about that?

**Dr PYBUS** - There are a number of people in the Aboriginal community Australia-wide who are calling for DNA testing, as you know.

**Mr BAILEY** - I think it's difficult to do at the moment, from my knowledge.

**Dr PYBUS** - Furthermore, I think it's appalling. As a historian I'm anxious about such a notion, I'm anxious about tying indigenusness purely to genetics. Indeed, the definition of aboriginality is three-pronged and genetic descent is only one of them. I think that if you did in fact have DNA testing - and God help us, I hope we never do because it sounds appalling to me, but I have to acknowledge that a lot of Aboriginal communities are asking for it - but if, for example, people who on the basis of my understanding of the historical record I said could not be descended from Aboriginal people were found to have DNA that would indicate that they were, I would have to admit I was wrong but it would make me necessarily agree that these people met the criteria of being indigenous people simply because of a small amount of genetic material that might be identified as Aboriginal.

**Mr BAILEY** - But wouldn't that take them back to being a descendant of an Aboriginal? I mean, we're talking about an Aboriginal person -

**Mr FLETCHER** - One test of three or four -

**Dr PYBUS** - Yes, one test of three or four -

**Mr BAILEY** - Yes, one test of three but the second one is they claim, so they claim, so they've got two out of the three and why wouldn't the Aboriginal community then accept them?

**Dr PYBUS** - They may, but it would be for the Aboriginal community to determine.

**Mr BAILEY** - I agree with that.

**Dr PYBUS** - It is also very speculative. As far as I know, there is no suggestion that DNA testing is going to be introduced. I think there would be a great deal of concern in the international community if Australia went down that path, even if the Aboriginal community wanted it. It runs against the kind of humanist impulse in the modern world, I fear.

**Mr BAILEY** - But the only ones who would want it would be those who haven't been accepted by the Aboriginal community.

**Dr PYBUS** - That may be true in Tasmania, but it certainly isn't true in the rest of Australia.

**Mr BAILEY** - I'm talking about Tasmania only - that's all we're talking about.

**Dr PYBUS** - In the rest of Australia the people who want it are people who are concerned about the very thing that we're talking about in fact.

**Mr FLETCHER** - I'd like to follow the proposition from Dr Pybus with regard to the links with the ancient history and the complete breakdown or destruction of the ancient culture and therefore it is different nowadays. It just seems to me that no matter where I go there are groupings of Tasmanian Aborigines who claim their community and claim that nobody as spokespersons for a single group speak on their behalf; indeed, they claim they are a self-contained community and they will make judgements related to their own affairs and that to me links back to the tribal grouping band, a situation that was territorial with different languages and separate, I suppose. Why isn't that valid in this day and age or do you accept that it is valid or do you think there should only be a single nation or a single grouping nowadays?

**Dr PYBUS** - The indigenous communities everywhere like European communities are very fractious and they tend to factionalise just as all other groupings do. I had quite a lot of experience working with the Aboriginal community in Victoria who were attempting to establish a kind of central overarching organisation, which was very difficult for the very same reasons - regional differences, where groups from the Mildura region didn't really want to be involved with people from Fitzroy and things like that. I think that this is just part of the way people operate in the world. However, at a more general level of policy, I think that it is legitimate to talk about one Aboriginal community because of that extraordinary process of pulling everybody together, getting hold of everybody, pushing them together and the survivors of that process are dependent on each other for their survival. So we have people who clearly would never have had any dealings with one another only a decade earlier - for example, the people on the west coast who are overtly hostile to people from the north-west coast who are overtly hostile to people from the south-east of Tasmania - who will on Flinders Island within a decade be intermarrying with those people.

So what you have is a real mixing-pot of forced and traumatised - and the impact of trauma is so huge in this circumstance that I think you can talk about a single community which will and does argue with one another. But to take the north-west coast as a case in point, I would find it very difficult to accept that there was any remaining distinctive Aboriginal community on the north-west coast for the simple reason that everybody in my view was removed from that area and even if people went back there they weren't necessarily the people of the north-west coast who went back there.

**Mr WILKINSON** - The land that you're talking about that we've been meeting about over the last month or so, are you saying that that is the land that was identified by the Aboriginal community back in 1975 as being of some significance to them?

**Dr PYBUS** - Generally speaking, yes. If you take Mount Cameron West, for example, one of the things that's very clear and interesting in terms of the relationship to these people being deeply territorial is that when Robinson is travelling around Tasmania with people who are made up from various different bands as he collects them - the small group that travel with him are not all just from Bruny Island - the importance of Mount Cameron West to all of the people in Tasmania, regardless of their territoriality, is quite extraordinary. So although that's an area that's somewhere within that area of certain bands who I think may very well have become extinct, its significance to all Aboriginal people in Tasmania was quite clearly documented in the early nineteenth century, so there's never been any question that that's a site of huge significance. I think that's probably true of most of the areas of land, that they have had a kind of universal significance, at least for the post-genocide generations.

**Mr FLETCHER** - I wonder if you would refer me to your reference for Mount Cameron West when you say this is well-documented.

**Dr PYBUS** - It's in the Friendly Mission; I'd have to pull the detail out for you but I can certainly do that and fax it to you.

**Mr WILKINSON** - I know it's a question Tony's been asking a number of witnesses but, as a historian, if you were born in 20 or 30 years' time and were looking at a Legislative Council select committee that may or may not transfer land to the Aboriginal community you might say there's got to be a procedure or criterion in order for the transfer of land because if it's just that Aboriginal people walked the land before we did the whole lot of Tasmania should be handed back to the Aboriginal people and we know that that just won't occur. So are you able to set down in concrete at all any criteria so a historian can come forward in 100 years' time and say, 'I can understand this because of certain criteria that were set and adhered to'? If the bar's too low the whole of Australia goes and if it's too high there's no transfer. It's probably too simplistic to say that but I'm just after your views.

**Dr PYBUS** - I think that what is being proposed is very good; I think it is very cautious. I know that there are members of the Tasmanian community who don't think that but, on the other hand, there is no doubt in my mind about the significance of this land to the Aboriginal community and the importance for reconciliation in the rest of the Tasmanian community being prepared to make that gesture to them. I think that in 20 years' time people will look back at the decisions that have been made in this matter, without having to be forced by the courts to do it, as one of the most generous and forward-thinking pieces of legislation in the whole area, basically since the South Australian government did a very similar thing with the Pitjantjatjara many, many years ago now. The fact is that most land transfers in Australia have been forced. There's been this dreadful process of litigation and counter-litigation and so on. Even if the Tasmanian community is prepared to make a gesture of this magnitude and accept the Tasmanian community at their word as it were - this is what we want and we believe we know who we are - I am full of admiration for it, I'd have to say and I think that in 20 or 30 years historians will still be talking about it in those sorts of terms, the same way that people who work in the area of reconciliation and race relations talk about the decision of the Don Dunstan Government to give large parcels of land to the Pitjantjatjara.

**CHAIRPERSON** - If I might expand a little on that, the community of the Furneaux Islands area are being asked to transfer 20 per cent of their entire area as part of a reconciliation process on behalf of the entire Tasmanian community. Do you believe that the rest of the Tasmanian community owes something to the Furneaux Island community, who will lose some of their European heritage and traditional occupations et cetera in this particular proposal?

**Dr PYBUS** - You know, Henry Reynolds has a very persuasive thesis. I've had some arguments with him about this but nevertheless he has a very persuasive thesis to the effect that if there is a case for land title in Tasmania it is most likely in the Furneaux group, not because they have had an unbroken connection but because the Government very clearly made that land over to Aboriginal people. The fact is that these were not even within the time that Wybalenna was still operating as an Aboriginal settlement. These promises that were made that Flinders Island, for example, was to be given to the Aboriginal people in recompense for the loss of mainland Tasmania were not adhered to and the grazing leases were started to be given to people. The European settlement started at the same time as there were Aboriginal people living at Wybalenna.

This is an historical misfortune and it is a misfortune for the people of the Furneaux Islands but insofar as we can say that there was a recognition of native title in Tasmania - and this is a point over which historians might have some arguments but I think Reynolds' thesis is a sound one; that indeed Arthur did recognise native title, as we know the British Government did, and recognised that he was doing a trade with the islands of the Furneaux group for the island of Tasmania - there could be an argument made that 20 per cent is nothing like enough and there should be 100 per cent. I recognise that that is not answering your question and that the people of the Furneaux are being asked to give up a lot but perhaps that's - again I come back to insofar as there were people, and Manalargenna is one, who clearly understood that they were getting land to replace the land they were leaving, that promise was never kept to them. That land was never given to them, so this is something I think we all have to bear in mind.

Perhaps the rest of Tasmanian does have to make reparation to the Europeans in the Furneaux. We are all beneficiaries of this process and we all have to shoulder the burden in some way but my understanding is that there is a willingness in the community to do that. Perhaps I'm wrong; perhaps this is Pollyanna-ish of me.

**Mr FLETCHER** - Certainly I think that Henry Reynolds' book is good reading. You have some argument with it and others I've spoken with have argument with it as well so I don't think it is an open and shut case.

**Dr PYBUS** - Neither was the Mabo case.

**Mr FLETCHER** - No, but if we step aside from that the links to the Furneaux group are pre-Bassian land bridge days and then post the sealer days where there was a shared European Aboriginal culture, I suppose, and if that's factual then the claim for the return of Bruny Island would seem to be far stronger than the claim for Flinders Island because there were Tasmanian Aborigines living and occupying Bruny Island from the days of the earliest white settlers, whereas they weren't on the Furneaux group of islands. They were absent for a long period of time until returned there by the sealers. How do you justify the legitimacy of the Flinders Island claim whilst rejecting the Bruny Island claim?

**Dr PYBUS** - In relation to Bruny Island, I would argue that there's been no Aboriginal occupation of Bruny since 1829 and it has developed no significance for the current present-day Aboriginal community. Therefore I cannot see anybody would put a land claim on Bruny Island.

**Mr FLETCHER** - But it's not a matter of land claims at this stage, is it? It's a matter of graciousness and reconciliation.

**Dr PYBUS** - I was not aware of the fact that the Tasmanian Aboriginal community were asking for Bruny Island or that they ever would ask for it. The claim on a large part of the Furneaux is related to the fact that that is the place in which the present-day community was forged - under duress in appalling circumstances and not their choice but nevertheless you cannot deny the significance of those places to the community.

**Mr FLETCHER** - But as a historian isn't the Furneaux group a forging of a culture of a mixed race?

**Dr PYBUS** - That is undeniable, but one of the things again about that community is that it is a community that would most appropriately be called by the term Creole in that it's a community that is neither wholly European nor wholly Aboriginal. My understanding - and this is backed up by the work that's been done by Lyndal Ryan - is that that was a community which developed its own Aboriginal culture because they all came from different places. Mostly they came from the north-east and the sealers who settled there, as opposed to the ones who blow in and out, are basically co-opted into that culture. I mean, it is more of an Aboriginal culture than it is a European culture and for the second generation it has become their culture. It is an Aboriginal culture; it may not be the same Aboriginal culture as pre-settlement but it is an Aboriginal society and culture. I don't think that anybody who works as a historian or anthropologist or archaeologist disputes that that is a unique Aboriginal community. It is unique because it has mixed genetic stock but its culture makes it Aboriginal.

**Mr FLETCHER** - But to test your previous argument, is it Aboriginal or is it indigenous? Is it the truly indigenous people of Tasmania?

**Dr PYBUS** - The definition of 'indigenous' includes being of indigenous descent. We haven't got down to the situation where you have to be a certain percentage, as in the United States for example, where you have to be at least a descendant of a fully indigenous person. The important thing to me in determining indigenousness - and I don't believe it's for me to determine anyway, but if I had to in my own mind - is to me a matter of culture and genetics. You can't have one without the other. I come back to the point that I made earlier: even if, for example, DNA testing were to show that a greater proportion of the Tasmanian population were descended from Aboriginal people than had previously been thought, I don't quite understand how this would make them have claims to indigenousness if they hadn't lived within an Aboriginal community or had not identified as being Aboriginal or had a sense of a shared-world view. That is what distinguishes the Aboriginal people of the Cape Barren islands who were the first people to get recognition in Tasmania as being an indigenous community.

**Mr WILKINSON** - In relation to the question from Tony about Bruny Island, I asked Richard Bingham back on 1 February if there were any other areas of land that were requested or was it just those. There was certainly discussion about other areas of land, particularly in the south of the State on Bruny Island and I think there was some comment in the press about some of those areas but they never did form part of the terms of reference with that working group. But your view would be that because, as far as your studies have shown, the last known continuous occupation was up to around about 1820, did you say?

**Dr PYBUS** - 1829, that's right. I think that questions about land claims outside of the ones on land in the south - I didn't look very closely because I only saw two media reports about this; I didn't look very closely about the parcels of land that were being claimed but I didn't notice that part of Bruny Island was included in it. I feared that this was mischievous; it may not be but my own feeling is that it is for ALCT to suggest what is significant to the Aboriginal community and what is important if there are further land grants to be made rather than people whose claim to indigenous status is perhaps problematic and certainly hasn't been accepted by the Tasmanian community, however much they believe it to be true.

**CHAIRPERSON** - Thank you very much for your time this morning; it has been greatly appreciated.

**THE WITNESS WITHDREW.**

**THE LEGISLATIVE COUNCIL SELECT COMMITTEE ON ABORIGINAL LANDS MET IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART ON MONDAY, 10 APRIL 2000.**

**PETER SIMS AND HELEN STEPHEN WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.**

**CHAIRPERSON** (Mrs Sue Smith) - Thank you both. We welcome you back amongst us, Mr Sims. Firstly, may I say thank you for your response of the 23 March to the question you took on notice in Launceston from the committee. It has been appreciated and the detail has been very beneficial. So I say thank you for that and I welcome you, Ms Stephen, to the table. I understand this afternoon you wish to present a submission on behalf of descendants of the Clarke family, if I interpret that correctly. We will pass over to you to make your comments on your submission and then the committee will ask any questions that they deem necessary at the end of the process.

**Mr SIMS** - Thank you, Madam Chair. Perhaps before I, if I may, bring to the committee's attention something of which I think the committee should be made aware of - and it is not in relation to Clarke Island, which is the time I propose to spend this afternoon - I have got a supplementary piece of evidence to give you, which I can table. You can either deal with that now or else you can consider that in your deliberations. I'm not aware of what kind of time constraints you have, but it's something which has just come to my notice and it is documented there for the members of the committee. I think it does have a bearing on some of the evidence that you have heard in the past and some of the issues that have been raised in regard to the West Point site.

**CHAIRPERSON** -Thank you.

**Mr SIMS** - I'll table that anyway, formally, Madame Chair. Thank you for the acknowledgment of the criteria that was in answer to committee member, Tony, in respect of criteria. I did spend some time in thinking that through and I thank you for giving me the opportunity for thinking it through. I suppose we're all thinking of the same sort of thing and that is that Tony made a similar question to the last person in a similar vein. But that's how I can see it anyway in this day and age, but in two years' time my thoughts might have changed. But that's as it is.

Clarke Island and the Maclean family. Both Helen and I represent the Maclean family. I understand that Helen has also made a submission to the committee on behalf of herself. But what I just propose to do is to just to refresh our memories on the submission - which is 28 January. I did try to create a historical background of the occupation of Clarke Island by our family - who they were; what they did and our connections. I don't propose to go through that because that is documented there and some of that historical information has already been published and will be published as soon as I have finished writing a book on the Maclean and other connecting families.

The heritage significance of Clarke Island to me and the Maclean family have been listed by the Department of Primary Industry, Water and Environment historical places inventory. I just may list the categories, which gives the significance of the sites on Clarke Island, to that inventory:

1. It demonstrates the evolution and pattern of Tasmanian history.
2. It demonstrates an uncommon and endangered aspect of Tasmanian heritage.
3. It has the potential to provide information on Tasmanian history.
4. It demonstrates the characteristics of a broad class of cultural places.



5. It demonstrates creative and technical achievement.

6. It has a strong meaning to the family and to the Furneaux community: social, cultural and spiritual. And it is associated with life as special people important in Tasmanian history.

The other point is the submission that I did raise was the lack of recognition by the Government and the Aboriginal Land and Cultural Issues working group about the eighty year occupation of Clarke Island by the Maclean family.

You probably have seen the briefing package put out by the Government and I did extract out of that briefing paper and put in the submission all that was said about Clarke Island. It finished at 1854 and that is why I made mention in my submission that it continued on with the Maclean occupation from about 1860 to about 1843. It is also significant to note on the map of Clarke Island - which is CPR map 5135 - Maclean's Bay is omitted and yet the 1:100 000 map and the references in the archaeological documents all refer to Maclean's Bay and it's an omission, I think, that should be corrected. Most of the other major parks there - Jim, see where Armstrong Channel is, the word 'Armstrong' - come into about the middle of Armstrong and in that - see that niche there - that niche, that bay - that's Maclean's Bay. That's where the homestead is and the other sites. I would like to see that oversight corrected on the map because it is quite a historic and part of the nomenclature of the island and it makes things easier to discuss.

Just to make it easier to work out where the historic sites are in relation to the Maclean family, I've also got another attachment to give you which is from Sim and Gate Archaeological survey of the outer Furneaux islands. The six sites are, as you can see clustered around and where you see the figure 4, that is Maclean's Bay - and I didn't actually write it on this, I just took it straight out of the Sim and Gate report. As you can see, they are clustered around that bay and I think there might have been a picture of it in my submission. I can't remember now. Yes, there is there - facing page 8 there is a picture of the bay and the landing section.

In the other part in my submission I outlined what I considered to be an inadequacy of the archaeological evidence to support the claim on Clarke Island. This does not mean that I do not support the claim for other reasons. For example, what the island is being used for right now, I fully support that. But I'm just raising this issue based on the criteria which I have already given you. If the criteria is going to be archaeological evidence, let's examine Clarke Island. There are seven only stone artefacts found on the surface and only one of those showed signs of retouching. There's a lack of clear evidence to suggest that these artefacts had not been brought into Clarke Island in more recent times.

I did contrast that in my submission with evidence cited in the briefing paper and other areas in Tasmania where there is indisputable evidence of Aboriginal occupation that are worthy of a land claim. So if we use the criteria 'only of finding seven stone artefacts', only one of which shows signs of being touched, this to my mind is insufficient evidence to justify a land claim. I did put in my submission and draw a comparison between artefacts, ochre, petroglyphs and burial sites in Devonport, which were examined by TALC in relation to a council wanting to put a track through the area and it was deemed that the artefacts there may have been brought in and were not significant to prevent the council from putting the track in and that particular site was actually destroyed.

So you see, there is conflict in assessing one site versus another, but I wanted to make the point here that the evidence for Clarke Island was insufficient, archaeologically speaking, to warrant a land claim, making the point again that what the island is used for now I am supportive of.

The other point that has come through in my submission and I think has come through clearly from other members of the family who have made submissions to your committee, Madam Chair, is the access requirements by the descendants of the Maclean and Salier families to Clarke Island and particularly the heritage sites which I've just circulated. These heritage sites are very important to the family. Helen and I have been fortunate - and Helen will describe this to you herself shortly, if she may - in our connection with the island and our visits to the island and to know that our great-grandparents

built up this house, which is still standing since 1870, so it's done pretty well for a wooden place - that's why I mentioned the technology; it's pretty good technology for a house to stand for that time - and also to visit the grave of our great-grandmother which has a tombstone there. Of course we would like to keep going back there with our children - if we have children - to do up the grave and also we would like to see that the homestead was preserved in such a state that it can still be standing in another hundred or more years.

**Mr WILKINSON** - There are two homesteads.

**Mr SIMS** - Yes, there are three actually.

**Mr WILKINSON** - Is the top one nearest the grave the homestead you're speaking about?

**Mr SIMS** - Yes, the one nearest the grave is the old homestead, the dilapidated one. Was it still standing when you saw it?

**Mr WILKINSON** - I was going to say it needs a little work done on it.

**Mr SIMS** - It sure does but it's been recommended to be listed on the register of the National Estate by the archaeologist who did the survey. I think you've had a supporting letter from National Trust that supports my submission and I'm hopeful that an assessment can be made by National Trust on its suitability and what is required to have it restored.

There are family members who can't get to the island. My mother, for instance, who is 90, said to me before I came down, 'I hope you can get something that can give us security over access to the island for the future'. So even she in a nursing home is still thinking of the times with her mother who was the first born on the island from the Maclean family in 1872. So we as a family have got quite strong links in recent times and that's why we're putting a lot of emphasis on access for our family.

Perhaps if I may hand over to Helen before I finalise that, Madam Chair.

**CHAIRPERSON** - Thank you. We acknowledge your submission to the committee and we will invite to make any further comments on that later.

**Ms STEPHEN** - I guess this is just to reiterate what I've written there, that as a child growing up my dad used to share stories of his childhood growing up on the island, which rather appealed to me because it was a rather exciting childhood there, a very free childhood. His aunt, Aunty Meg as she was known to us, when she came to visit she also had stories to tell and so I suppose growing up with those stories left quite a lasting impression with me. Then in 1971 a group of us went back, which included my dad, and it was the first time he'd been back since 1940. It really made quite an impression on me just watching his reaction to going back to the place where his childhood roots were and it was a very strong feeling just being there in this place that my father had talked about so often and to see the old homestead and also the other homestead where he had grown up as a boy which is another one still standing.

There was also the schoolhouse still standing then - it's not any more, it blew down in the wind a few years later - where the oldest cousin came back after he had been educated at Launceston High School and taught my father and his two brothers and sister and the other cousins in this schoolhouse, which I found rather interesting. They then went on to Launceston High School, having first gone to Lilydale school because in those days, as you'd probably remember, you had to sit a test to be able to go to Launceston High School so they went for just that last term to Lilydale and then on to Launceston High School. But that building has now gone; it blew down in the wind. So that was my first trip back. The second was much later - in 1988 - when another party of us went, including my son, and that's left quite an impression on him. And again, just my one sister and myself went back in 1990 and flew over in a small two-seater plane with a resident of Swan Island at the time and spent a lovely day there. So those three trips have left me with a very lasting impression of just the importance of that as family heritage and history. That's where I'm coming from.

**CHAIRPERSON** - Thank you. Any questions?

**Mr FLETCHER** - Both witnesses seem to be suggesting that ownership is not the critical factor, access is the critical factor.

**Ms STEPHEN** - Yes, exactly right.

**Mr FLETCHER** - If you could be guaranteed access then you'd be quite happy for the land to be transferred in ownership.

**Ms STEPHEN** - Absolutely. I don't have a problem with that.

**Mr SIMS** - Yes.

**Mrs SILVIA SMITH** - Access and protection of your heritage on the island. I think it's more than just access, it's access and protection of those particular areas - the gravesite and the homestead and things like that.

**Mr SIMS** - Yes.

**Mr WILKINSON** - As I understand, it the gravesite is quite well protected. As you probably know, it's in amongst a group of trees -

**Mr SIMS** - Boxthorn hedges, yes, which are noxious weeds.

**Mr WILKINSON** - Are they? They protect it from the wind, though, and it also has a bit of a fence around it. Do you know who did that?

**Mr SIMS** - I would imagine it was done by great-grandfather when he had to build a box for great-grandmother. He did all of that and he got the tombstone done by Jacky Dunn.

**Mr WILKINSON** - I understand about the tombstone. I understand, though, that the Aboriginal community may have done something to stop people from actually walking on the gravesite.

**Mr SIMS** - I hadn't seen that but they might have done, yeah.

**Mr WILKINSON** - They've built a fence around it, as I understand it.

**Mr SIMS** - Have they? To respect the site? That's excellent.

**Ms STEPHEN** - Good, yes it is.

**Mr SIMS** - I had been hoping to get across to Clarke Island prior to addressing this committee so I was up to speed. Obviously you have been there anyway and seen the site. But, as I say, I want to go there with the National Trust also to do an assessment of these sites and also for Heritage Tasmania to ensure that they go on the heritage register, even though there's a recommendation there. And possibly the house or the old homestead can go on the register of the National Estate because the sites do meet the criteria, it is just a matter of getting the documentation correct. Once they are on the register of course, whether it is on private or public land, it qualifies that there is a duty of care to look after those buildings. I think we, as a family, would take on some responsibility for that duty of care to ensure that our family relics were preserved and protected.

**Mr FLETCHER** - You're supportive of the transfer. Why do you support the transfer? You've argued earlier on that the archaeological evidence certainly doesn't justify it. The European history of the island is equally as strong as the Aboriginal history of occupation of the island. There was a private lease which has been bought by the Indigenous Land Council and is now being used for a very worthy purpose on the island. Why then do you support the transfer of the island? What is your justification for supporting the case for the ownership?

**Mr SIMS** - I was unaware that some of the land has actually been transferred back. Do they have a lease or is that ownership?

**Mr FLETCHER** - The part of the island which was under private lease has been bought by the Indigenous Land Council, as I understand it, and that may be that area available to the TAC for its youth rehabilitation program. So that lease, I guess, is a twenty-year lease or something like that and that's supposedly in the hands of the Aboriginal people.

**Mr SIMS** - But the utilisation of the island for that purpose is not constrained just to that small area because the people will utilise the whole of the island. That's why I made the point that I saw no problem with the whole island being given over to the Aborigines for that purpose because it's pointless constricting it just to that one area and saying the rest of it is a no-go area and to give title to the whole lot. I saw no problem with that; in fact I saw that as being an advantage to have the whole lot because it is a small island and the package is ideal for the types of correction that is being accommodated by the people on the island. It's very supportive of that and this would be ideal for that.

**CHAIRPERSON** - So your justification for transfer is a proven program that is proving successful for the Aboriginal community.

**Mr SIMS** - That's right, yeah - full marks for that.

**CHAIRPERSON** - Do you believe if it wasn't transferred that program would have no capacity to carry on or that it's enhanced because it's transferred? Would you like to expand on that?

**Mr SIMS** - Yes, I think it would be enhanced and I think it would give them a sense of ownership and they could develop it further. I would actually like to see it further expanded and there has been talk of not only Aboriginal offenders going to the island but making it non-discriminatory to both black and white. That way that island would give so much back to those kids - the island as a whole, not just the area they have - and if it was under the control of that organisation who had this foresight and this program which is obviously commended by the Government and supported by it and continue that further. It is based on the fact of how much the island meant to the Maclean family and the significance that it played in moulding those children who were educated on that island and the influence that had which was very strong. That's what a small island can do to people and certainly having the contact with mainland Tasmania and that island to give them this sense of place and ownership does give them a sense of place.

**CHAIRPERSON** - If I might expand that, at the moment, Mr Sims, or certainly when the committee was in the Furneaux group, there were three young people who were in the program on Clarke Island and, as you have said, it is being proven to be highly successful for some individuals. Undoubtedly if the program was to be expanded in the way you speak of it would have to be financed much better, one might say, than it is at the moment and in fact there were some positions put to committee members that they are quite strained in supervision because of it. Who would you see having the responsibility for financing this particular program, whether it is a combination of indigenous and European children or whether it's indigenous children or whatever? Do you want to expand on that?

**Mr SIMS** - It probably gets back to a point that I made in my earlier submission when I met the committee and that was there's no point in giving land to anybody unless it has some support from the person who's giving the land. I see this as the same thing; if the land is going to be given there needs to be some financial support given by the governments in conjunction with the new owners to build infrastructure for facilities such as this - and there'll be other facilities developed as an outcome from this. This gives support to the whole thrust of handing back land. It's not just giving a gift and then walking away from it; it's giving a gift and backing it up with support such as finance and other infrastructure support from the bureaucracy that is essential for them to undertake what they propose.

**CHAIRPERSON** - Would you believe one of the successes of this program is the fact that it is low numbers and thus more highly concentrated and the environment suits those young people who have chosen to take the option of Clarke Island?

**Ms STEPHEN** - I guess I'd just say that I support it because I work with young children as a teacher and I feel that anything we can do that's positive for young people has to be a good thing. So I would support that.

**Mr SIMS** - I think you could take larger numbers within reasonable bounds as long as the ration was kept about the same because that's pretty important, the ratio of instructors to the clients.

**Mr FLETCHER** - Peter, I'm going to make a reasonably long statement now and I'd welcome your comment in relation to it. I think Clarke Island may well be an example of a position I've put to other parties, and I've put to you previously, but it seems to me that if we're dealing with land rights Tasmanian Aborigines ought to make a claim through the native title Federal jurisdiction. They'd be unsuccessful, but if they are there unsuccessful there is the Indigenous Land Fund of \$45 million a year every year for Australia which buys private land - as indeed it bought the lease on Clarke Island and it has bought the Thule estate on Flinders Island and the Modder River station on Cape Barren Island to empower and provide opportunities for the Aboriginal people.

But if there is a crown estate, if there are other areas of special significance - and you have dealt with some of them in your paper - outside or on crown land, then perhaps there ought to be a process involving the Aboriginal community to identify those special sites that have significance and the protection of those ought to be managed and identified and assessed by the Aboriginal community but measured for their common good against the LUPA process or things of that nature. Then they remain part of the crown estate but are managed as part of a crown estate for their very special value. Managing part of the crown estate, I suppose, means putting the best managers in charge of the interpretation and conservation of those sites. It might easily be Aboriginal people or might be people who are archaeologists or people with special skills whose profession dictate that they ought to be involved in that process.

The basis of that is that there is a core crown estate that is variously classified as State reserve or national park or World Heritage Area or conservation area which has importance to the public, to the whole of the Tasmanian community. The links to it for recreational and other purposes are long-standing and deeply embedded and people have a close association with that. Therefore, rather than transferring - if the land acquisition through the Indigenous Land Fund can provide the empowerment and the opportunity for Aboriginal people, as it has done already on Cape Barren, Flinders and Clarke islands, then the crown estate ought to be retained in the Crown and managed for their special values such as, if it's an Aboriginal special value that's been identified and assessed, managed for those purposes. Could you comment on that general thrust?

**Mr SIMS** - Obviously you've thought a great deal about that by the length of your question. I think I touched on the same thing in my earlier submission to you about the possibility of not giving actual straight-out titles so the new land managers were not associated with the Crown. I support that notion because it gives much greater continuity and protection for all parties and there is the opportunity at a given point of time in the future of not really closing off options. If the land title is given over to any one person the options then are really closed off and it's very hard to get it back again; it's virtually irreversible. What you're proposing is not irreversible; there is a degree of, not necessarily control by the Crown, but the ownership is still with the people as a whole community and the management of that piece of land so identified - like World Heritage and national park - is managed specifically for the purpose it has been reserved. Perhaps 'reserved' is not the best term to use in this case because we have notions then of Indian reservations in America and things like that and I think we want to try to get away from that.

But certainly I think it has a lot of merit in also defusing a lot of community angst with both parties. It has that opportunity in enabling the Aboriginal people to have a say in the management of the land that they identify as being significant and using that process then to give security to Aboriginal people for that part of land they feel is very significant to them. I think that's got a lot of merit and I'm pleased for that question that you've asked again. It's not really a clear-cut decision one way or the other; it's not a yes or no - no, that land is not going to be handed back or yes, it is going to be handed back - but going forward this way there is a special land classification with special land management prescriptions by the people who are the real stakeholders. But at the same time the Crown still has an opportunity of course of seeing that the overall interests of the broad community are respected.

**Mr FLETCHER** - Peter, the counter argument to that is that we're in a process of reconciliation and we should be generous and freely give some land to promote the process of reconciliation. Don't you

think that's a worthwhile goal?

**Mr SIMS** - I think you can argue this so many ways and I think if this committee could come forward with that suggestion you made there as a recommendation and build on that and show good faith what it means by that - to interpret it right through as to how you would see it enacted and how you see it taking place - that there would be ownership by the Aboriginal people of that land because they have ownership through the management and with that management they would be putting up proposals for certain infrastructure and certain ideas which would need to get government support - people's money - and then people have a right to ensure that that money is being wisely spent.

But I think it is how it's going to be presented to the public. It could be presented very strongly as a reconciliation thing because it's not going the way of handing back the land and saying, 'There is the land, good luck to you - go for it'. There is still an involvement by the Government, not being a motherhood or fatherhood role but it is there in a supportive role, encouraging the reconciliation between all the parties concerned. Otherwise I think if it goes the other way it's not going to solve a lot of problems. It won't solve reconciliation by handing back land full stop.

**Mr FLETCHER** - One Aboriginal witness to us at an earlier time suggested that the most significant thing that could happen to facilitate further reconciliation medium to long term is the transfer or the lease or the establishment of a first-class centre of excellence for Aboriginal cultural interpretation. Would you care to comment on that proposal? Do you think that has merit?

**Mr SIMS** - Yes, Tony, it sure does. I saw that as being central to the issues at West Point and the Marrawah area that if there was this centre of excellence interpreting Aboriginal culture to the community at large this would attract visitors to the area, this would attract so much attention that the local people, that's everybody, would feel proud of this establishment. They would learn a lot more about what Aboriginal culture was all about so Aboriginal people would learn more about their own culture. The whole thing would really start to mean something.

I feel the area most appropriate for it is up in the north-west and is probably in the Marrawah-Arthur River area where tourism is a very important thing but it is cultural tourism and it has the spin-off of all three sectors: it is monetary gain for the community and it is culture recognition by the general community and it is endorsement of Aboriginal people of what sites of significance are there, are significant, are the best of the best in the world, as I mentioned before - we should really be very proud and so should everybody else. But that would be a very positive way of doing it.

**Mr WILKINSON** - Excuse my ignorance, but no doubt there are other cultural centres in the Northern Territory, for example, and maybe other parts of Australia, do you believe that if we were to do it here to me it would have to be the best and it would have to be the best in Australia and then you would have to align that with, as you say, some of the best sites in the world at West Point?

**Mr SIMS** - On the west coast again, yes, so it leads to that.

**Mr WILKINSON** - So what type of things would you need?

**Mr SIMS** - I would envisage an establishment which would actually create employment so you could employ a lot of Aboriginal people. I would see this as a Parks and Wildlife centre, I would see this as a tourist centre. So you have a mix of the various interests in that area and other people who have interests in managing that land are the land managers, recreation interest should have some access to that building as well. So it would be a multi-use building but the emphasis would be on a cultural centre of Aboriginal sites of significance, which are through the window there, or the ranger will take you there on a tour in half an hour that goes every half an hour and build this up that way. It would give tremendous impetus to that area. When I set up Tiagarra in Devonport I was using the same sort of argument back in 1974 to a tourist committee and who looked blank you know, tourism and cultural tourism was a new word then. I said, 'We can get some Federal money for a ... place there and we have an Aboriginal site here, why don't we utilise that and get the culture of Aboriginal people communicated to the wider community, to the tourist people?'

Of course the idea fell on fertile soil and fertile money at the Federal Government at the time and that took place and that is now being run by the Mersey-Leven Aboriginal Corporation - which is exactly what I set out to do in the first place; it should be run by Aboriginal people, not white people. So that has been a vision of mine that has come to reality. I want it to be much bigger than that. Like everything else, you always think of something bigger but it comes back to just how much money we had at the time and there is also talk now of expanding that and making that larger.

That is a place where it is already happening but I see the west coast as being something quite different, better. Obviously it is 1974 versus 2000 so it is obviously going to be better and in an area where there is a range of very significant Aboriginal sites. There is an Aboriginal community there, they really are probably waiting in the wings for something like this to happen, so all we need is the direction from Government and the support from governments. I put international governments there too because I see the UN would have a role here for support to indigenous people. So there are all sorts of opportunities to tap into there because this would be a world-class cultural centre.

**Mr FLETCHER** - You could almost open up the track from Rocky to Sandy Cape, couldn't you?

**Mr SIMS** - Yes, there are all sorts of opportunities like that yes, a walking track there as it was.

**Mr BAILEY** - Peter, if Clarke Island is to be transferred in perpetuity to the Aboriginal Land Council and you want to preserve rights to access that land, how do you see that occurring, firstly, in perpetuity to your rights and your family rights to continue? That is, who would the rights attach to; how long should they last and how are they in fact reserved? I have a technical problem I understand what you are saying but how do we go about it?

**Mr SIMS** - It has been worrying me too that same question. In view of the fact that the places we want to visit or we want preserved are the very places that are already been utilised by the Aboriginal people right now. The next step, to answer your next question was, who would be the ones who were approved to go there?

**Mr BAILEY** - You two obviously have a personal interest in this, do your children or -

**Mr SIMS** - That is what I think we are at one with within the family, we would like this for our children and our children's children. We want this for perpetuity because if the grave and the other sites are there - well, they are there anyway - we would want the opportunity for our descendants to have the same access rights as ourselves.

**Mr FLETCHER** - What about for an historian or a researcher who might want to write the family history or something?

**Mr SIMS** - Yes, not only family. So there could be other people, bona fides for bona fide reasons, that's right. But therein lies a question: does one have to have a piece of paper showing our family connection, 'We're a member of the family, we have right of access here'?

**Mr BAILEY** - And you have arrived all the way over there and you're turned away by the gatekeeper.

*Laughter.*

**Mr SIMS** - When I asked the Premier the question he wrote back to me and said: 'Permission for access to the sites will be required. However the Aboriginal Land Council of Tasmania have indicated they will look favourably on such a request'. Well, they might look favourably today but tomorrow they might not, so that is not good enough. The family wants something more concrete than that and more lasting than that. I have been looking at ways and means of how the legislation could be worded to accommodate that and it is not an easy one.

**Mr BAILEY** - Well, I can't see an answer to it off the top of my head.

**Mr SIMS** - No.

**Mr BAILEY** - I can understand what you want but putting that into a practical application.

**Mr SIMS** - Yes, into words in a bill, is not easy.

**Mr BAILEY** - I don't know whether it's appropriate anyway but there's just got to be some general principle.

**Mr SIMS** - Excepting that the bill or the act itself refers to a plan and the plan says where you can and can't go.

**Mr BAILEY** - Yes.

**Mr SIMS** - So that's a legislative requirement there, isn't it? It is linked to the bill.

**Mr BAILEY** - Yes, well, if you only wanted to go to the grave I can see that would be reasonable to have surveyed and shown on the plan -

**Mr SIMS** - With a hatched area.

**Mr BAILEY** - with a hatched area, but as to the houses and buildings which are now occupied, I would see difficulties there.

**Mr SIMS** - That's right.

**Mr BAILEY** - We have got Risdon Cove where there is a monument and there is a right of access, I think during daylight hours, over a reserved area and there is a precedent for it in relation to Bowen's memorial and so there is a precedent for that, but it would be for you and your descents then for perpetuity. Are you two brother and sister?

**Mr SIMS** - No.

**Mr BAILEY** - So they are separate families.

**Mr SIMS** - Yes, quite separate.

**Mr BAILEY** - How many separate families are there?

**Mr SIMS** - There were nine children and I didn't bring my genealogy with me.

**Mr BAILEY** - No, so there are quite a lot.

**Mr SIMS** - Yes.

**Mr FLETCHER** - One Maclean and one Stephen family here, are they same?

**Ms STEPHEN** - No, that's my married name, Stephen.

**Mr SIMS** - My grandmother was a Maclean and -

**Ms STEPHEN** - I was a Maclean.

**Mr SIMS** - Yes, so she is nee Maclean.

**Mr FLETCHER** - Right, okay.

**Mr BAILEY** - Okay, that will be a problem.

**Mr SIMS** - Yes, there would be 30 living descendants now.

**Mr BAILEY** - I don't know how far down the track you can go with this.



**Mr SIMS** - Or would you make that available to the public and then in that way it gets away from families, it gets away from the historian wanting to come and take a photograph of the grave or something else.

**Mr BAILEY** - Well, that's like it is.

**Mr SIMS** - Like it is at Risdon Cove.

**CHAIRPERSON** - Your problem and concern there I would see, if you are looking to encourage the Youth Justice Program that is happening there at the moment, is that to make it available to the public could become quite anti to the process that is working successfully, so I would suggest that has problems and concerns as well.

**Ms STEPHEN** - Because of the program.

**Mr SIMS** - Yes, that's right.

**CHAIRPERSON** - Yes. The public is quite general and quite wide.

**Mr SIMS** - Yes.

**Mr FLETCHER** - I haven't been to the island. The sensitive sites are on that area of ground presently being leased by the Aboriginal community for -

**Mr SIMS** - Yes.

**Mr FLETCHER** - Okay.

**Mr SIMS** - That document I handed you with the dots on it is Clarke Island and that is basically the area that is leased to them. So they both coincide and they are -

**Mr FLETCHER** - All that western side of the island is leased. I think it's still in the crown reserve.

**Mr SIMS** - It is crown reserve - a nature reserve I think it is, yes.

**CHAIRPERSON** - I will put another scenario - and it is merely a scenario, Mr Sims - if Clarke Island was to remain in the hands of the Government as the Crown and the area that is leased remains under lease and the Crown leased the area to the Aboriginal community to continue their program a condition of the lease being access for particular family who could prove credentials for family reasons, et cetera, is that another scenario that would satisfy the Maclean family concerns?

**Mr SIMS** - As a condition of the lease, yes, that's right, it would do. The same if a historian came too, it would be by arrangement but it would certainly be in the lease to allow access to the sites by the family.

**Mr BAILEY** - But there would be difficulties with that, it might be a three-year lease or a 21-year lease and then it's renewed then and we don't need that clause any more.

**Mr SIMS** - And then that has gone -

**Mr BAILEY** - It's not quite as simple -

**Mr SIMS** - There's no security with that either, just like the Premier's letter, there's no security in that.

**Mr BAILEY** - This is a term that's set out in the lease.

**Mr SIMS** - Yes, that's right.

**Mr BAILEY** - But anyway, we can think about that.

**Mr SIMS** - That's a difficult one but it's the significant sites and it's really the homestead - the old homestead and if we, as a family, are going to spend money on it and there's going to be some Commonwealth money go into as well and perhaps some State money into upgrading that, that's quite - and the same with the grave, if we are going to spend money on it - we want to do it up anyway, the family members now want to do it up, but there's a problem there of getting onto the island and doing the work.

**Mr BAILEY** - The other question I want to ask you. You spoke about a duty of care under the Cultural Heritage Act, what is the penalty if that were to be given to the Aboriginal community and no repair was done at all and it just rotted away? What penalties are there under that act? Are you familiar with it, to say that they would have to keep it in repair or if they did repair it then they would have to do it to a standard. But if they did nothing - my understanding was that if you do nothing you really can't be forced to but if you can be forced to and you haven't got any money it can't be enforced anyway.

**Mr SIMS** - That's right, yes. I think it just identifies the heritage site and identifies the responsibility that you have a duty of care to -

**Mr BAILEY** - There's a moral rather than a legal obligation.

**Ms STEPHEN** - Yes, that's how I see it.

**Mr SIMS** - not to hasten the demise of that building - not to do anything to hasten it - but if you can't do anything to stop the natural demise, well then so be it.

**CHAIRPERSON** - Thank you. Any other questions of the committee? Thank you very much again, Mr Sims and Ms Stephen, for your attendance here this afternoon. Your submissions have been appreciated and your ongoing paper work. Do you wish to make any comment in closing the process?

**Mr SIMS** - Just to thank you, Madam Chair, and the members for the questions that have been asked - the thoughtful questions. It is not an easy solution to find and I'd be happy to answer questions individually if any of the members want to at any stage on any aspect of it, because it is one that we are all trying to come to grips with and there is no one simple answer and whatever decision is made by the committee it's not going to be acceptable to some of the sections of the community, to everyone. That's normal anyway, I think we all live with that. But anyway, I look forward to the final report and thank you for allowing me the second time to address you on this with Helen.

**THE WITNESSES WITHDREW.**

**THE LEGISLATIVE COUNCIL SELECT COMMITTEE ON ABORIGINAL LANDS MET IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART ON MONDAY 10 APRIL 2000.**

**JANE FLACH, REG WATSON AND ENIS McCARTHY, TASMANIAN HERITAGE COUNCIL WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.**

**CHAIRPERSON** (Mrs Sue Smith) - Thank you for your attendance here this afternoon. I do again apologise for the lateness of this process but it is important that I ensure that the committee are comfortable with the understanding of each submission that is put forward. We will ask you to speak to the submission. I understand you are then speaking to it, Mr Watson, and we will move on through the process as you have seen happen this morning. So if you would like to start Mrs Flach.

**Mrs FLACH** - We would like to thank you first of all for giving this opportunity. We were very afraid that it was all going to disappear and we are very pleased that finally we do have our say because we feel that we have been marginalised and we haven't had much opportunity before.

I am Jane Flach. I have written and published historical material and I am interested in this topic and various other topics. Our concerns in our submission are mainly historical and constitutional. Mr Watson has written a previous submission before the 1995 legislation was passed and Mrs McCarthy has had first-person experience at being excluded. We particularly wanted her to come because it would be only hearsay if anyone else had come instead or if we had related it.

The Tasmanian Heritage Council was set up before the statutory body. We are equal delegates from various organisations who have this interest in common. In our submission we point out a lot of the Mabo ruling would apply equally to traditional white land usage as well as Aboriginal land usage and this is our constitutional concern, that this statutory rights that we have inherited shouldn't have been taken away from us in a process of reverse discrimination. I would also like to make a personal comment that the reconciliation process appears, to me, in some ways to have been counter productive as far as reconciling the whole community because by some people it seemed to have gone too far. I'm not making that for myself particularly, I'm making a general observation of what I have seen.

My historical concern is that there tends to be a politically correct revisionist history, which was brought out in our submission. I was particularly interested when I just happened to be doing a submission for Forestry that I found out Aboriginal and Aboriginal land at Port Arthur had been slipped in because I thought Forestry was trees. What I noticed in that particular Forestry one it was based on IUCN classifications and the terminology that was put for Port Arthur and the Aboriginal land was politically correct in modern words - they did not have words like 'glow-worm' in the 19th Century in the sense that it is used now. I had a nasty feeling as a historian - and I tried to keep objective and look at both sides - that Port Arthur and the Aboriginal area set aside could have tended to be used as object lessons, which disagreed totally with my view of what I have discovered in my historical research. I have a great deal of respect for Cassandra Pybus' research into the ancestry - that was brought out today. I do not endorse her personal opinion about reconciliation because it would appear to me there is a lot of mea culpa in this, that my ancestors did this and I am responsible. My family, which also goes back to 1816, were not part of the 'squattocracy', if you like. I don't have those same guilt problems that a lot of people have. I also feel that the media has been putting a lot of guilt problems onto people.

Our main concern as the Tasmanian Heritage Council is not particularly land rights. We addressed this because this was the subject of your submission, but, as I say in our submission, we have also commented with regret about the headstones in St Davids Park that have been totally neglected - that is

our history. Just in passing, you wonder what will happen to Cornelian Bay when it reverts to Tasmanian history.

There is a wonderful book 'Stones of the Century' for St Davids Park which luckily preserves what was there. I hope somebody is doing it at Cornelian Bay as well.

We were also extremely concerned with Port Arthur when the bulldozers moved in and totally wrecked the officer's quarters, which were full of archaeological remains. We put in a submission to Commissioner Doyle over that - of course it went ahead and then it is finished, so it is fait accompli. I have been down to the Port Arthur since and I was absolutely revolted by the interpretation centre. It just didn't fit, as far as I was concerned. It was a bit more like Walt Disney. I also went to the Taranna meeting that had a lot to say about this. There were some very good historians from the Port Arthur site itself who objected to what has been done there.

Coming back to something that is part of our sacred tradition is the Bowen monument where the first landing was. Mr Watson, my husband and I went to visit the site lately and we were very disturbed by what we saw. We don't know if the committee has been - we know that you were going to the site, but we don't know whether you inspected the Bowen monument when you were there. We have some photographs to indicate. I was present throughout the Legislative Council debate, not through all of it, during the 1995 handover. I was interested in a lot of the comments made by your former President, George Shaw, when he said that when he was walking through St David's Park he felt that this was his historical site as well. This comes back to the traditional inherited thing. There are statutory provisions about the Domain that also mean it belongs to everybody and that's where we're coming from. We want equal rights. We do not want reverse discrimination.

Listening to the different people who were speaking today - it wasn't part of my brief but I was very interested to listen - I have a thought about the roles and I don't know whether it's just my own idea that possibly in Nazi Germany they took a list of all the Jews and then they rounded them up - I don't know whether this is behind one of the reasons why the roles are regularly destroyed. I have no idea, but I think might have heard that somewhere. I don't think that the parallel is the same by the way.

I'm also interested with the definition that continuous occupancy constitutes a right to land. I listened with interest to Mrs McPherson speaking about her feeling isolated from the Aboriginal community. She said that there were many tribes and that her tribe had been isolated from the recognised tribe. She also said that the problem, if you like, was that, in a sense, her tribe - I use that word loosely - because they'd be assimilated, yet because they hadn't gone to the islands at the same time that they were assimilated, they actually had a greater claim, in a sense, because their continuous occupancy definition held. I believe that this woman has done a lot of research at the university. I'm not sure if I'm speaking about the right person, but she has gone into all of the remaining languages that belong to all the different tribes and documented them so that that culture has been preserved by people like her. She's looked at it and treasured it.

As far as the land claims go, I have a problem that if, for example, I went somewhere and had a picnic and I left my chicken bones there that that would constitute that because I'd had a picnic there, this was a sacred site. I realise there are some things that have more sacred sites than others.

Another thing in our submission was common property resources and I have the definition about this from Dr Bates in relation to fishing. I have a sympathy for Mr Dillon who keeps coming up to the court for abusing these common property resources because the problem from the common property resources is that there aren't enough resources to go around now. The other problem is that people from outside are coming in and taking more than their share. But according to our inherited rights, if I want to go out and catch a few flounder on Sunday, I shouldn't have to have a licence and this is coming over. Also, if I want to catch a few flounder, I shouldn't have to derive my licence from somebody in Sydney who's just sitting back and I have to catch so many flounder before I've even paid the licence to get the benefit of that.

As far as reconciliation goes, I think that word is used as a bludgeon quite often. True reconciliation implies two parties and, as we also said in our submission in relation to Mary Durack, she has recognised that a reconciliation is a part of the Aboriginal tradition, so is the other side, which you

could even define as 'restitution' rather than 'reconciliation'. So I think that we've had quite enough land transfers. I've also looked at Pump House Point and there are things in Kangaroo Bay. This midden idea - it comes up all the time and gets cut off again - just, please, equal access to all.

Lastly, when you had your previous round of submissions you had Justice Slicer in and I was quite interested that he said not only do we hand over the land but we hand over the money as well to run the land. I fully admit that there are problems with education and health care and so on but the problems are not with how money's been thrown at the problem - the problems are how much of that money filters down and is properly applied.

**Mr WATSON** - My concern is the situation at Risdon Cove and our concern goes back to 1975 when we addressed the Legislative Council on this matter. The problems that perceive them -

**Mr FLETCHER** - 1975 or 1995?

**Mr WATSON** - 1995, I'm sorry - have been fulfilled. As Jane has mentioned, we did go over there only recently to look at the site. I have been over there three times in recent times with other members and delegates of the Tasmanian Heritage Council. Overall, as one who values historical significance and also that of my heritage as well, I am somewhat appalled at the apparent conditions over there that exist at this time. I've made a letter to the Tasmanian Heritage Council, the government body - to Mr Peter Tucker - at his request accompanied by photographs which will back up our claims.

The memorial, which is part of our heritage, is what's damaged in 1995 - it was vandalised, nothing was done about it. We reported it to the police - the police were concerned and they did their job but no culprit was answerable for the vandalism. At public expense some type of repair work to the memorial has been done, however the memorial still stands vandalised. The actual defacing of the wording is still very bad. On the side of it there's also red painted fingerprints on the left side and on the front side and the back - in fact all around the monument.

Now, you're talking about my heritage here - our heritage - we are talking about a significant heritage aspect of Tasmanian heritage which could be a pulling point for tourism and something to be proud of. Yet, as a State, as a parliament, we have allowed this monument to be vandalised and we haven't done anything about it. I think this is an absolutely appalling situation. We have often said, 'Well, you've got access to the memorial'. Well, let me tell you the bridge to the access of the memorial is dangerous and we have photographs of this and I can take you there. It badly needs repair. A number of boards are rotten and the handrail is dangerous. If someone goes across there and hurts themselves, then someone is liable for prosecution. Upon walking to the crest of the hill we have found that the one bark hut has collapsed and badly needs re-erecting; the other one is still remaining but has been vandalised on the outside and inside where the fireplace has been dismantled and, again, I have photographs there - nothing has been done. Again, this is my heritage. It doesn't seem to be of any concern to worry about the heritage of the majority of the people in this State.

The other thing which really annoys me as an historian and a published historian: there are a number of historical sites at Risdon Cove and they have been the intended new house for Bowen, the other one was the Government garden of Bowen and Bowen's hut which he lived in at the time. Previous to being taken over in 1995 that was open to public access for anyone who was concerned, now that is barred. It is barred because there are signs saying 'Private land'. Our question is: who owns that land and why can't we see our historic sites, our sacred sites, if you like? Who owns that private land?

The other thing is the National Parks and Wildlife in the early eighties did a lot of archaeological work in that area. It was a very thorough job - I have their findings - and they put a lot of signs around this was such a hut, that was such a hut, all that has been vandalised, it has been kicked in, it has been broken. That again is of historical, significant importance to Tasmania, yet we do nothing about it. We allow it to be vandalised and once it is vandalised the culprits aren't taken to task and of course nothing happens. We are losing a part of this heritage. So the historical markers are neglected and vandalised and who has allowed this to occur and are there immediate plans to repair and allow access to the public?

The other thing that has been put to me - and the valuable historic foundation for Restdown, which is a very early Tasmanian house on that site, is just a bunch of rubble at the moment - I have been told by a very high authority that the flag which is flying, the Aboriginal flag, is not on land ceded to them in 1975. I have no way of verifying that but because the source is good I would like to find that out. So what we are requesting is an actual map of what has been passed over to the Tasmanian Aboriginal Land Council, so that this point can be verified so we can say, 'That's not the case' or we can say, 'It is the case'. So my concern is: whose responsibility is it for the upkeep and protection of the Bowen memorial? Secondly, we request that repairs to the existing memorial and other historic material take place as soon as possible and that inquiries are made into the vandalism. If a crime is done five, six, fifty years ago it is still a crime if there is no culprit. If this is not done then we will report the matter to the police ourselves as an act of vandalism.

We're terribly upset the overall destruction of our valuable historic and sacred site and hopefully, as I have done, I have pointed out to the government body of the Tasmanian Heritage Council through Mr Peter Tucker, whose letter I have here: 'Thank you for your letter which was received at the Secretary Office' et cetera ... I noted the contents and useful photographs and I will have the matter brought to the attention of the Tasmanian Heritage Council' - which is meaning themselves - 'at the earliest opportunity'.

So this dreadful state of affairs I would like to address to the committee today. It is a result of an appalling administration blunder.

**Mrs McCARTHY** - My presentation is an incident that happened to me in 1996 on 3 June and 4 June. I had an occasion to be driving past there and I went in to see if I could get some more photographs that I got previously at the pyramid site there. When I went to the door this African Negro - it turned out to be Wayne Daniels, I think - he said, 'Sorry, it's Aboriginal land and those photos are no longer here'. I said, 'Can I go over and photograph the monument?' He said, 'No, it's now Aboriginal land'. So on driving out I noticed the bridge - probably the same bridge that Reg is referring to there - I thought, 'I can get over here the long way round and go up and get a photograph'. As I approached the memorial site to get the photograph he came out of the pyramids again and yelled out to me, 'No photos'. I just ignored it and took the lens cap off and proceeded to take the photograph that I wanted. But the children had also come out. They were there probably on some school activity because it was June holidays and they started yelling, 'Aboriginal land, Aboriginal land, no photos'. Naturally I was a bit incensed and upset because it has always been a public place where we've gone. I thought, 'Where am I living? Is it Tasmania?' that I can be denied access to something that was always public land. So I came back and phoned the Premier's Office and I also phoned the *Mercury* about it. I wrote a letter. I was told also by phone that we had access to the land during daylight hours unless there was an Aboriginal function on.

The next day the children next door had planned a barbecue. It was windy so we decided to go there because it is nice and sheltered down in the hills from the wind. We went there as normal and the same children were there and they were over having a barbecue. We joined in, we had our bats and balls and the children played together and everything was fine until they finished their meal.

But to go back to the beginning, when we got there we were told we couldn't be there and I said, 'I have made inquiries and we can we were told we have access during daylight hours'. When they finished the meal the same gentleman came over - and I will call him by name - Wayne Daniels came over and said we would have to leave. Just after we had initially arrived there though a government car pulled in and a gentleman got out and he was with them. He also came over to us and said that we would have to go now. Anyway, we stayed there because our meal wasn't finished being prepared. The children went over there and one little child came over with a Tupperware container of breadcrumbs, tipped it in the creek there and filled up with water and came over. I said to him, 'Have you got that for tadpoles, have you?' because I knew he was probably going to throw it all over our table, by the look in his eyes. Anyway he tipped it on the bat and ball beside the table and then walked off. Then they started chanting, 'We want black, we want now'. What I objected to was the fact that those children earlier on, five, ten minutes, quarter of an hour before had been quite happy to play with us, with our children. They go to Talire, the neighbour's children, and myself, and yet that change that came over them, that hatred, 'We want black, we want now', in those children. I thought, 'That's not healing the

gap, that is creating a problem', that he should try to influence the children that that was theirs and it was not for white men any more.

That is the part that worried me most, that we had that attitude being created in these children that we try to assimilate in our class. I do teaching - I am a trained teacher and do relief teaching - that you teach children to live together and play together and yet these children are being influenced by that well-known basketballer to say, 'This is ours, we want black, we want now' and that we were no longer welcome. That is the disturbing part.

We've always shared what we've got, we were brought up - red, yellow, black and white, all are precious in His sight - a Christian attitude. It is just not the way I was brought up that we should segregate, that that was public area and that it should be for all the community to share. Sizzling sausages in school holidays, it could hardly be classed as an Aboriginal special function. It wasn't that I was intruding on their privileges, that they were having some special function, it was just the normal school holiday.

**Mr FLETCHER** - I will make some observations, if you want me to make observations. One has to consider the comments - and they have nothing to do with this present inquiry, in my opinion, other than their anecdotal evidence.

**Mr WATSON** - I object, I object most strongly.

**Mr FLETCHER** - They are anecdotal. I listened to you have your say, let me have my say now.

**Mr WATSON** - Well, please let me have the right to answer your say.

**Mr FLETCHER** - The incidence took place at a transitional time in a relevantly short period of time after the land had been transferred. Perhaps there were mistakes made on both sides of the argument. I don't think it does any good to apportion blame and to seek to use that to influence the committee at this time. Society will always be subject to pressures from time to time as people make errors of judgment, so we need to forgive and forget, I think, in relation to those matters.

But, quite clearly, the point that is built into the act the rights of people during daylight hours to have access to that monument and I think it is an important monument and I think it needs to be retained in a good order and be available to people as the act says. I think there is a need for all of us as Tasmanians to protect that monument and to make sure it is in a presentable position.

**Mrs McCARTHY** - I was also locked in, too.

**Mr WATSON** - Mr Fletcher, when I received the complaint from Mrs McCarthy and after I received the complaint of the vandalism of the monument I phoned you.

**Mr FLETCHER** - You did.

**Mr WATSON** - And I never got a reply.

**Mr FLETCHER** - Yes, you did.

**Mr WATSON** - No, I didn't.

**Mr FLETCHER** - Yes, you did.

**Mr WATSON** - I had to go to Steve Wilson.

**Mr FLETCHER** - No, when you rang me I informed you at that stage that it was a criminal event and you should report it to the police and have the law take action in relation to the matter. That's what I advised you at the time.

**Mr WATSON** - Did you respond to Mrs McCarthy's when I - no, you didn't, there was no answer whatsoever. In consequence I went to Steve Wilson.

**Mr FLETCHER** - So what's the problem?

**Mr WATSON** - A big problem, you didn't respond; you're saying this, but you didn't respond.

**CHAIRPERSON** - I think as Chair, thank you, Mr Watson, Mr Fletcher, thank you.

**Mr FLETCHER** - I have doubt about your credibility, Reg, that's the reason why.

**Mr WATSON** - In what respect? I find that rather insulting.

**CHAIRPERSON** - Excuse me, can I just intervene here as the chairperson.

**Mr FLETCHER** - Because you're narrow-minded in your outlook.

**Mr WATSON** - I see.

**CHAIRPERSON** - Mr Fletcher, I don't want to have to stand.

**Mr FLETCHER** - A very narrow mind.

**Mr WATSON** - I would like that apologised and taken back.

**CHAIRPERSON** - Thank you, Mr Watson.

**Mr FLETCHER** - No, I won't apologise to you, that's what I think about you.

**CHAIRPERSON** - Mr Fletcher!

**Mr WATSON** - You're getting very personal, Mr Fletcher.

**CHAIRPERSON** - I think the issues that have been relevantly brought up here are in relation to any further transfers, what protection there are. If I am incorrect in interpreting your process as what is written into the act as to access. I believe you have also brought up a relevant question: if there are historical sites of European heritage in those areas, who is responsible for ensuring their protection; their upgrade? Am I correct in interpreting that?

**Mr WATSON** - Certainly.

**CHAIRPERSON** - Thank you. I suppose I put a question to you - and it is your choice as to who answers this particular question: in light of past experience on the 1995 transfer, would you believe that any further transfers of land should perhaps happen without any restrictions? And by that I say that we may not transfer as many parcels of land, we may look for particular exceptional spiritual heritage, cultural heritage from the Aboriginal communities, but we may give them total right and authority over that particular land.

So we don't have an expectation as you had, Mrs McCarthy, of being able to enter if down the track we're going to find those issues are not policed, are not controllable in some particular areas. So I'm looking for an opinion from your organisation as to any further land transfers, whether you believe we would be better to have no admission by others without invitation so the community doesn't have expectations that then are not met?

**Ms FLACH** - I can answer. I can see enclaves coming here. This is what I'm saying again.

**Mr WATSON** - I think access should be for all.

**Mrs McCARTHY** - That was the hurtful part, I was locked in, I was threatened, I wasn't able to leave even if I wanted to. The van went off and they came back with Sue, from Denise Swan's office, I didn't write down the surname. This is just a copy of my letters and I wrote off to Denise Swan's office explaining the situation. There was also that government official who was most adamant. He was more



adamant that I leave than Wayne Daniels. It is a public park to me and always has been so we must make provision but we are not going to make it so it is not for everyone.

**CHAIRPERSON** - Then is it fair to say that, regardless of your past experience with the 1995 act, your Tasmanian Heritage Council have a position of no transfers regardless, or because of the problems you've had you have a concern for no transfers?

**Ms FLACH** - Please may we have community consultation, with everyone heard. We feel we've been marginalised, as I said in the beginning, and everything examined on its merits. But I would like to point out that if you were going to go down this enclave track it's not going to bring back reconciliation so it should be thought very carefully.

I also made representations to Mr White when Mr Bacon had his community consultation forums at Glenorchy. I regretted that those were all private so nobody knew what anybody said afterwards. Flinders Island people I also thought had had a raw deal. I understand that certain standover tactics were used. I can't go into that, I don't know, I just heard it on the grapevine.

**CHAIRPERSON** - No, I would suggest we only put on record what we personally know rather than presumptions, for your protection.

**Ms FLACH** - Yes, I accept that. But, again, there is a lot of white heritage there too and isn't it ironic that it's because of the researchers of Augustus Robertson that there's far more known about this community than a lot of the others that unfortunately weren't documented at the time.

**Mr BAILEY** - I would just like to comment that in looking section 27 of the act the land has been vested in the Aboriginal Land Council so they own it in perpetuity. The right to the public is during daylight hours over the lane a right of access as specified in plan 3466. So you would have to look at plan 3466 to determine what area -

**Mr FLETCHER** - It is only a small area of land.

**Mr BAILEY** - and I would presume the monument is on that piece of land, so if you go beyond that you are trespassing on land that has been given to the Aboriginal community.

**Mr WATSON** - May I ask then, Mr Bailey, what about the historical sites of Bowen's hut and the proposed Bowen's new Government House and its garden, is that barred from researchers such as myself or Jane?

**Mr BAILEY** - If it forms part of the title there that would be so. We are talking about the 1995 act.

**Mr WATSON** - As a researcher, how do I go up there?

**Mr BAILEY** - With permission - just the same if you went onto anybody else's land, you would have to get permission to go beyond whatever is reserved in that plan.

**Mr WATSON** - Well, you see this is the problem that I have. Prior to the transfer there was no problem, I just went there as a researcher as it is my heritage and right, but now I am open to whether permission will be granted or whether it will be not. Now, if it is not, then that sort of material that I can use is denied me - that is wrong.

**Mr BAILEY** - Well, I think it is just the same as if there was an historic home privately owned on private land, you would not have the opportunity to go and look into that house.

**Mr WATSON** - It is not a home, it is a historic site.

**Mr BAILEY** - I know and it is something of significance, I can understand that, to the white community, but Parliament has given that land to the Aboriginals and that is the law.

**Mr WATSON** - I do want to finally address the committee. I have taken personal insult from Mr Fletcher when he said I have no credibility. I want it to be tabled that I find that insulting and I would

like it withdrawn.

**CHAIRPERSON** - Thank you. We accept your comments and the option is up to Mr Fletcher as to what he does or does not wish to do with that particular comment.

**Mr FLETCHER** - I did not say Mr Watson doesn't have credibility.

**Mr WATSON** -I'm afraid it is on transcript.

**CHAIRPERSON** - Thank you, Mr Watson, you have had your say.

**Mr FLETCHER** - But I did say I don't believe you have credibility.

**Mr WATSON** - The same thing.

**Mr FLETCHER** - No, it's not. You may well have credibility to everyone else in this room. I am only speaking on behalf of myself, not commenting on a public opinion. I am entitled to my opinion about you.

**Mr WATSON** -I still find it grossly insulting.

**CHAIRPERSON** - Thank you, Mr Watson. The committee takes note of that. We thank you all for appearing here today and for making your submissions and we do apologise that we have well and truly run over our time and we thank you for your patience in that particular process.

**Mrs McCARTHY** - Can I add, be careful what is handed over, that anything that is of significance that we do have access and that we must not have this black and white business created.

**CHAIRPERSON** - I think the issues of 1995 have taught us not only in the Bowen instance, but in the Mount Cameron area et cetera -

**Mrs McCARTHY** - That was very hurtful to me that -

**CHAIRPERSON** - that our wording in some particular instances needs to be corrected and tightened up to ensure that the lessons of 1995 are not repeated in any ensuing processes.

**Mrs McCARTHY** - In 1903 it will be the 200th anniversary of Bowen's landing, won't it?

**Mr FLETCHER** - 2000.

**Mrs McCARTHY** - What did I say? Sorry, please correct the figures, but you know what I am trying to say. It will be the 200 years of settlement. Will we still have access to that site? I can remember when Bern Cuthbertson came with the *Lady Nelson* and they had all the ladies all dressed up in their finery and they had to land it because the Aboriginal people didn't - they wanted that sight probably - they didn't want us to have our recognition of history. They threw the flour bombs and I can remember there was all this woo woo, they had the paddy wagons there and this awful kerfuffle and their behaviour was not what I call Australian.

**CHAIRPERSON** - I would suggest, Mrs McCarthy that we really need to look at plan 3466 to see what is allowable in access in that particular area. If it is something that historically has been extricated and now is in the hands of the Aboriginal community it would be a tremendous process of reconciliation for both the Aboriginal community and the Tasmanian Heritage Council to come to some agreement for you to be facilitated in 2003 to look at your particular significance in the same way and that to me personally is what reconciliation is about: when two parties are here and they can come to here in some particular process. So initially I think it is what is designated in the plan that will tell us what your legal rights and entitlements are.

**Mrs FLACH** - Yes, we would be very grateful because that information has been withheld from us for so long.

**Mr BAILEY** - It is a matter of public record so you could a copy of the central plan.

**Mrs FLACH** - Well, the politicians have not been able to supply us up to now with the information we requested. We have some documents and photographs to table.

**CHAIRPERSON** - Thank you, we will take those. Sue McLeod will take charge of those documents and photographs you wish to table. Thank you again for your presence.

**THE WITNESSES WITHDREW.**

**THE LEGISLATIVE COUNCIL SELECT COMMITTEE ON ABORIGINAL LAND MET ON TUESDAY 1 FEBRUARY 2000 IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART.**

**Mr RICHARD BINGHAM, Mr GREG BROWN AND Ms BERNADETTE KELLY**, DEPARTMENT OF PREMIER AND CABINET, WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.

**CHAIRPERSON** (Mrs Sue Smith) - We welcome you to the committee's formal hearings. What I shall do is hand over to you and your colleagues to do the briefing and then we will open it to questions from the committee.

**Mr BINGHAM** - Thank you very much, Madam Chair. Could I start just by foreshadowing my understanding of the process which is involved at this point is that the committee is at a very early stage in its hearings. I expect that there will be issues that are raised in subsequent hearings. There may be issues raised today which you would like further information about. We are more than happy to provide that information so I would not want the committee to think that this is it as far as the State Government input is concerned. We are more than happy to assist in whatever ways possible.

I had intended in this presentation to give you an outline first of what the presentation entails and then to provide an opportunity for us to deal across the table with any of the issues that arise from that presentation. If you prefer to ask me questions or any of the other officials questions as I am going through all of this, equally that is fine from my point of view so please do not feel constrained.

In terms of the outline of this presentation, firstly I would like to deal with the issue which the Premier dealt with - the Aboriginal Land and Cultural Issues Working Group - the consultation process that was undertaken by that working group subsequently and the legislative package itself and some of the detail which is contained within that. There is in addition, as of course you are aware, a State Government submission to the committee. We have put that in a form of identifying the issues that have been raised through the consultation process and a State government perspective or response in relation to each of those issues and what I say needs to be read in context of that document and the things that are contained within it.

The Aboriginal Land and Cultural Issues Working Group, the Premier outlined to your what its mandate was. For the sake of completeness I should spell out the membership. Aboriginal community representatives were representatives of the Aboriginal community. They were drawn from a number of different organisations but represented some nine separate Aboriginal community organisations. They are: the Tasmanian Aboriginal Centre - Hobart, Launceston and Burnie; the Aboriginal Land Council of Tasmania; the Deloraine Aboriginal and Cultural Association; the Aboriginal Elders Council of Tasmania; the Mersey-Leven Aboriginal Cooperation; the South-eastern Tasmanian Aboriginal Cooperation; the Flinders Island Aboriginal Association; the Cape Barren Islanders Community Association and the Tasmanian Aboriginal Land Council. The Tasmanian Aboriginal Land Council withdrew on 17 May from the formal deliberations of that broader group. Not all those organisations, I should make clear, sent representatives to the meetings. It was basically the first four of those bodies - the Tasmanian Aboriginal Centre; the Aboriginal Land Council; the Deloraine Aboriginal and Cultural Association and the Aboriginal Elders Council - which were specifically represented at the meetings of the working group. But certainly the Aboriginal community representatives to the working group were nominated by a broader Aboriginal working group. This broader group met to discuss the work of the Aboriginal Land and Cultural Issues Working Group to obtain a representative position on issues as they were raised through the working group's process. That is in terms of the Aboriginal community representation.

The other government representatives on the group included: myself, from Department of Justice and Industrial Relations as chair; a number of representatives from the Department of Primary Industries, Water and Environment - that membership moved as the issues before the working group shifted - and representatives from the Department of Premier and Cabinet including the Office of Aboriginal Affairs, Greg and Rodney Gibbons.

The terms of reference for the Aboriginal Land and Cultural Issues Working Group were to analyse the land and cultural issues raised by representatives of the Aboriginal community who met with the Premier in November of 1998 and to recommend appropriate processes for working through and resolving those issues.

The specific issues that formed a part of that agenda were: firstly, the transfer of culturally significant areas of land to the Aboriginal community, including those currently proposed in the legislation which is before you, Mount William National Park, Rocky Cape National Park and Mount Roland; secondly, rights to practice cultural fishing, hunting and gathering; thirdly, rights to perform traditional cremations and burials; fourthly, the decriminalisation of public drunkenness; and fifthly, the issue that Aboriginality and eligibility as an Aboriginal person should be determined by the Aboriginal community.

The working group met eight times between 17 December 1998 and 24 June 1999. In addition to those formal meetings of the working group, it established some subcommittees that dealt with specific issues between meetings on various of the cultural rights in particular.

The Premier met with the Aboriginal community on 20 May last year to outline the agenda of the working group and to discuss its progress to date and the report of the working group was submitted to government in August 1999 for its consideration, subsequently work began within government on the preparation of the legislation which is before you. In terms of that agenda that formed a part of the terms of reference for the working group, there were a number of issues arising within each of those areas that were identified and discussed. Many of these issues were the sorts of issues that the Premier has identified as being ones which arose during the course of the consultation undertaken by the working group and subsequently by the Government. They included things like other legal interests in the areas of land that were under consideration, be they freehold, lease or licence interests; questions of public access and use of the land; public infrastructure that is located on the land and in particular the various values of the land, the natural values, things like threatened species, the land reserve status and the impact on the Regional Forest Agreement in some cases and specifically Heritage values, both Aboriginal and non-Aboriginal. All of those issues were matters that were addressed in the course of considering each of the proposed transfers of crown lands that had been sought by the representatives of the Aboriginal community in their November meeting with the Premier.

Moving along to the consultation process which the working group undertook. Discussions between Aboriginal members of the working group and residents and lease and licence holders of Cape Barren Island were held during May and June 1999. This formed a part of the broader work that I alluded earlier and the linkage between the Aboriginal community representatives on the working group and the broader Aboriginal working group comprising the meetings of which were open to any members of the Aboriginal community. So there was that ongoing process of consultation but specifically with lease and licence holders on Cape Barren Island during May and June 1999.

On 6 October 1999 myself, Clyde Mansell, the co-ordinator of the Aboriginal Land Council of Tasmania, met with freehold owners on Vansittart and Little Dog Island to discuss access issues in particular. Prior to the Premier's announcement on 12 October there were briefings by the Premier's personal departmental staff for a range of people, including members of the Parliamentary Labor Party, the Leader of the Opposition and shadow minister for Aboriginal Affairs, the Honourable Sue Napier and the Honourable Peter Hodgman, respectively, the Honourable Peg Putt, Leader for the Greens and, as you would be aware, some members of the Legislative Council: the Honourable Tony Fletcher and the Honourable Colin Rattray. The public announcement of the Government's intentions, as the Premier indicated, was made on 12 October.

After that announcement the consultation process included letters from the Premier to freehold lease and licence holders on Vansittart Island, Little Dog Island and Cape Barren Island, which was

approximately 80 people and organisations, and to all shack lease and licence holders in areas that were an issue. In the north west of the State meetings were held between the Premier and the Government representatives with the Circular Head Council and the Arthur Pieman Coalition on 21 October. Later, on 4 and 5 November, government officials returned to Smithton to discuss legislative progress and other issues. At this time meetings were held with the executive of the Arthur Pieman Coalition, Circular Head Council, Circular Head Aboriginal Association and then a number of representatives on the Arthur Pieman Coalition of particular users. They included surfing, those agisting cattle in the areas, fishing representatives, camping and horse riding representatives, tourism and local business representatives, kelp harvesting representatives, shack owners' representatives, off-road vehicle representatives. Meetings were also held during those two days with the District Community Consultative Committee, with the representatives from the Stanley Land Care Association and with an individual local farmer and conservationist, Geoff King.

In the Furneaux Islands, as opposed to the north-west coast, meetings were held between government officials and the Flinders Council, freehold owners from Vansittart Island and Little Dog Island and the Flinders Island Aboriginal Association on Flinders Island on 26 October. The Premier met with the Flinders Council Mayor, Lynne Mason, and Councillor Michael Graham on 17 November for further discussions on the land transfer. Each of those meetings raised a series of issues and the State Government submission to your committee identifies what those issues are and a government response in relation to each of them.

So far as the north-west was concerned, the issues that were raised included the boat launching area at West Point Aboriginal site; camping at Sundown Point Aboriginal site; cattle agistment at Sundown Point and West Point; contamination of the creek at Sundown Point; concerns over the granting of cultural fishing rights; the extent of title - the issue about low and high-water mark was raised as an issue by both non-Aboriginal and the Aboriginal community. The Aboriginal community sought the low-water mark in recognition of the relationship between the land and sea for their culture in particular. Other issues included the identification of European cultural heritage; access to coastal areas by kelp harvesters; local management of the area once transferred; and ongoing resolution of the issue of access to Mount Cameron West or Premangana.

The shack site issue was also raised in the course of this discussion and, as the second reading speech makes clear, the shack site categorisation process is separate from that which is contained in this legislation and the shack sites that are in issue have been excised from any land to be transferred under the legislation.

In relation to the Furneaux Islands, issues that were raised during the course of consultation included commercial licences and the fact that licensees would be required to obtain permission from the Aboriginal Land Council to access the land; the consultation process that had been put in place and concerns about the sufficiency of that; general access to the islands by recreational users, especially the coastal areas; infrastructure on Cape Barren Island and the future management of that; Little Dog Island and the use of the mutton-bird rookery by non-Aboriginal people and the use of land by the locals for recreational and other purposes, including grazing.

There were concerns identified about the issue that was raised earlier in discussions with the Premier about native title processes compared with the Aboriginal Lands Act 1995, issues querying the extent of Aboriginal association with the land and the extent in contrast of non-Aboriginal association with the land. The issue about title to high-water and low-water mark was again raised by both the non-Aboriginal and Aboriginal communities. A sense that an unreasonable share of the reconciliation package was falling on the people of the Furneaux Islands was raised and in relation to Vansittart Island, the specific concerns of the freehold owner there about continuation of the lease of that part of the island which is adjacent to his freehold. As I say, each of those issues is identified in the submission and a response is set out in relation to each of those.

Moving on to the legislative package and the components of that. Firstly, if I could deal with the Police Offences (Public Drunkenness) Bill 1999. This amends the Police Offences Act to decriminalise public drunkenness and also authorises police officers to remove an intoxicated person to a place of safety or into the care of a responsible person. That provision has a two-year sunset clause on it and the

explanation for that is a matter which is addressed in the second reading speech but one we are quite happy to deal with by way of questioning if that's the way the committee wants to proceed.

Secondly, the Aboriginal Land Council Elections Bill which deferred the next election for the Aboriginal Land Council to the year 2000. It is anticipated that this will enable the new electoral roll process set out in the Aboriginal Lands Amendment Bill 1999 to be implemented before the next election.

Thirdly, the substantive bill which is before you - the Aboriginal Lands Amendment Bill - and the land areas. I indicate at this point to the committee that there are maps set out on the bulletin board there on the right-hand side of the room and if there are issue that are unclear as I'm going through we can certainly refer to those maps for clarification of the specifics of some of the points.

In relation to West Point Aboriginal site, this is a site of 550 hectares which was proclaimed in 1976 under the National Parks and Wildlife Act 1970 as an Aboriginal reserve. It was also declared as a protected site under the Aboriginal Relics Act 1975 due to the significance of the Aboriginal heritage located in the area. In response to some of the issues that have been identified through the consultation process, the legislation provides that title should be to the high-water mark except in areas which require the protection of Aboriginal cultural heritage, where low-water mark will apply. This includes, for example, the northern end of Lighthouse Beach to the northern boundary of the site.

In relation to access, vehicle and pedestrian access will be guaranteed to the existing shacks which are being removed from the land to be transferred. Vehicle and pedestrian access will also be guaranteed onto Lighthouse Beach along the existing road. Access is guaranteed off the southern end of Lighthouse Beach along the current formed road to the car parking area on the headland that overlooks the next beach. The Government does not believe it is possible to guarantee access any further than the existing car parking area due to the number of Aboriginal sites located on the headland. Where the boundaries of the site extends to low-water mark pedestrian access will be between low-water mark and high-water mark.

Sundown Point Aboriginal site is 135 hectares and in 1973 was declared to be a -

**Mr FLETCHER** - Richard, if you are going to take questions, just by way of clarification, I notice that the shack sites have been excised and marked, hatched. Nothing's happened, that's just the principle, the objective to excise those lands if the bill goes through and the action is taken. I notice that the hatched area clearly excludes access to the foreshore, to the beaches for those shack sites.

**Mr BINGHAM** - Can you perhaps indicate to me where we're talking about?

**Mr FLETCHER** - The area that has been excised from the park for the land to be transferred but that doesn't include access to the foreshore at all, so one presumes the foreshore to high-water mark in that area will be Aboriginal land and therefore the shack owners will have no rights of access to the foreshore.

**Mr BINGHAM** - That's right, the access is to the shack site as opposed to the foreshore. Any access which the shack site owners have, assuming that their sites remain through the categorisation process, any access across that land which forms a part of the land transfer would need to be by negotiation with the Aboriginal Land Council.

**CHAIRPERSON** - Richard, you talked about road access to those shack sites. Who will be responsible for the management of the maintenance of the road access, et cetera, when you have shack site owners moving legally across Aboriginal land?

**Mr BINGHAM** - The detail of that, I think, is something that the Land Council would want to negotiate in terms of the future management of the area. The general principle is that infrastructure which exists within the Aboriginal land is maintained by the body which is responsible for maintaining it at the present time so that there is a lease-back, if you like, of the infrastructure on Cape Barren Island. In relation to this specific one, I am not aware if there has been any further discussion between the Land Council and any of the other relevant people about that specific road.

**CHAIRPERSON** - So who is responsible at the moment for the maintenance of that road?

**Mr BROWN** - At the moment I think it is Parks and Wildlife inside the boundaries of the protected area, but I would have to clarify that with the council.

**CHAIRPERSON** - So we make a presumption that Parks and Wildlife, on that principle, will continue to be responsible for the maintenance of the road.

**Mr BINGHAM** - That is the presumption that applies. As I say, I think the experience has been with the land that has been transferred in the past that there has been a period of working through how all that is going to be done between the Land Council, as the new owner of the land, and the previous body with responsibility for maintenance -

**CHAIRPERSON** - I asked the question because, undoubtedly, when we move into those areas, the principle will get lost in the practicalities of day-to-day processes for a lot of the people who have questions in those particular areas, so I would appreciate some clarification on that road, if possible, thank you.

**Mr BINGHAM** - We can perhaps deal with that as a supplementary thing. The issue is complicated of course where there is a need to upgrade tracks which exist at the present time. But we can certainly give you the details about each of those.

**Mr FLETCHER** - Richard, at an earlier briefing to the committee by yourself and Rodney Gibbons in relation to this very question, you stated that there was still negotiations taking place with regard to access to the foreshore for the shack site owners. There is an expectation, I think enhanced by the fact showing that the shack sites are excised, that those shack sites be transferred. If you remember, you gave a period of three months when I raised the issue that the partnership agreements said those shack sites had to be categorised by the end of December, that there would be some urgent action taken in regard to them. Are there negotiations still taking place with regard to the matter of access being granted as part of the shack sites categorisation process? It seems to me that people have shacks there, they have them because they have always accessed the foreshores for their recreational fishing and activity.

**Mr BINGHAM** - Yes. I think the best response I can give to that is to say that the shack site categorisation process is the principle driver and depending on the outcome of that then the issues that relate to access across that land become obviously much more significant. I think perhaps the best thing is for me to get you some information about exactly where the shack site categorisation process is. As I say, it has been treated as something which is separate to this issue and I will take that on notice.

**Mr WILKINSON** - Can I ask a question in furtherance to that, those shack sites have always had access to the foreshore and that is over how many a year for ever and a day.

**Mr BINGHAM** - My understanding is for as long as the shacks have been there. The purpose of having the shacks there -

**Mr FLETCHER** - About 40-odd years.

**Mrs SILVIA SMITH** - Some of them have been there since the late 1930s.

**Mr WILKINSON** - And you are saying presently, in relation to those shack sites, the only way that those shack site owners will be able to obtain access to the foreshore is by negotiation with the Aboriginal Land Council.

**Mr BINGHAM** - Well, the issue for me is, first off, the shack site categorisation process has not been finalised so we don't know formally what the status of those sites is going to be. If the assumption which is being made, that they are transferred to the current owners in some form or another then, yes, there will be a need for there to be some negotiation between those shack site owners and the Aboriginal Land Council as owner of that piece of land in between high-water mark and so on.



The other issue is that there is generally in relation to Aboriginal land a right of access and the amendments to section 27(8) of the substantive act provide a general right of access within 15 metres of the high-water mark. It may be that that is sufficient in itself to provide the access that is being sought for that, but I have no doubt there will be questions about what sort of access people want and whether they want to take boats across or whatever.

**Mr WILKINSON** - Assuming that is the case and assuming there is a right of access and the right of access is dependent upon negotiations with the council - because that is the concern I know of a number of shack site owners - is there any appeal process going to be put in place if access is not given to those owners for whatever reason it might be?

**Mr BINGHAM** - I think an appeal process would require legislation and I don't think that exists. There is an appeal process in relation to leases and licences which are not renewed by the Land Council but I doubt whether this would fall into that category.

**Mr WILKINSON** - So you're not saying it would happen but looking at what might happen if there is an argument between, let us say, the shack site owner and the Aboriginal Land Council, the Aboriginal Land Council may, for instance, say, 'Look, you can only get access over that land if you pay me \$20 000 a year or \$30 000 a year' or something like that. That might be deemed to be totally unfair considering the previous usage that the shack site owner has had to get to the foreshore. Is there any body in place to sort those differences out and if there's not, do you believe that that would be an appropriate thing to do?

**Mr BINGHAM** - I think the sensible thing is to wait and see. As I say, none of this can be resolved until the shack site categorisation process is complete. If it goes that way then the scenario that you outline is one possibility, but another possibility is that there is complete agreement between the Land Council and the shack owner about the terms of access and there's no need for anything else. I think these fall squarely within the category of the issues the Premier identified where there is ongoing consultation and the list that we had at the start of the number of issues that remained to be resolved is considerably shorter than it was at the time we started the consultation process, I am happy to be able to report. So I think that fits into that category. It may be that when the time comes to get to the legislation becoming law that that issue remains unresolved and that is an issue that the Government would certainly need to consider at that time. But it is more than likely, I suspect, that it will be resolved in the course of the consultation that is going on at the present time once the shack site categorisation thing is complete.

**Mr BAILEY** - But would you agree that this bill should not pass until those details have been cleared up? If that land were to be transferred without knowing the status of access for those individual shack owners then their properties may be worthless if in the future it can't be negotiated.

**Mr BINGHAM** - Well, I suppose my response to that is they do know what the state of access is under the law and the state of access as it is at the present time is that they do not have any unless they can reach an agreement with the Aboriginal Land Council or they are covered by the section 27(8) provision under the legislation.

**Mr BAILEY** - What is the problem about giving them access? Why is there a reluctance to grant that access to the beach?

**Mr BINGHAM** - I don't think there is a reluctance; it is just that the issue hasn't come to that at this point because the shack site categorisation process is not complete.

If, for example - and I am not suggesting that this is a likely result - but if the process was to determine that these shacks ought to be removed from here because of the values of the land and so on then I think the Government's intention would be to transfer that area of land and would require subsequent legislation and so on as well so the issue about access wouldn't arise at that point. Because all of this is pre-supposing what the result of the shack site categorisation process is it just has not been pinned down either one way or another at this stage.

**Mr BAILEY** - That would need to be pinned down before this bill passed, would you agree with that?

**Mr BINGHAM** - Yes.

**CHAIRPERSON** - The other issue while you are there, Richard, boat launching for emergency sea rescue, is there any that happens in that particular area? Will it continue to be the same process or does that have to change?

**Mr BINGHAM** - There are two alternative sites, as I understand - am I right about this, Greg?

**Mr BROWN** - Yes.

**Mr BINGHAM** - Do you know exactly where they are?

**Mr BROWN** - There is an area that has been utilised just inside this reef here for launching dinghies that has been destroying quite a large Aboriginal midden site there, so that area will not be able to be accessed. There are two alternative sites: one is at Bluff Hill and there is another north of the site as well, which is a private launching area. Apart from that there are no other real areas apart from if they - if there is no swell launching off the beach for rescues.

**CHAIRPERSON** - And those sites are accessible by road at this stage or will have to be made accessible?

**Mr BROWN** - At Bluff Hill certainly yes; I am unsure as to the location of the private one as in sort of roads and things. It is my understanding that permission is required from the owner to access that boat ramp.

**CHAIRPERSON** - Are you aware of any history of sea rescue from that particular area or is it something -

**Mr BROWN** - No sorry, I'm not aware.

**CHAIRPERSON** - Okay, thank you.

**Mr BINGHAM** - In relation to Sundown Point title is to high-water mark, except in the areas which require protection of Aboriginal cultural heritage. For example, the boundaries starting at the petroglyph site and going south will be the low-water mark.

Vehicle and pedestrian access will continue on the current formed roads, the existing shack which has been removed from the land to be transferred that site, consistent with the principle ... to the area that has been used for camping at Sundown Creek and onto Arthur Beach at the mouth of Sundown Creek. Vehicle and pedestrian access along Arthur Beach will not be affected as the title boundary along the beach extends to the high-water mark only. The public will be able to access this area between low-water mark and high-water mark.

In the petroglyph zone there is no guaranteed access; this will assist in the protection of the petroglyphs. In the area south of the petroglyph zone to the southern boundary, pedestrian access will be allowed between low-water mark and high-water mark. Camping will continue at Sundown Creek camping area. It should be noted there are a number of management issues such as contamination of the creek and lack of toilet facilities that may restrict camping in the future. Whilst it will be the responsibility of the Aboriginal Land Council of Tasmania to deal with these issues the Government will work with the Council as necessary to resolve the problems.

Trial Harbour is the next site. This is 0.63 hectares. In 1981 it was declared a State Reserve under the National Parks and Wildlife Act and a protected site under the Aboriginal Relics Act later that year. The site will be transferred to low-water mark to allow the Aboriginal community to manage and protect the petroglyph site. Pedestrian access along the coastal area of the site between the low-water mark and high-water mark is guaranteed.

Fourthly, Cape Barren Island. This island contained a high level of Aboriginal heritage values. There are a large number of Aboriginal sites recorded on the island which include artefact scatters, middens, a

rock shelter and caves. The age of the sites extend from 10 000 years ago to the middle nineteenth century. Abundant evidence of pre-European Aboriginal occupation has been found on islands in the Furneaux Group which includes Cape Barren Island. Many among the Tasmanian Aboriginal community see Cape Barren Island as home. The title to the 39 758 hectares will be the high-water mark. Crown infrastructure such as the community health centre and the primary school will be leased back to the Crown for the continued provision of services to the citizens of Cape Barren Island. The public will have a right of access over the existing public roads on Cape Barren Island. Public roads on Cape Barren will be included in the transfer but the continued management and maintenance of the roads will be the responsibility of the Flinders Council. The legislation confers a right of pedestrian access to the coastal areas over the area of land 15 metres wide immediately above the high-water mark, except in a number of areas around the island. These areas are identified on this central plan register map for Cape Barren Island to show the rights of pedestrian access.

The protection of the significant natural values - that is, the internationally recognised Ramsar wetland on Cape Barren Island and the current nature reserve area on Clarke Island - the Aboriginal Land Council of Tasmania has agreed to seek categorisation for these areas as indigenous protected areas under the Commonwealth national reserve program.

**Mr FLETCHER** - Just in relation to the category of the land transferred and the revenue stream for the Flinders Council now and post any transfer, will that change materially?

**Mr BINGHAM** - That is not my understanding that it changes at all. It is dealt with under the substantive provisions, I think, of the 1995 act in relation to -

**Mr FLETCHER** - The Crown is not paying any rate revenue at all for the crown land on Cape Barren Island at the moment.

**Mr BINGHAM** - To the best of my knowledge that is not the case. The question was whether the Crown is paying any rate revenue for the crown land on Cape Barren Island. I don't think that is the case.

**CHAIRPERSON** - And Flinders Island council are maintaining the road infrastructure at the moment?

**Mr BINGHAM** - Yes.

**CHAIRPERSON** - And the power and water facilities were ATSIC-funded, were they not?

**Mr GREG BROWN** - Yes they are, and maintained by the Cape Barren islanders community - that is the water, power and sewerage.

**CHAIRPERSON** - So one could possibly say the Flinders Council responsibility mainly is the road infrastructure. Would that be correct?

**Mr GREG BROWN** - They have a responsibility for the tip as well; other responsibilities I'm not sure of.

**CHAIRPERSON** - Landing sites, anything like that - jetties? Any in that area?

**Mr GREG BROWN** - Jetties are currently under the control of MAST, it is my belief.

**CHAIRPERSON** - So nothing basically would change from the Flinders Council process to what is happening at the moment? Little income, if any, but road maintenance, as in the past, which is possibly recognised under their Federal funding from Commonwealth grants.

**Mr GREG BROWN** - That is my understanding, yes.

**Mr BINGHAM** - Clarke Island contains Aboriginal heritage values. There are a number of Aboriginal sites recorded on the island. Stone falls found at the site show a consistent pattern of occupation on the Furneaux Islands about 6 500 years ago, mostly all near permanent fresh water sources. Robinson used

Aboriginal women to take sealers as guides on Clarke Island in 1830. ... huts at Snug Cove used by the sealers and their women.

Since European occupation, a number of Aboriginal families have been associated with the island, including the Thomas, Maynard, Mansell, Everett and Beaton families. Close association by the Aboriginal community continues today as the Tasmanian Aboriginal Centre currently uses the island for diversionary programs for Aboriginal youth. Title of the island - approximately 8 149 hectares - would be the high-water mark and pedestrian access to the coastal areas around Clarke Island will be over the area of land 15 metres wide immediately above the high-water mark.

Little Dog Island is the next site. The Aboriginal community has been trying for a number of years to have the island returned. In 1976 the Aboriginal community petitioned the then Premier, Bill Neilson, for its return, citing recognition of prior ownership and an uninterrupted tradition of mutton-birding. A number of Aboriginal families from Cape Barren Island have a strong connection with Little Dog Island; these families commercially birded the island in what the Aboriginal community sees as one of their most important cultural activities. Even today these families still maintain a strong connection with the island, although commercial birding ceased in the 1980s.

Evidence of pre-European contact is supported by the number of artefact sites that have been identified and recorded on the Tasmanian Aboriginal site index. Traditionally the area between Little Dog and Tin Kettle Island at low tide was a traditional Aboriginal fishing ground. Title of the 22 hectares on Little Dog Island will be the high-water mark; the title will not include the coastal area that runs adjacent to the freehold areas on the island. On the land that is transferred, pedestrian access will be over the area of land 15 metres wide immediately above the high-water mark.

Vansittart Island. The Aboriginal community has a strong historical association with Vansittart Island; it was the second jump in George Augustus Robinson's program in relocating Tasmanian Aboriginal people from mainland Tasmania. The first movement was to Swan Island and from there on to Vansittart Island in 1831; after about nine months the reserve was moved to Flinders Island. More than 20 Aborigines who died during those nine months are buried on the island; in later years their graves were robbed. In the 1820s to 1830s, Vansittart was the centre of the Aboriginal sealing community.

Today's Aboriginal community has been trying for a number of years to have Vansittart returned; it was part of the Aboriginal community's unsuccessful claim to the State Government in 1986. A small number of artefact sites have been identified and recorded on the index. The title of Vansittart Island will be the high-water mark and includes 595 hectares. The title will not include the coastal area that runs adjacent to the freehold area on the island. On the land that is transferred, pedestrian access will be over the area of land 15 metres wide immediately above high-water mark.

Finally, in relation to Goose Island -

**CHAIRPERSON** - If we could just stay on Vansittart for a moment. The freehold owner is landlocked between the two sections, is that correct?

**Mr BINGHAM** - Yes, that is right.

**CHAIRPERSON** - What problems is that going to create, firstly for the Aboriginal community getting from section one to section two through the freehold and vice-versa at the freehold? Have they access to get out by sea from their land or do they have to transfer across Aboriginal community land as well?

**Mr BINGHAM** - The principal landing point is on the coastal reserve adjacent to the freehold, which is where the freehold owner takes the barge in on most occasions. It is also possible, in the right conditions, to land on the coastal area adjacent to the southern side of this freehold land.

As I said, the title that is transferred to the Aboriginal Land Council will not include the coastal area that runs adjacent to the freehold there. I would expect that the principal landing, both for the freehold owner and the Aboriginal Land Council will continue to be that beach and that that beach will be the point by which people get access to that land. It is also possible to land on a couple of areas adjacent to the land proposed to be transferred, just on to the rocks and so on. The proposal that the title should be

the high-water mark means that in anything under than the highest tide it will still be possible to continue to land on those spots as well.

**CHAIRPERSON** - The first question I should ask is: what is the special significance of the small area of crown land to the Aboriginal community?

**Mr BINGHAM** - Of this?

**CHAIRPERSON** - Yes. Was there any consideration by the working group of looking to adhere it to the freehold title perhaps by negotiation, or does it have a very significant relationship to the Aboriginal community? I have a tidy mind so I am looking for some special significance.

**Mr BROWN** - The community representatives of the working group provided details of the significance of the areas of crown land on the island but I couldn't tell you as to what actual significance was attached to that parcel of land. We would have to seek further advice on that.

**CHAIRPERSON** - I would appreciate some information on that lower section.

**Mr BINGHAM** - I think the principal area of settlement on the island is likely to have been the freehold land.

**CHAIRPERSON** - Has the working group had any discussions with the freehold owners as to whether they had any interest in perhaps through sale transferring their freehold title through the Government to the Aboriginal community?

**Mr BINGHAM** - That suggestion was put to me when I was talking to the freehold owners, that they would be interested in doing that if the Government was prepared to pay that amount of money. It is not something that has been pursued in that sort of context. That occurred both in relation to Little Dog and in relation to Vansittart.

The final one is Goose Island. It was here that government met with Aborigines in 1871 after they had petitioned in protesting against the issue of the grazing licence on Mount Chapel Island, seeking land on Cape Barren Island. The licence had a detrimental impact on the only means of systems they had, mutton-birding. Even though the Government promised to reserve some islands for Aborigines in the 1860s it was only after this petition that land was granted to them on Cape Barren Island approximately a decade later.

There were a small number of sites and sheltered sites located on Goose Island that have been identified and recorded as Tasmanian Aboriginal site index. A title to the 109 hectares that constitute Goose Island will be the high-water mark. Pedestrian access to coastal areas around Goose Island will be over the area of land 15 metres wide and immediately above the high-water mark.

**Mr WILKINSON** - You talk about that promise, the Government promise, and I know the Premier mentioned that as well. Have you evidence of these promises and, if so, could we have copies of any historical document which shows that were promises made which weren't kept?

**Mr BINGHAM** - Sure. We certainly have material about this issue and about the ... meeting. We can certainly provide you with the material that we have.

**Mr WILKINSON** - Can I ask also please, Richard, because they are the lands that we are speaking about now, obviously there was a lot of consultation that proceeded prior to these eight parcels of land. Was there a request for more parcels of land that the Government said, 'No, not at this stage' or 'No, not at all'?

**Mr BINGHAM** - The terms of reference for the working group also included Mount William National Park and Rocky Cape National Park and also an area of land in relation to Mount Roland. During the course of the working group's deliberation the area of land at Mount Roland was never specifically particularised to the point where it could be firmed up in terms of what this proposal was. But certainly there was a lot of discussion about Mount William and Rocky Cape.

The Premier's announcement in October last year indicated that there was further work to be done in relation to the potential transfer of those and whether or not what sort of model would be most appropriate.

**Mr WILKINSON** - Was there any other areas of land that were requested or it was just those?

**Mr BINGHAM** - There was certainly discussion about other areas of land particularly in the south of the State on Bruny Island. There was some discussion about those. I think there was some comment in the press about some of those areas as well but they did not ever form a part of the terms of reference for the working group.

**Mr WILKINSON** - I think a lot of people in the community are saying, 'There are eight parcels of land now, are there any more parcels of land?' I know that that is a thing we have to look at if it comes up and when it comes up, but speaking with some Aboriginal people my advice is that the Aboriginal people request all crown land back. That is the aim. Some Aboriginal people say 'No, that's not the case'. What are your views on that?

**Mr BINGHAM** - My view is, I think, the same as yours - that is, different people have different views about it - and all you can deal with are the things that are on the table at a particular time. Certainly from the working group's point of view and in terms of this package, there is no suggestion that there is a second eleven, if you like, ready - there is not that at all. The areas that have been considered, apart from the ones that are part of this legislation, as I say, Mount William, Rocky Cape and Mount Roland.

**Mr FLETCHER** - Richard, just to follow up on that subject. The Premier said, and you have reiterated, that many areas were considered, some accepted and some rejected. I wonder, would you spell out the criteria which lead you to accept some areas of land and reject other areas of land?

**Mr BINGHAM** - You are asking me to make some judgment about government's policy decisions and so on, which I am loathe to do.

**Mr FLETCHER** - Are you saying to me then that there was no criteria, it was just a matter of 'we feel we can get this through, this is acceptable at this time, we will grab this parcel and run with it'?

**Mr BINGHAM** - Certainly from the working group's perspective the advice that was given to government included some specific issues in relation to areas of land which are currently national parks that don't arise in relation to some of these other areas, criteria such as the Regional Forest Agreement has a particular impact in those areas, particular values associated with status of national park as compared to the status of unreserved crown land and those sort of issues, the question of the appropriate management model to reflect those. So to the extent of that are you suggesting that no criteria were applied, I don't agree with you because I'd say that issues such as those in effect are criteria.

**Mr FLETCHER** - There was no effort made to prioritise the significance of various areas of land to reach a conclusion that 'these are the most significant therefore we ought to transfer them, these are not so significant therefore we won't recommend their transfer'.

**Mr BINGHAM** - To the extent this does get back to the issue about accepting at face value the request from the Aboriginal community, no, there wasn't a specific requirement for them to say well this is more important than that and I think if that question were asked I'm not sure that the Aboriginal community could answer it. There may well be some within the community, mostly associated with the Rocky Cape area, who would say that that is the most significant area. Equally, there would be others who would say that one or other of these islands, Cape Barren perhaps, is the most significant. People would have different views about it.

**Mr FLETCHER** - You were very much the architect of the land use planning legislation which established an open process with rigour and with testing and with criteria. Shouldn't the same process be applied to the testing of this land into the future?

**Mr BINGHAM** - I see the genesis of those two things as being very different, that the essence of this is about reconciliation and an acceptance of the wishes of the Aboriginal community in the historical context. That is very different from making the decision about what is the most appropriate use of a parcel of land, given that there are broadly accepted criteria within the community about land management issues. It gets back to the point the Premier was making about the principle of this. I think it is that principle which drives those things rather than it being something where you say, 'Well, this land ought to be used for agriculture and this land ought to be used for Aboriginal culture and this land ought to be used for mining'. It is not in the same qualitative level, in my view.

**Mr FLETCHER** - You seem then to be saying to me, if I follow your proposition through, that your definition of reconciliation is that we have perpetrated a wrong on the indigenous people through the generations and that we should grant land until such time as the Aboriginal community say, 'We forgive you' and then we have achieved reconciliation.

**Mr BINGHAM** - I don't think that is a fair representation. I think, again, we get into issues of my personal view and what I say here are my personal views rather than being the Government position. The issue is basically about understanding, as the Premier said, and I think that has two components to it: one, a recognition of what has happened in the past and then acceptance of that, preparedness to deal with that; and secondly, along with that recognition, a preparedness to accept on their own terms the Aboriginal community that recognise that the contribution that the Aboriginal community makes to the broader community and as a consequence of that diversity to grow as a broader community. I don't accept the concept of reconciliation which requires that Aboriginal communities ought to be the same as or ought to be integrated with the broader community. I think the powerful thing about reconciliation is the recognition of the benefit from diversity.

**Mr FLETCHER** - Do you accept then that there eventually will be a separate Aboriginal nation, as a logical extension to your proposition?

**Mr BINGHAM** - No, I don't. I don't think that is a logical extension to the proposition any more than there would be a separate nation of any other cultural group that makes up the Australian community.

**Mr FLETCHER** - I would just like to follow this through. I think there is a need for a legitimacy to the process accepted by the majority of Tasmanians. Obviously there is a time when leaders should lead and say we believe this is right and take this course of action but it seems that there is some evidence coming in that if reconciliation is truly to be achieved it is not only a matter of giving but there is a matter of identifying a process that has a legitimacy and some rigour about it so that people can look at the process and say, 'Yes, there are some tests here, the tests have been met, the land should be transferred'. I suppose that has been done on a national basis through the High Court judgments in the first instance, and the passage of national legislation. We are all Australians and Wik provides for the forcible removal of indigenous people from their land and provides that if they re-establish the links at the earliest possible time that the ruling still applies. Therefore I am struggling with the process of why Tasmanian Aborigines are different from mainland Aborigines who were dispossessed also and did not re-establish their links and therefore are denied a native title claim. There ought to be some consistency about how we Australians look at this matter. I wonder, would you argue to that point.

**Mr BINGHAM** - Again, a personal view about it is that justice means different things to different people and needs to be seen in the context of what occurs in different places at different times. We are very quick to say that local solutions are best solutions to these issues and I wouldn't accept that in something that goes to the heart of the nature of the community in which we all live that we ought necessarily be saying that the same solutions that apply in other parts of the country ought necessarily to apply in Tasmania. For me, the issue about the Tasmanian Aboriginal community is that it is a different community from communities which exist elsewhere in Australia and the solutions, the ways which we as Tasmanians devise to deal with those issues, I would think that is the most appropriate way to go.

I'm not sure that I can answer this with any great particularity because I think it depends very much on philosophical and personal perspectives on these matters. I understand the benefits of a decision-making system that establishes objectives and criteria, and all those sorts of things, I certainly agree

with that, but in this context I am not sure that the issues are amenable to the same sorts of solutions. They tend to fit more into a basket of justice broadly defined rather than some other -

**Mr FLETCHER** - There would be evidence received which would suggest that if the values applied by the Government in recommending the transfer of this land were generally applied, then all crown land in Tasmania should be returned to the Aboriginal people. It just seems to me that it's not realistic to do that; it is not achievable, therefore there has to be a test introduced some way which identifies what is achievable and just and what is not. That shouldn't rest with the individual, should it, or a group of individuals.

**Mr BINGHAM** - I see the point you are making and I understand where it comes from. Where I differ with you, I think, is in terms of my personal assessment about whether this is a situation that ought to have that sort of structure applied to it. There are some assumptions which underpin your approach that I would not necessarily share in all cases. That is not say that I don't think it is worth exploring, and I heard the Premier say he would be very interested to look at that issue in the context you are raising as part of the committee's deliberations.

**Mr WILKINSON** - Without that criteria, as Tony was saying, isn't it a case where you send signals out to the community, you come to a conclusion when you suit your criteria to get to that conclusion, but you get to the conclusion first? Unless you have that criteria, that is the signal that is passed out there, I think, to the community.

**Mr BINGHAM** - Yes, I understand that logic but I would say that in relation to some of these fundamental issues, if you are talking about any other sort of context of multiculturalism, or something like that, you would not set out to write the criteria about the terms upon which we ought to accept a particular ethnic community as a part of the Australian community. Why do we want to do it when we are talking about Aboriginality in that way, given the special relationship that indigenous people have with this country and their historical association, and so on? It seems to me in that case more than any other we ought to be able to say, 'Well, you've made your decision, you've made your requests about what it is you want. Reconciliation for us is about responding to those requests in a positive way'.

**Mr WILKINSON** - In answer to that, one of the big differences is in bringing ethnic people into the country, they are coming to Australia and maybe becoming Australian citizens at a later stage. They are not getting back certain lands, or whatever it might be, so that is the big difference and that is, I think, causing the unrest out there in the community. I believe one of the causes of unrest is because there is a difference between the two.

**Mr BINGHAM** - Yes, I understand that but there is also a lot of concern about foreign ownership of land, not just Tasmania but particularly northern parts of the country. Land ownership is no different than any other sort of stake in the community in lots of different ways.

**Mr WILKINSON** - Would it be hard to form a criteria, even though that criteria is not set in concrete? Would it be hard with the work that you have done to form a criteria which would give us and also people coming after us guidelines in relation to the hand back of land to Aborigines?

**Mr BINGHAM** - I think it would be very difficult to form those sorts of criteria. I don't know enough about Aboriginal culture to be able to say how you'd make those sorts of judgments.

**Mr WILKINSON** - So it is a case where the Aboriginal people come to the Government and say, 'Look, this area of land has particular significance to us' for whatever reason and it's then up to you to put your case to the Government on whatever evidence you have to show the significance of the site and that could be an ad hoc situation working around the State doing that or are you fairly comfortable that you've identified significant Aboriginal sites now?

**Mr BROWN** - To some extent I guess that was the principle that applied to the working group, that the Aboriginal community came to the group and presented the areas of land and identified their connections to those areas of land to the working group. So I guess the principle of that has applied in this instance.



**Mr BAILEY** - One of the criteria I think you've mentioned already, Richard, is the fact that there had been promises made by previous governments or representatives of government in relation to land going directly to Aboriginal people. That seems to me to be one criteria we can certainly look at, which was discussed while you were looking at the maps. I fear some concerns in having a criteria in relation to the granting of land to the Aboriginal community. I would have thought there should be some significant historical connection to the land, maybe through middens on those lands, which would give that predominance as a criterion to justify the granting of those lands and perhaps the use to which that land can be put to carry on the culture or traditions of the Aboriginal community, whether that be mutton-birding or fishing or whatever that has been associated with their cultural heritage. I get the feeling just sitting round the table that what the members are looking for is something to hang a hat on, to say, 'This is justifiable because of these reasons', and those reasons in the future can come through as a test as to whether future lands should be granted or not beyond that which has already been granted.

**Mr BINGHAM** - Yes. I think to the extent that what that says is that the Aboriginal community has identified a specific area of land as being specifically important to the Aboriginal community, for whatever reason, then I think that is a legitimate criterion and is very much a criterion that has applied in this package.

**Mr BAILEY** - Yes, but you're looking at that more broadly than perhaps I'm trying to identify.

**Mr BINGHAM** - Yes, and you would want to particularise it as having a number of specific limbs, I suppose, so that it is important to the Aboriginal community because it contains a lot of artefact sites or it was the site of a significant meeting with a governor or those sorts of things. I can see that but the rider that I put on those things is that the people who ought to make those judgments about the application of that criteria is the Aboriginal community.

**Mr BAILEY** - Yes, but the judgment that's being made is by the Parliament as to whether the land should be granted back - or gifted back. That to me is where the criterion is, that the judgment has to be made against the ask. I mean, every ... may well ask and there may be no significance. I doubt if that would be so but if there were to be a global ask, as Tony has suggested, for all the crown land then there are no criteria against which a future base can be made and the ground rules set.

**Mr BINGHAM** - Sure, I understand where you're coming from in relation to that. I suppose the only observation I would make is that it's not unusual for parliaments to act at the behest of a particular group. There is plenty of legislation on the books that you could say came about because the business community wanted it or consumer representatives wanted it or whoever it might be. I don't see why where something is sought by the Aboriginal community it necessarily has to have objective criteria to judge the worth of that potential legislation.

**Mr BAILEY** - Okay, I'll leave that but I presume that the land as granted would need approval for any development that might want to be put on that land by the Aboriginal community?

**Mr BINGHAM** - Yes, the mainstream legislation would apply.

To move on to the other amendments that are made by the bill, the first of these is in relation to aboriginality. Both the Aboriginal community and the Chief Electoral Officer agreed that a number of changes to the enrolment process for Land Council elections were desirable and as a consequence of that the definition of 'Aboriginal person' has been incorporated into the legislation. The act previously defined an Aboriginal person as having the meaning given to it for the purposes of the Commonwealth Aboriginal and Torres Strait Island Commission Act 1989. The new definition is in line with the interpretation of 'Aboriginal person' which has been applied in recent Federal Court decisions and the guidelines which were applied in the 1997 Land Council elections. It is proposed that the Land Council should be responsible for accepting or rejecting objections to enrolment on the electoral roll on the basis of aboriginality and the onus of proof in relation to eligibility is to be on the person asserting it. In order to publicise and make fair that process, the Land Council is required to prepare and make available information on the eligibility process criteria and appeal mechanisms.

In relation to maintenance of the ALC electoral roll, the roll is currently, under the existing law, destroyed after an election. This has caused concern as the process has proved to be difficult and there

is an emotional issue for many electors and potential electors. The Electoral Office and the Land Council both support retention of the roll once it has been prepared but subject to restrictions in relation to public access to the roll and the legislation provides for that.

**Mr WILKINSON** - Can I ask why it was destroyed in the past?

**Mr BINGHAM** - That was a specific component of the 1995 legislation which required that it should be. There was a concern at the time that the roll might be misused or might have been made available for purposes other than the Land Council elections and it was a specific request, as I recall, for the Aboriginal community -

**Mr WILKINSON** - Yes, but why though?

**Ms KELLY** - It was the first time that a roll of that sort had existed in Tasmania so there was concern over its misuse as a roll of Aboriginal people in Tasmania, because it is a voluntary, not a compulsory, election and those who choose to be part of it do so and they wanted to remain private.

**Mr WILKINSON** - So are you saying that it might have been used for people if they were endeavouring to find out who were Aboriginal people and who claimed to be Aboriginal people, they may claim in ten years' time that they did not ten years' previous therefore they could not claim that they are Aboriginals ten years' hence. Is that what you are saying or is that one of the reasons? In other words, because they didn't claim they were an Aboriginal in 1980 they cannot claim it in 1990, is that the type of reasoning?

**Mr BINGHAM** - It was more in relation, I think, to concerns about misuse of the roll for the people wanting to sue and finding out addresses from electoral rolls and all of those sorts of issues. I don't think it was at that high sort of level.

**Mr WILKINSON** - I asked that because I understand, again from speaking with Mike, that there is the problem again of the definition of an Aboriginal and there is some talk about who should be classed as being an Aboriginal and part of the people who should be classed as being an Aboriginal are people who always have held themselves out to be Aboriginals. That is why I asked the question.

**Mr FLETCHER** - Richard, I have to say that I have a significant problem with this area and I know it is a significant problem in its own right, the fact that the onus of proof rests with the individual and that the ultimate test is to be applied by the Land Council and the Land Council approves those people who are going to vote to elect the Land Council to approve the names of legitimate Aborigines to vote, so there is a certain circular nature about that process that does give me real concern.

**Mr BAILEY** - It is a bit like the Trust Bank, isn't it?

*Laughter.*

**Mr FLETCHER** - I am not sure how you overcome that, but I will take further evidence and consider the evidence in relation to that issue.

**Mr BINGHAM** - Perhaps I could just observe that the fact that - I was thinking as the Premier was talking - the context and the nature of the debates that we have today as opposed to the nature of the debates we had fifteen years ago about these sorts of issues are considerably different, and I think there is a significant measure of maturity of the Tasmanian community that it has moved on in that way. The issue of the electoral roll being maintained in the way in which it is I think is a demonstration of faith, I guess, by the Aboriginal community in the processes that the Parliament has established and I think it is worthwhile making the point that you take some comfort from that.

The next issue I was going to mention was the fact that other land acquired by the Land Council, the bill amends the act to enable the Land Council to acquire land by means other than by land being vested into the Aboriginal Lands Act, such as by gift or purchase, for that land to be considered as Aboriginal land for the purposes of the act. I don't think that is inconsistent with the original intention. I see that as being the principle clarifying the original intention of that 1995 act.

Fourthly, clarifying access to coastal areas - and I alluded to this earlier - there has been concern about the perceived ambiguity of section 27(8) which refers to right of access over coastal areas of Aboriginal land and exceptions to this right. Section 27(8) has been replaced with a number of new access provisions which better reflect the original intention of the section. The first of these is the new section 27(8) which gives a right of pedestrian access over the majority of areas of Aboriginal land to an area of land 15 metres wide immediately above the high-water mark. Not all land that was previously transferred, nor the land being transferred now fit within this general principle and in these cases the legislation deals with the access over these areas separately - for example, to determine access rights over Sundown Point, West Point, Trial Harbour and Oyster Cove the legislation refers to the central plan register map for each area. As part of Mount Cameron West was referred to as an exception in the previous section 27(8) a new provision has been enacted to deal with access at Mount Cameron West.

This new provision allows pedestrian access for the coastal area of Mount Cameron West over an area of land 15 metres wide immediately above the high-water mark from the southern boundary to the area marked as 'D' shown on the high-water mark on the central plan register map, and from the northern boundary to the point marked as 'A' shown on the high-water mark on the central -plan register map. Copies of maps are just being made available.

**Mr BROWN** - It is quite difficult to see, it is quite small. So you have 'A' at the northern end of the petroglyph zone and you have 'D' at the southern end of the petroglyph zone.

**Mr FLETCHER** - That is the low-water mark.

**Mr BROWN** - So between point 'D' and point 'A' - I will be better off if I go to the other one which has an enlargement - it is the actual plan of the title. That is point 'D' there and point 'A' there where it actually follows 5 metres inside the low-water mark, so the access right is out around there between the low-water mark and 5 metres inside the low-water mark to take people around the petroglyph zone and so the new position is just clarifying that access provision.

**Mr FLETCHER** - One of the concerns I have at the time of discussing these issues the matter of access for people using the beach from time to time was real. There was a consensus among the parties, it was enshrined in legislation, subsequently vehicular access has been denied and when the heat has come into the debate to some degree the archaeologist has come in and found there is a midden in the middle of that road now so access is denied because the Aboriginal Relics Act 1975 has precedence.

I would have thought, naively I guess, that the later act and the Parliament having knowledge of the 1975 act and giving the public right of access over that road would have overridden the provisions of the Aboriginal Relics Act in relation to that matter but at an earlier time, Richard, you advised me that your opinion was that that was not the case.

**Mr BINGHAM** - Yes, it is a line-ball decision, I can certainly see the logic in what you are putting. As a matter of law I think that is the position that the 1975 act continues to apply because it is not inconsistent in that way, there is no direct inconsistency. It just means that you have to exercise the right of access in ways which don't impinge on the values that the 1975 act is protecting.

**Mr FLETCHER** - Given all that - this is a general public concern, I am sure it will come up in evidence, if not now it will later - we enter into an agreement with regard the transfer of this land and the right of access to certain parts by certain people and then subsequently an artefact or artefacts or remains or a midden is discovered and the 1975 act applies and access is denied.

**Mr BINGHAM** - The way to overcome that would be for there to be specific provision in the 1995 act which removes the operation of the 1975 act in those particular circumstances thought to be necessary.

**CHAIRPERSON** - Would another option be that if it has extreme significance that something should be in legislation to ensure access is still granted - there is a responsibility to grant access but a choice can be made of different access so you can actually move the road or the foot access or whatever. Surely in that way you are protecting the culture that has been discovered and yet still living up to the principle of access - is that not an option that may be -

**Mr BINGHAM** - I think that would be an option as well. It is a matter of drafting and working out some mechanism to enable that to happen which no doubt, if the framers of the 1995 act had thought of it, they would have done something at the time.

**Mr BAILEY** - If I can just follow that up, the land is granted to the Aboriginal community in perpetuity. I presume it is different from fee simple, which the normal provision would be. Because it is granted in perpetuity does that mean that the Public Land Acquisition Act may not apply? And if that does not apply then there maybe a problem in getting alternative access around the midden.

**Mr BINGHAM** - I haven't thought about that issue at all.

**Mr BAILEY** - I hadn't either, it just came up then.

**Mr BINGHAM** - Good point, it doesn't apply, no.

**Mr BAILEY** - The Public Land Acquisition Act doesn't apply? I assumed that that was probably right by the use of the word 'perpetuity', it seemed to go further than a normal fee simple.

**Mr BINGHAM** - It doesn't apply to the Aboriginal land; it would apply to adjacent land if that was presumed reasonable.

**Mr BAILEY** - Yes, but if this is going through the middle of land granted to the Aboriginal community where there was a road -

**Mr BINGHAM** - Yes, okay I see.

**Mr BAILEY** - That is all I am saying, they couldn't then divert around the middle of it unless they could acquire or do it by agreement.

**Mr BINGHAM** - Or do it by agreement or by legislation.

Cremations. The bill includes consequential amendments to the Cremation Act and the cremation regulations to enable the Aboriginal community to conduct cremations on Aboriginal land. Approval from the Aboriginal Land Council of Tasmania to conduct cremations on Aboriginal land will be required along with the approval of the Director of Public Health for use of the site for cremations. In addition, a person wishing to conduct an Aboriginal cremation will be required to comply with cremation regulations and obtain the necessary medical certificates and permit.

**CHAIRPERSON** - Okay, we are open for questions. I have a couple perhaps while the committee get their heads around some issues. Richard, the Premier did provide us the committee with some confidential papers and I noted in particularly the far north-west it was quite often that the working group had been advised there was no survey of historic sites of non Aboriginal values. Did the committee have any thoughts on whether perhaps some work should be done on what may be some non-Aboriginal values in some of the land transferred so that 100 years down the track we don't have the circle coming around where we ignored Aboriginal culture and now in the process of recognising it we may ignore some European culture in those areas?

**Mr BINGHAM** - From the working group's perspective I think we would have taken the view that we would have wanted as much information as possible about all the values of the land and what we did was to try to collect as much of that as we possibly could. Given the reporting time frames and so on, it was not possible to undertake a whole lot of new work in relation to areas of land but I certainly would never say that it's not desirable to have knowledge about the values of the land.

**CHAIRPERSON** - Thank you. Just a housekeeping issue in this report, in most instances when it was talking about access it referred us back to 2.4.3. On page 33 of the report it actually, under 'access', refers us back to 3.5.3, of which there is none in the report. Am I to presume that is supposed to be 2.4.3 or are we missing something?

**Mr BINGHAM** - I think that would be a safe presumption. There were some significant adjustments to the report and a couple of points, and I suspect that is a cross-reference in here that we missed. Can I just add in relation to your earlier question. It was pointed out that the Historic Cultural Heritage Act of course applies to Aboriginal land, so in the event that there is a discovery of a significant European heritage issue then that act would operate to protect it.

**Ms KELLY** - Any individual can apply under the act to have a site, if it is identified and comes within the criteria of the Historic Cultural Heritage Act, registered under that act and then it is a management issue for the current land owner to manage that site.

**Mr FLETCHER** - Just by way of closing - I guess it is matter to ask the Land Council more than ask this committee - the matter of funding for the ongoing management. Is the State to increase the appropriation of funds to the Land Council to enable them to meet their obligations under this transfer?

**Mr BINGHAM** - I honestly don't know the answer to that. I imagine that is an issue that is being considered in another department during the course of the budget process that is under way at the present time, so I don't have any up-to-date information about it. I do know that, as the Premier said, certainly the view is that the listing of some of these areas under the indigenous protected areas program the Commonwealth will provide access to larger amounts of money than have previously been available for managing these sorts of areas. That is an appropriate role for the Commonwealth Government.

**CHAIRPERSON** - Can we presume it may make a difference to the budget of the National Parks and Wildlife section of DPIWE when we are transferring some of their responsibility?

**Mr BINGHAM** - Yes, that is certainly the view that was put by the Aboriginal community representatives in the working group that responsibility for these areas was transferring, but I must say particularly in the context of the discussion about the national parks where there is a bigger resource made available by Parks and Wildlife than in relation to some of these smaller areas.

**CHAIRPERSON** - The other question I have in some information sent to us, the Tasmanian Aboriginal Land Council withdrew on 17 May. Can you give us some indication as to why they withdrew at that time?

**Mr BINGHAM** - My understanding about that is that it relates to issues internal to the Aboriginal community and disagreements between various members of that community. It certainly wasn't something that was ever discussed in the context of the working group.

**Mr WILKINSON** - Do I take it from there that the Aboriginal community as a whole was not unanimous in relation to the hand back of lands, or do I take it that there are just divisions within the Aboriginal community and those divisions at the moment are just not going to come together?

**Mr BINGHAM** - I do not think it would be fair to say - and this is my personal perception - that there are divisions within the Aboriginal community about the hand back of land. I think there is a remarkable unanimity within the community about the desirability of the hand back of land.

**Mr WILKINSON** - Can I ask why the Land Council pulled out?

**Mr BINGHAM** - I think it is more to do with internal views of strategies to best achieve that aim, and those sorts of things.

**Mr GREG BROWN** - I would like to add that the Land Council are very supportive of this land transfer package.

**Mr WILKINSON** - When you talk about strategies, that is what I am trying to struggle with because my advice, as I stated previously, was that the Aboriginal community's aim is to have the return of all crown lands. The community is saying they are nervous as a result of that. The community therefore says, 'Is this just another stair in the staircase leading up to the return of all crown lands?' What I am endeavouring to come to grips with is, is it, and if that is the case, is that why the Land Council are

saying they do not agree with the strategy that is applied in relation to the hand back of lands under this?

**Mr BINGHAM** - My perception about the issue of precedent, if you like, is that, as we said before, you can only deal with what is on the table at the particular time. There are no other issues that are on the table at the present time, and if and when there is a broader request from the community I think we just need to deal with that at that time.

**Mr WILKINSON** - The same arguments will come back, won't they?

**Mr BINGHAM** - Yes, and they always will. It is always a question of where are we going to draw the line. But that is no different from anybody else asking for legislation through the Parliament. Shop trading hours, for example, where are we going to draw the line in relation to that?

**Mr WILKINSON** - I said to Sue, it is like having a child in grade 9, and you say, 'You can't go out past nine o'clock or ten o'clock', and then when he or she grows older you say, 'Yes, you can'. It depends on the circumstances at the time and the maturity of the person.

**Mr BINGHAM** - I think it does, and I think I previously made the point that all of this needs to be seen very much in an historical context. I think it will be seen very favourably in an historical context but I hesitate before judging what the situation will be like in fifty years time.

**Mr BAILEY** - Could I just follow that question up. Is it possible if the Aboriginal Land Council was not satisfied, as Jim was saying, in relation to Mount William not now being included and Rocky Cape not included - and I think one other parcel of land which was under consideration - was it an issue like that, that it was not going far enough and that they were not prepared to continue on unless those areas of land were included in the package?

**Mr BROWN** - I guess along the lines of what Richard was saying, the absolute reason for the Land Council withdrawing from the working group was not divulged to the actual working group.

**Mr BAILEY** - So we can ask them about that?

**Mr BROWN** - Yes, and I am quite sure they would be quite open and honest as to why they did.

**Mr BAILEY** - I meant to ask before, the amendment to section 29 says, 'The area of land shown on a particular plan in the central plan register ceases to be a conservation area'. Is that part of the bill likely to have any effect in relation to State/Commonwealth relationships with agreements that have been entered into, whether they be forestry or other?

**Mr BINGHAM** - I think the only impacts are in relation to the Regional Forest Agreement. There are some issues, I think, associated with Clarke Island.

**Ms KELLY** - There are a number of areas of land that have been reserved and if we transfer those lands they no longer become reserved because their status is revoked by this bill. We have been in discussions with the Commonwealth and in regard to the impact like removing those reserved areas of land from the Regional Forest Agreement, what impact it has. It has in fact basically no impact because there is no actual forest communities reserved on those lands. They merely come under the Regional Forest Agreement because they have been reserved for Aboriginal heritage purposes or for other natural values that are not forest communities, but that is the only agreement that it will impact upon.

**Mr BINGHAM** - We're not aware of there being any other impact apart from the Regional Forest Agreement and it is only very marginal so far as the RFA is concerned.

**Mr WILKINSON** - Greg, how can you see this helping the reconciliation process?

**Mr BROWN** - They are compromising my position as a government representative, I am probably best to talk on a personal basis. Ownership of land by Aboriginal people is fundamental to their health and wellbeing and the spiritual side of things. Even in the Royal Commission into Aboriginal Deaths in

Custody it recognised that ownership of land by Aboriginal people assists in health outcomes, economic outcomes. It is much broader than the fact of just owning land.

Aboriginal people have a very strong connection to the land and to the sea. It's not easily understood by a lot of people and I guess it is really where the community struggles to get across why land is so important to them. I guess there is the political argument that goes back that the land was taken from the Aboriginal community now it is just a matter of getting some of that land back. I guess there are two sides of it.

I guess to answer your question, I can see it adding significantly because it can add to a sense of wellbeing, to having ownership of some land by the communities adding towards - and I guess eventually generating economic activities, which I am under the understanding that the Land Council is now looking at pursuing.

It is all a slow process as well. The resources of the Aboriginal community are not large so it is a slow process with any development of any lands, whether it is previous or now coming back, and there are only a limited amount of people and a limited amount of funds available to actually develop that. You can see it, I guess, in some of the festivals: the Oyster Cove festival, to name one; the Rocky Cape festival. The amount of Aboriginal people who go to those festivals - and non-Aboriginal people - and a large part of that is celebrating that that is Aboriginal land and all people are welcome to those celebrations. Every year the Land Council invites the community and they have a week-long camping session at Premangana at Mount Cameron West. That is all to do with getting back to cultural identity and the ownership of the land and the value of the land to the community.

**Mr WILKINSON** - Some might argue though that they are a nomadic people. You will have to excuse my ignorance, but you would be saying that 'No, that's not the case'.

**Mr BROWN** - The Aboriginal community is very family orientated, very strongly family orientated.

**Mr WILKINSON** - I am talking about the land in particular, in your loving of the land and the sea and therefore certain areas have certain cultural significance. What I am saying is were they nomadic in nature and therefore in one area at one time and another at another time or did they mainly oscillate around the one area?

**Mr BROWN** - There were a number of Aboriginal groups in the State prior to European occupation and those groups did travel around in defined areas and it was mainly, I guess, to follow seasonal and food resources. So to some extent that did occur but it was in a certain area and that is quite widely documented.

**Mr WILKINSON** - Do you think we'll ever get to a stage where we'll say, 'Yes, we're reconciled, let's get on with it'? Pierre Slicer, who is going to come before us to give a submission, has said on a number of occasions in relation to pleas in mitigation that, like, some children have different backgrounds and you say, 'The parents separated at a young age and there was abuse of the child in the family' and he said, 'You can't keep using that as a crutch; we've got to move on from there'. Do you think we're ever going to move on or is there always going to be this talk of having to have reconciliation? Do you think we'll ever get to a stage where we can say, 'Yes, there's reconciliation; now let's move on'? Do you understand what I'm saying?

**Mr BROWN** - Yes. I'll answer this as a personal response. It will move on and to some extent I think reconciliation is driven somewhat from government, rather than from the Aboriginal community itself. The Aboriginal community will never lose sight of the problems it faces and I think you will find that the community will always probably approach government to return more land. I think we'd be sort of flying blind if we believe that this was going to be the last claim of land by the Aboriginal community.

**Mr WILKINSON** - Yes, that's where I'm coming from, as you probably understood.

**Mr FLETCHER** - Greg, just drawing on your understanding and knowledge, you say there were tribal groupings pre-European. What was the culture? Did they all speak the same language or did they all have the same pastimes or dance?

**Mr BROWN** - With regard to language, it's a difficult one. The Tasmanian Aboriginal Centre at the moment is constructing language and it's been a long, slow, arduous task because a lot of it is reliant on writings of French explorers, other European explorers, British explorers and then trying to get the pronunciations right and the phonetics and all those types of issues tied in with language. But without having a great knowledge of their language program, it is my understanding that there were a few different dialects but basically they could communicate with each group. I'm not sure of the exact detail but I could probably find out for you.

**Mr FLETCHER** - The reason I ask is that there is a research paper circulating on the north-west coast that claims that each of the tribal groups had separate languages or dialects and they found it very difficult to communicate with each other and indeed, post-European settlement a limited few spoke English and that was virtually the only means of communicating with one another.

**Mr BROWN** - I'd be surprised if that wasn't right because I know an interpreter in the Territory and he knows 43 different dialects or languages in the Northern Territory alone, so I would be surprised if it wasn't the same down here.

**Mr WILKINSON** - Were they warring tribes? In other words, did one tribe try to take over the land of the other tribe to carry out their hunting or whatever it might have been?

**Mr BROWN** - To what extent that occurred I'm not sure, but I'm aware it did occur at times, yes.

**Mr WILKINSON** - So you had the one tribe that oscillated around one area attempting to take over the area of another tribe?

**Mr BROWN** - I'm not sure about taking over areas.

**Mr FLETCHER** - More defence of the territory perhaps, rather than expansion of the territory.

**Mr BROWN** - But there was trade that occurred as well between the tribes.

**Mrs SILVIA SMITH** - Can I just ask a question of Richard? The working group talked about principles for Aboriginal fishing and hunting in Tasmania and there are five there and they are very good and very well expanded. I just wonder if that similar issue was given to, when we were talking about shack owners on coastal sites there, did the working group look at that issue with regard to people of non-indigenous, non-Tasmanian Aboriginal background, who have had access to fishing rights, for example, and hunting rights on crown land for ever and a day?

**Mr BINGHAM** - Well, certainly one of the things that was uppermost in the working group's minds was the list of issues that was considered in relation to each of the areas of land, was the European heritage and access and the other legal interests in adjacent areas of land and so on. So that formed a large part of the working group's consideration and as you will see, there are recommendations about how each of those sorts of issues ought to have been handled for each of the areas of land. We didn't go to the extent of articulating principles about European use of land or anything like that -

**Mrs SILVIA SMITH** - That would come under other legislation anyway, wouldn't it?

**Mr BINGHAM** - Yes.

**CHAIRPERSON** - Thank you. If there are no other questions, may we thank you for your time this morning. I think it has been a very worthwhile few hours that the committee has spent educating ourselves on the process. Undoubtedly as we work through the hearings we will be looking to have further contact with you to confirm, reaffirm or question some of the issues that come up. I thank you for your attendance this morning.



**THE WITNESSES WITHDREW.**

**THE LEGISLATIVE COUNCIL SELECT COMMITTEE ON ABORIGINAL LANDS MET IN COMMITTEE ROOM 2, PARLIAMENT HOUSE ON MONDAY, 10 APRIL 2000.**

**JENNIE HERRERA, ROSE BROWN AND ROBYN CLARE**, HOBART QUAKER PEACE AND JUSTICE COMMITTEE WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.

**CHAIRPERSON** (Mrs Sue Smith) - Ladies, thank you for your submission to the committee on behalf of the Hobart Quaker Peace and Justice Committee. I have been requested by members of the committee - we did not complete our morning's hearings until 1.50 p.m. and we have been pushed for time - do you have an objection if they sip their coffee while they speak to you.

**Ms CLARE** - So long as you don't have an objection to me sipping my tea.

*Laughter.*

**CHAIRPERSON** - Thank you for your submission, as I have said. The process we have used through the hearings is that we ask those who have put forward a submission to speak to it, to add anything else they believe is relevant and then if the committee need to ask extra questions to clarify your position, they shall do so at the end of the process. So I'll hand over to you - I don't know whether both are speaking or just one - Jenny you've actually signed the submission. If you would like to make a start perhaps, and then we can move on to Robyn.

**Ms HARRERA** - Yes, thank you very much. We don't have a lot that we want to add to it; we put in our basic thoughts. But we would like to say that we do support the process of returning land and we hope the process will continue. From our input from all kinds of people, our feeling is that the process just needs some fine tuning; there may be small areas where it can be made more open, more accessible, but we support the process itself.

In regard to the question of when complaints and problems and disagreements arise, we do feel that perhaps there is an area there where some form of mediation or ombudsman or some way to bring people together perhaps in a less formal way to resolve a lot of these issues because a lot of them appear to come from confusion or misinformation, particularly on the question of access. That seems to be the area where so many people don't quite know what access means and whether it's access for people, whether it's access for vehicles, whether they can bring dogs onto the land. All kinds of questions there. So there may be an area there where some processes of mediation or even just a hotline or something can resolve a lot of those problems. Robyn has done quite a lot of work in mediation and she might just like to add to -

**Ms CLARE** - I worked on trialing the Aboriginal studies program at Friends School and I spent four years in the Kimberley and Pilbara region in north western Western Australia developing cultural awareness packages and workshops to help with the land claims there.

The judiciary would come and spend time with the Aboriginal people in learning the importance of special areas for Aboriginal people and just from that experience, I feel that to have processes where the stakeholders in the area might have workshops or go out bush with Aboriginal people might allay any of the problems that may happen later on.

**CHAIRPERSON** - Thank you. Anything else to add Jenny?

**Ms HERRERA** - The other question is that when land is returned, there needs to be sufficient funding available, particularly to deal with things like introduced weeds and pests and so on. I know there's been some programs where young Aboriginal people have been funded to go and do landcare work and that kind of thing.

But from what we can gather that's a fairly ad hoc approach and there may be an opportunity to put that on a firmer basis so that every land has some sort of backup, that the Aboriginal community can be certain that they will be able to bring the land back to as near as possible - you can't bring it back to exactly what it was before we all arrived. But where there's problems - for instance, my next door neighbour was very upset because at Risdon Cove the English willows were being removed and he said he knew the family that had planted them and he felt that that was a discourtesy and he couldn't see that English willows might not be the most appropriate trees to have on land that has gone back to the Aboriginal community. So there are all kinds of issues involved with that sort of work on the land itself. But some form of funding or support for unemployed young people to work on it and so on could perhaps be brought out a bit more.

**CHAIRPERSON** - Do you think Jenny, land ownership or the controller of the land is the most important perspective from the Aboriginal community? I ask that question because in New South Wales there was land transferred to the Aboriginal community and then leased back to National Parks so the Aboriginals had ownership of the land but National Parks were the responsible body to manage, allow the public through and so on. Would you like to put some relationship to that process into the Tasmanian context - either of you?

**Ms HERRERA** - Speaking personally, I regard it as Aboriginal land. But obviously in a community of 6 000 to 8 000 people, the actual means of controlling and running that land simply isn't there and the land does need to be cared for. But the Aboriginal people are saying themselves that it's that relationship with the land that's so important. But the business of how to run the land, caring for the land itself - and that's one of the most important things, how do we care for the land in the best way, not only for now but on into the future. We would certainly regard Aboriginal ownership under whatever system suits them best as vitally important.

**Ms CLARE** - Have they been consulted on how they would like to look after the land?

**CHAIRPERSON** - The committee, certainly, have had several meetings with the Aboriginal community. But originally the concept that has been put forward by the Government for legislation was a result of a request from the Aboriginal community for land transfers of specific areas and the Government have acceded to that request. What we have found as we've talked to them through the process is that there is a presumption of handing back massive hectares of land and yet in many cases much of the land has absolutely no capacity to make a financial contribution to the community, let alone to its own maintenance, and therefore it is a concern that all communities should address, whether they are Aboriginal or of European descent, in this process.

**Ms HERRERA** - Yes, and of course sovereignty itself and ownership and leasehold and freehold and all these things have different down-the-track responsibilities and so on. My impression is that they would like some form of recognition that it was their land but not necessarily every, you know, big amounts of land but that of course is for them rather than for us to be saying, but recognition that it all was Aboriginal land.

**Ms CLARE** - In my experience, an acknowledgment of the spiritual relationship with the land and the spirituality associated with that, if non-Aboriginal people accept that and have tangible evidence of it, then Aboriginal people feel stronger in themselves and able to move on with that. It seems to me that in the past we have taken away the land and we are now not acknowledging the spirituality and being acknowledged in some way - and giving back the land is also acknowledging the spiritual relationship with the land - that enables Aboriginal people to feel stronger.

**CHAIRPERSON** - You made comment earlier that you had actually done some work in the Pilbara region, was it, with Aboriginal communities. Would you like to make some comment on the Aboriginal communities you worked with there in comparison with the Aboriginal communities as you know them here in Tasmania?

**Ms CLARE** - It's very different. People talk about Aboriginal people generally and each community has its own flavour, its own way of approaching non-Aboriginal people and so, initially, when I was working there, a lot of listening needed to go on and I would see this as being a great opportunity for listening and to work out creative ways around the issues that might arise. There's a lot of potential in this opportunity.

**Mr FLETCHER** - Could I ask then: do you see that the Aborigines of the Pilbara region have any greater or lesser requirement for or right to land than the Tasmanian Aborigines? They would be equal, there is an equality about their presence. Why then when Aborigines of the Pilbara make a land claim for native title rights through a Federal-established tribunal, why then shouldn't the Tasmanian Aborigines have exactly the same process available to them?

**Ms CLARE** - I would think that they should have. I'm not understanding your question probably.

**Mr FLETCHER** - Well, instead of us sitting here trying to establish a range of criteria or a reason that is rigorous to transfer land, why don't the Tasmanian Aborigines follow exactly the same process as the Pilbara Aborigines do? Why shouldn't they be required to do that?

**Ms HERRERA** - The problem we've found - for instance, I inherited a small farm in Queensland with my brother and we were looking at a way to get native title over it or to share in some way, but we have not been able to find any Aboriginal group with a traditional connection to that because the movement of people was so extreme -

**Mr FLETCHER** - But that is to satisfy your need, isn't it, rather than the Aboriginal need.

**Ms HERRERA** - Well, it's both ways. I mean, if there were Aboriginal people there, we'd love to be able to sit down and talk to them. The same problem works here, I think, that because people were moved and moved and moved, the Federal Government, the way it is set up, that process, but there is no reason why the State shouldn't set up a slightly different process to deal with Tasmanian conditions -

**Mr FLETCHER** - So you're saying there is not this equality, as Robyn said, that each group should be treated differently and assessed differently?

**Ms HERRERA** - Well, that's going by what the Federal Government set up as its criteria of having to prove a connection to the land. That's the problem there where Tasmania is different to the Pilbara but the Tasmanian Government, looking at Tasmanian situations, if they set up some form of tribunal to look at the specific situation here, we would be very much in support of that process.

**Mr FLETCHER** - What I am trying to determine is whether you believe there is a reason beyond reconciliation, like, should the people of Tasmania or should the Parliament of Tasmania be generous to the Tasmanian Aboriginal community by giving them land simply because they think it's a good thing to do and simply because the Tasmanian Aborigines believe this land is important to them, significant to them. Now if I follow that path and they ask for more next year and more five years down and more and more and more, if the criteria is valid eventually we give them the whole of the island State of Tasmania, which is not going to happen. So what I'm trying to determine is, is there a process that allows an open transparent assessment, with some rigour built into it, that enables all the people of Tasmania to say, 'Yes, this is a fair process. We have confidence in this process. We embrace the concept of the land transfer' rather than the Parliament saying, 'Here is some land' and the people of Tasmania saying, 'Why did they give them that land? I think this is wrong'.

**Ms HERRERA** - It has to be more than a feel-good thing.

**Mr FLETCHER** - Yes, well that is what I am asking: is there a way of doing this? That is what I'm interested in.

**Ms HERRERA** - For instance, the Australian Government has sovereignty over Australia but that doesn't mean there isn't land owned by Japanese and German and American interests and so on, so that the question of sovereignty and recognition is rather different to the question of specific land ownership and so you would -

**Mr FLETCHER** - I don't quite understand your point there.

**Ms HERRERA** - Well, recognition of Aboriginal sovereignty over Tasmania is not the same thing as Aborigines owning all of Tasmania, for instance - I mean, there could be parallel forms of sovereignty whereby European sovereignty and Aboriginal sovereignty work together in the way that the Aboriginal provision of government was not based so much on land but on other aspects of life that they wanted to gain greater control over.

**Mr FLETCHER** - So are you putting to me here that there are in fact two nations: there is the Aboriginal nation and the Australian nation and that the sovereignty of each should be respected and treated separately?

**Ms HERRERA** - Not necessarily separately, they would obviously interact. But there could be a way of coming up with something unique to Tasmania even that would recognise what happened and of developing new ways of looking at it. I think it's people starting to say, 'Well, what do we mean by sovereignty or self-determination or land rights or native title' and this process, I get the impression, is really only in the beginning out in the community. It is not a matter of perhaps you saying, 'Tomorrow we'll recognise Aboriginal sovereignty' it's a matter of bringing these concepts into discussion and Tasmania developing in its own way which recognises its history and its culture and land and type of communities living here.

**Mr FLETCHER** - But, Jennie, you are saying to me that you think there may be a time when the Aboriginal people of Australia will have a sovereignty that allows them to be self-determining. They will have their own laws, their own land and -

**Ms HERRERA** - I would like to think so, that the two things would work in together. For instance, we know that there has been some working to get Aboriginal laws recognised in some parts of Australia where that legal system is still in existence but obviously that's not so much a thing in Tasmania where it was destroyed. But there are probably ways in which people can come together and look for new ways of working together and I don't know, maybe Quakers are going in a slightly different way to the wider community. But I think, for instance, when Rob Valentine talked about Aboriginal sovereignty at the East Timor rally last year, several people came up to me afterwards and said, 'Oh, wasn't that wonderful to hear Rob Valentine talk about Aboriginal sovereignty', which was very interesting. It doesn't mean that people went away and did anything about it but just the fact that they were taking that idea on board at this stage, I think.

**Mr FLETCHER** - It's a concept I find difficulty with - a great deal of difficulty with -

**Ms HERRERA** - But that's not really the issue today.

**Mr FLETCHER** - Yes, that's right.

**Ms CLARE** - Are you getting that feeling that Aboriginal people would like to have a space where they had their own laws and were separate from everybody else?

**Mr FLETCHER** - No, I don't get that feeling at all. I get a feeling that there is different groupings in an Aboriginal community, the same as there are in the broader community. There is like we are, I suppose, a political grouping within that have ambit claims of one form and another or have distant goals and that might be separate sovereignty and a separate nation of Aboriginal people or whatever. But then there is the majority of the people at the community level who want to live their life and be proud of their heritage, proud of their culture, proud of where they come from and be part of the broader community as well and have good health and good education and good law and order and things of that nature, so there are the various groupings. Anyway, am I talking too much?

**CHAIRPERSON** - As usual.

*Laughter.*

**Ms CLARE** - I can see your concerns.

**Ms HERRERA** - With the Quakers - there are sort of three areas, there are individual Quakers and what they're doing, which often comes back to something like The-Pay-the-Rent Campaign, which you probably know about -

**Mr FLETCHER** - Yes.

**Ms HERRERA** - and some form of recognition and all and so on, and then there is the actual land that the meeting house is on, which is only a little block, and they thought well obviously sharing that land isn't realistic but perhaps they could share use of the meeting house in some way. Then there's the Friends School, which obviously does own quite a bit of land and so they've been looking at how might that be shared or recognised or something like that. So a piece of land they've got out on the east coast, they are talking to the east coast Aboriginal community to see if they would like to use that land. Another thing they were looking at is perhaps setting up bursaries for Aboriginal children to come to Friends School, so it's not so much focus solely on the land, it's talking to the community and seeing what they might find the most appropriate way of the school recognising and supporting the Aboriginal community.

**Mr WILKINSON** - Jennie, you were saying in Queensland that you had a property there and you said that you were hoping that there was some type of Aboriginal history to it. Is that as I understood your comment a while ago?

**Ms HERRERA** - Yes, the group that was there appear to have been moved so far back and have lost connection with it so the actual Aboriginal communities in Toowoomba tend to be people who have moved in from further west. So it may be that the only appropriate way of recognising that that was Aboriginal land is perhaps to give part of the money to the Aboriginal community or something like that.

**Mr WILKINSON** - Because that's a bit like Tasmania in some ways, isn't it, because they've been removed.

**Ms HERRERA** - Yes.

**Mr WILKINSON** - What were you saying you'd like to do; if they came to you and said, 'We were on this land 40 000 years ago. You were here 100 years ago or 150 years ago', would you see it within yourself to give part of that land back or would it be more of a case of sharing it with them, in other words, allowing them to come on to enjoy certain ceremonies or whatever it might be?

**Ms HERRERA** - It would depend on what was most appropriate. I mean, the land was a small dairy farm so it doesn't have middens or sacred sites or anything like that but if they would like to use that as a place to bring city kids out into the country to go camping or something like that, it would be wonderful.

**Mr WILKINSON** - So rather than a gift back to them, it's a sharing with them?

**Ms HERRERA** - Well, that would depend on if they said, 'Look, we would love to have or own part of this land or own all of it or something' or 'We would like to buy it from you but we can't pay the market price' or whatever. It would be a matter of sitting down and talking about what they would like to do.

**Mr WILKINSON** - But it's not really up to them, is it, it's up to you because you own the land. So they could put forward their wishes but in the end it is up to you in relation to what you do.

**Ms HERRERA** - It is partly, but also we have to go away and live with ourselves so we have to do what we feel is right after the discussions.

**Ms CLARE** - One thing that I found a problem, in the north-west it's appropriate to ask the community if it's okay if you come onto the land and they sing the land so it's easier for you to be with that and let the ancestors and the spirits know that you are coming. Here in going to places of Aboriginal significance, it's tricky asking if you can go there. I don't know if anything can come out of that.

**Mr WILKINSON** - Can you expand on that, what do you mean by tricky? You don't know who to ask or are you scared that you are going to be kicked off?

**Ms CLARE** -Yes, and when you do ask you don't always get a response because there are probably a large number of Aboriginal groups in Tasmania who would need consulting. I am interested in going to Judds Cavern, for example, as a caver but I feel reluctant to go because that's on Aboriginal land - there are hand stencils in there - and I don't know how to go about finding out or saying to somebody, 'I'd like to go on your land and I'll be there on x weekend'. That's just a little aside.

**CHAIRPERSON** - Why does it differ to the other places? Here, surely you contact a recognised Aboriginal group like the Tasmanian Aboriginal Centre and they'll tell you whether they are the management for that area or whether the Tasmanian Aboriginal Land Corporation, for instance, are the managers.

**Ms CLARE** - More often than not there's no response.

**CHAIRPERSON** - So it is not who you go to, it is the communication process that needs improving.

**Ms CLARE** - Yes.

**Ms HERRERA** - It is also, I think - I work at Runnymede, the National Trust house, and you get a lot of tourists who would love to have some contact with Aboriginal people or go somewhere and see something, particularly tourists from overseas, and they don't know quite how to go about it. So maybe there is an area there that needs more information out in the public domain. In here there is a lot of talk about access but it is not really spelt out so people think, 'Oh well I wonder what that means'. Does access mean 'I can actually drive there or go on a bus tour' or does it mean 'I must walk in' and so on. So perhaps there is room there for a bit more information.

**Mr WILKINSON** - The previous witness gave some information in relation to a Kooparooma and Niara Aboriginal Culture Centre. Do you believe Tasmania's lacking in not having one of those because of the instance you've just mentioned where people who are tourists come to Tasmania and have come to Runnymede and say, 'Where do I go to understand the Aboriginal culture?'

**Ms HERRERA** - I think there is, yes, because things like the Aboriginal Centre is only open in office hours.

**Mr WILKINSON** - I'm not being disrespectful to it, but if you go to the Aboriginal Centre you are not going to see much Aboriginal culture in itself.

**Ms HERRERA** - No, but if you want information and maybe the mainstream tourist information area could include a bit of information. Also of course the areas of land that have been handed back are often quite remote and people think, 'If I drive all the way up there and then find there's a gate with a padlock, what do I do?' So maybe that's an area that just needs a bit more consultation and information.

**Mr FLETCHER** - Can I ask you what you understand by the reconciliation process and have we made progress in relation to that matter over the last decade?

**Ms HERRERA** - I think Tasmania certainly has made progress. In fact my feeling is that Tasmania is moving forward gently while the mainland is perhaps not quite getting it right. One of the problems is that it has turned Aboriginal reconciliation rather than white reconciliation so there is this perception that it's Aboriginal people who are going to do all the reconciling and we will just sit back and wait for the better relations to flow from that. But in general, I think, Tasmania is moving gently ahead.

**Mr FLETCHER** - Can you think of any action Tasmania has taken from either community which has been very, very positive in the reconciliation process?

**Ms HERRERA** - I think that the feeling of joy when the first handbacks of land happened. People really felt proud and excited that this process was starting and that in general it had cross-party support. That was a very positive thing.

**Mr FLETCHER** - Can you cite a similar instance from the Aboriginal community's perspective?

**Ms HERRERA** - The fact that they are being consulted about things like the tracks along the foreshore of the Derwent, and things like that, because their image was of the council simply going ahead and doing things but now the councils are listening to them and saying, 'Is this appropriate? Will this interfere with middens?' Just the fact that they are being talked to, listened to, and what they have to say is being seen as important.

**Mr FLETCHER** - I thought your proposition to me was that - it's named Aboriginal reconciliation; this denotes that all the reconciling is being done by the Aboriginal people and very little is being done by the broader community.

**Ms CLARE** - And they have been doing it forever, adjusting to us, and we haven't adjusted to them. Part of the thing with the reconciliation as well, it seems to me that we'll become reconciled when - I shouldn't say that - part of the process is understanding the Aboriginal processes of their skin system. When we take on board some of their processes of a lot of negotiation - I am just talking about up in the north west - but it took a long time to get anywhere and in that long time, a lot of talking was done and that's what happens. A lot of yarning done in the pubs and parks and it is really valuable, this yarning that goes on. We are doing some yarning now. Laughter, humour and joy and accepting that the process is so important and acknowledging Aboriginal processes in the way we work. I remember standing up here demonstrating once on the lawns -

**Mr WILKINSON** - How many years ago was that?

*Laughter.*

**Ms CLARE** - Way back. It was a demonstration for something to do with Aboriginal issues. Someone was peeping out from the lace curtains and I was standing with an Aboriginal elder and she was so chuffed to think that someone was peeping out through the curtains at the people outside, whereas in the past they'd had to peep out of their houses in fear. That was a turning point to some extent for her. I didn't quite understand the subtlety of it but just seeing someone doing that was a turnaround.

Those little things can change thinking. You are saying what steps, what things have made these changes and sometimes it can be tiny things.

**CHAIRPERSON** - Quite evidently you were involved in 1995 when the first transfer of land happened to the Aboriginal community; you made some comment about the feeling at the time. In 1995 the Tasmanian community, I think it is fair to say, embraced the concept of transfer of land to the Aboriginal community under certain terms and conditions. The reaction has been different in the second round of transfer of land. Different sorts of reasons have come up. Some thought 1995 was the land transfer as far as reconciliation went, and there would be other demonstrative things we could do for reconciliation than land transfer. Others have pointed to the fact that there has been a loss of trust because some of the issues - locked gates, for instances, problems with access et cetera - have come up over those past five years. Would you like to make some comment on the difference of 1995 to 2000, why the same community feeling is not there, because it is not there, and that is evidenced in this committee with the submissions the committee have had over the past three months?

**Ms HERRERA** - I think it's still there though. I think there is still pleasure to know that the process is still going ahead. But the problem this time round that several people have said was that there was more secrecy about it, and they wondered why when the community was supportive that this hadn't perhaps been more open, and I think that maybe needs to be addressed, but that's not something we can do. That is more the Government talking about what it is doing and what it plans to do, and maybe encouraging more input. And those little problems like a locked gate can be blown out of proportion unless the Government is providing information and perhaps providing some means, perhaps through the Ombudsman's office, for those little things to be resolved. I have lived in country areas, and so has Robyn, and I know how little things can fester and be blown out of proportion.

**CHAIRPERSON** - If I put it to you that it had been Mt Wellington transferred and you struck a locked gate before you started to climb the mountain, even though a law had told you you had access over a



particular path et cetera, do you believe that it should be interpreted as a small thing if the law states one thing and yet another thing is seen to have happened?

**Ms HERRERA** - I think there would be an area there to find out what was happening. I mean, obviously when it is bad weather you expect people not to go up, and so people may wonder what is happening, how do we find out, but if there is a gate there saying 'today this is closed because there is a special Aboriginal ceremony', I think people would accept that. But if they went every day and there is a locked gate, they would obviously want to know what is happening when they have been assured that there would be access. But there again it needs to be made clear what kind of access the bill is talking about. Is it vehicle access, is it people walking up with their children? Those little kinds of things perhaps could be brought out clearer to avoid perhaps some problems in that area.

**Mr WILKINSON** - You are saying you both lived in the country for a period of time. Do you believe there has to be an acceptance within the community where the land is to be handed back for there to be proper reconciliation? And if there is not this acceptance, should there be by the educative process that you were talking about prior to it being transferred back?

**Ms CLARE** - I think the education part is coming together. Have you guys been out with Aboriginal people out bush and hung out with them informally and had long yarns? Yes?

**Mrs SILVIA SMITH** - I have in a different process, not in this one.

**Ms CLARE** - It's sort of like the Russians. We were led to believe that they were all really dreadful people, and now everyone's coming together. I just think if people come together they find out the common humanity.

**Mr FLETCHER** - Robyn, it seems to me one of the problems - there have been two startling aspects of this inquiry as far as I'm concerned. One, an Aboriginal person on a very high profile piece of land that was Aboriginal land, when questioned informally said, 'Look, no-one ever uses this land. The Aboriginal people don't come here. It's a shame, isn't it, but no-one comes here'. From my area of the land, the land has been given back, and you can almost bet pounds to peanuts that a fence has been put up, a gate-keeper's been put on, some work is done with very limited funds on trying to control the weeds, which is impossible. But people don't go to that area of land unless it is once a year for a week for a special ceremony, but the rest of the time the land is there and nobody is using the land.

**Ms CLARE** - School groups go there, if we are talking about Oyster Cove.

**Mr FLETCHER** - No, we're not talking about Oyster Cove. And when I speak to people in outlying communities, whether it is Cape Barren Island or Flinders Island, and say to them - a community level group, people on the north-west coast - 'How has the last transfer of land affected your life?', and apart from the euphoria of the day or two of the handover and then on, it hasn't affected their life at all. They want to support more transfer of land, but still the issues of health and education and job opportunities for their young and the like, those sorts of things, are very high on their list of important things that need doing, so they are almost speaking as an assimilated person with the same pressures as I have, or as other people have, rather than having this spiritual link to the land which produces a different person. Somewhere that's in the back of my mind. I can't -

**Ms HERRERA** - But it's like the land that the National Trust has, perhaps. It's not the same because obviously it's not a spiritual connection, but I say to people 'You can go up and enjoy the gardens at Runnymede any time. You don't have to pay to go through the House'. And they are astonished, they say, 'Can I really go in there?' And so there is often this feeling that any public or community-owned land is off limits, even though there may be nothing to back up that belief. And so that may be at work to some extent in the Aboriginal community, where they feel that belongs to that community and therefore we can't go there.

**Ms CLARE** - Well, is it not just important to know it's there? Maybe people can't afford to go there.

**Mr FLETCHER** - That's a factor for sure.

**Ms CLARE** - There are any number of reasons. I'm really happy that some of the regions in the south-west are there. It gives me great spiritual nourishment just to know they are there, but I don't go there. And in the north-west, people couldn't get back to their lands because of various reasons, but knowing it was there was important, and that is a huge thing.

**Mr WILKINSON** - Can I get back to my question, please, about whether you believe that for reconciliation to occur there has to be acceptance within the community where the land is being transferred for there to be reconciliation.

**Ms CLARE** - It is the chicken and the egg thing, give it back and reconciliation happens or -

**Mr WILKINSON** - Or like in 1995 where there has been a great deal of consultation. Everybody accepted it with, as you say, a deal of euphoria at the time. This is a bit different, as you were saying, Jennie, because of the creeping up aspect of it, I suppose, where in the areas that the land is to be transferred back, a number of people are saying 'In some areas it's with the community'. It's a difficult question.

**Ms HERRERA** - It's a difficult one and of course other things come into play like the impacts that One Nation had in some areas or things that people mightn't necessarily come out and express, or just the fact that people are unemployed and they may be feeling - anything to grumble about sort of thing. Here is one group of people who perhaps seem to be getting more particular concern by the Government. Even just the amount of time the Government is spending on looking at the issue they may say, 'Why isn't the Government spending that amount of time on looking at unemployment or roads or something?'

**Mr FLETCHER** - Respite for people with disability, whatever.

**Ms HERRERA** - Whatever. So that all kinds of other issues may be coming into play that education might resolve. But if they're issues that people aren't being honest perhaps to themselves that this is why I'm against Aborigines getting anything because my own life is in a mess or something, no amount of education is going to resolve that. But I think the Government does need to be perhaps looking at how they educate and where they're educating and what amount of time and effort they're putting into it. I think every government can educate better.

**Ms CLARE** - I am conscious of during the blockade there was a great divide in the community and I would hope that that doesn't happen again. The process of coming to some resolution doesn't happen through dividing people. To make this process a conciliatory process through education, through workshopping together, hanging out together, in the most informal ways, not in this type of situation which is intimidatory. You do not learn on another level.

The people who I was working with, we learn in an abstract way, we are talking in an abstract thing. But a lot of stuff can happen, absorb, on another level. For me, it's really important to have education and mediation and workshops and Hamersley Iron up in the north-west wouldn't employ people, non Aboriginal people, at their company unless they had done some of the training that we'd done. It is just becoming a mandatory thing to understand Aboriginality.

**CHAIRPERSON** - If I might expand on that a little because in the main we are talking about two very small communities. One community we went into, I, as chair was absolute astounded that the community had a tremendous understanding of the Aboriginal heritage in their area and a respect for it, even to the stage as saying in some instances, 'I know where there is something very special to the Aboriginal community but I'm not going to tell anybody in case you get some yobbo who goes in there and desecrates it'.

So they have a tremendous understanding of the Aboriginal culture in their community. They have all lived as one in their community for generations. They are accepting of one another and yet they see the proposal before us at the moment where a land transfer is being transferred to an Aboriginal community - and I might say this is local Aboriginals in that community as well as the European community - are seeing that the transfer as proposed at this time by the Government is actually bringing in strangers, that is going to destroy a process they have lived with for a hundred years or

more, where they have all recognised one another and lived and worked together, hunted and fished together. And now all of a sudden up comes a bureaucracy-type process that will put restrictions on everybody, including their own local Aboriginal community.

**Ms HERRERA** - When you say strangers, do you mean the bureaucrats or do you just mean outsiders?

**CHAIRPERSON** - They interpret the transfer of land, because it has to be transferred to an organisation, there has to be a corporate body who can accept the responsibility, but at a local level they interpret a transfer as not one of us. Somebody from the city is going to come out and tell us how to do it, I suppose is the best way I can explain it.

**Ms CLARE** - I'm from the Government, I can help you.

**CHAIRPERSON** - So I am asking you the question, I suppose, in a transfer of land, if you can achieve transfer at a local level is that a better process even in a State as small as Tasmania than at a State level, where you hand it to a State body representing the Aboriginal community.

**Ms HERRERA** - But it maybe in some cases where there's a lot of fears about a process but when it has actually happened they realise those fears were baseless. So maybe the Aboriginal Land Council needs to come in and say, 'We're not going to be here every week telling you how to run it. It's your local community and they're going to be the ones to benefit'.

**CHAIRPERSON** - But that's not necessarily so because after the 1995 process it was not the local communities that were managing the land in those areas - and I instance in the Circular Head area, it is being managed by the Tasmanian Aboriginal Land Council. The caves are being managed by them as well; Risdon Cove and Oyster Cove are being managed by the Tasmanian Aboriginal Centre; Wybalenna appears to be the one that will get up with local management when they work through a few issues where local Aboriginals on Flinders Island will manage Wybalenna.

**Ms HERRERA** - But of course when you look at it, all sorts of strangers can come on to your property and people tend to just live with that but where small communities maybe haven't thought that through it may seem more threatening. I mean all sorts of people can come into my backyard without my permission - the Hydro, Telstra, quarantine and Health department and the department of Agriculture and all sorts of things and I have no say over that. But I think perhaps in the city you just tend to live with that so the council can come in and do this.

**CHAIRPERSON** - I put the issues specifically because Robyn talked about the yarns. I think they've had the yarns in some of the small communities and they do understand one another. We have to ask ourselves as a larger community, are we creating destruction amongst the yarns by taking one particular process over another.

**Mr WILKINSON** - Quite bluntly what they are saying is, 'We don't want the southern people telling us what to do with our land', that's it bluntly. In a way I can understand that. They say, 'We've been the ones who have been enjoying it, we've been the ones who have lived with it; we've been the ones who are saying we're Aboriginal; we've been the ones who have been living our culture' and some as best they can. The two cultures are accepted, the European culture, the indigenous culture, they are both accepted within the local community. Sometimes what they're saying is, 'Don't come and spoil all that. If you do something, you're going to spoil all that and you're going to cause a division, and it is all right for you to say that everything will be all right, because you're down south. We've got to live in it.'

**Ms HERRERA** - I know, it's a big problem right throughout Tasmania with things like services going to Melbourne. We all feel that somehow we're not being listened to.

**Ms CLARE** - There was a community that I worked with, a saltwater community in the Kimberley, and they lived in the most idyllic place. They were living traditionally, hunting dugong and turtle; having their wonderful, unique ceremonies, and they were sitting in a wonderful position to have a tourism enterprise. They chose not to go ahead with it because it eroded their culture. So, gosh, the questions you're asking, I need time to have a really good think about them because I hadn't realised

your dilemmas and how you were respecting all the dimensions of this. So there might be a creative solution around it.

**Mr BAILEY** - In relation to Aboriginal persons being accepted, you said that that should be settled by the Aboriginal community, and that is generally what is said.

**Ms HERRERA** - Yes.

**Mr BAILEY** - But under the current act and under the proposed bill, the ultimate determination of that can be applied by a Supreme Court judge, which may or may not be an Aboriginal person. How do you comment on that, which is the antithesis of saying it should be settled by the Aboriginal community, and yet there is an appeal process within the bill and within the current act which may go to a white person?

**Ms HERRERA** - It is very much sort of mixed feelings on that one. I know that court case that went through was rather bitter and unfortunate and there was a feeling of if only there had been some sort of accepted mediation process, that they didn't need to take it to court. So that maybe taking it out of Aboriginal hands has some benefit and maybe leaving it in has some benefit. I had very mixed feelings when I read through that part of the bill. But there again, with people sitting down and talking to each other, maybe it need never get to the stage where it has to be a court case.

**Mr BAILEY** - Following on from that, would you see that a representative tribunal might be better than the Supreme Court which might comprise, say, two persons from the Aboriginal Land Council, which is the owner of the land and the organisation driving this issue, with a retired or a current police magistrate or a retired Supreme Court judge, who might chair that panel or that tribunal without it then going to the Supreme Court, a costly exercise?

**Ms HERRERA** - In general, I think we would all say that if a tribunal can keep things out of that very expensive legal process and still meet people's needs, we would be very much in favour of that.

**Mr BAILEY** - Well, it seems to me that where there is dispute over whether a person is an Aboriginal person or not, and that person really wants to take it through, and if they are in necessitous circumstances but still have a passion to want to be part of that community, the cost of going to a Federal court or the Supreme Court of Tasmania would be prohibitive, particularly if the group that is responsible for determining legal aid in itself determines that that person is not of Aboriginal descent and then can't get the money to go before a costly court case. They are then denied the opportunity of, if you like, joining the club.

**Ms HERRERA** - Yes, it is a very difficult one, but I am sure that people getting together and talking it out can resolve maybe not every problem but a lot of the problems.

**Mr BAILEY** - With a tribunal it would be less formal than a Supreme Court hearing or a Federal court hearing, I would have thought. I would be interested in your views on it.

**Ms HERRERA** - Well, people feel more comfortable often about going to mediation rather than going even just for minor things. If they trust the process and feel that it is really there for them and is not just the Government trying to cut costs or something like that, if it is set up in a way that the community feels they can trust that they will get the best outcome through the tribunal rather than through the court, I would imagine it would - well, like the Mediation Centre certainly saves money by keeping a lot of cases out of court. By keeping them out of court it keeps them out of the media. It reduces that sense of division.

**Mr BAILEY** - If you accept that, do you then accept that a non-indigenous person ought to be part of that tribunal?

**Ms HERRERA** - I would actually have no problem with that, if that person is fully trained and is accepted by the Aboriginal community as somebody who really knows what they are doing.

**CHAIRPERSON** - Thank you, ladies, for your attendance this afternoon. The input that you have given us has been most beneficial.

**Ms HERRERA** - Thank you very much for inviting us along; it has been very interesting to hear what you are doing.

**Ms CLARE** - Well, good luck, guys.

*Laughter.*

**THE WITNESSES WITHDREW.**

**THE LEGISLATIVE COUNCIL SELECT COMMITTEE ON ABORIGINAL LANDS MET IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART ON MONDAY 10 APRIL 2000.**

**REVEREND DR CHRISTOPHER NEWELL**, ANGLICARE TASMANIA, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

**CHAIRPERSON** (Mrs Sue Smith) - Thank you for your attendance here this afternoon. We apologise; we have kept you waiting after, I believe, you did not get the message on the time change that your organisation accepted on our behalf. You have been exceptionally patient this afternoon and we appreciate that. The process we use is we ask you to speak to the submission that members have before them and anything else that you wish to add at this time and then they will ask questions if they feel a need to quantify any of the statements you have made.

**Rev. NEWELL** - If I could just clarify that I appear on behalf of the Anglican Church, the Diocese of Tasmania. It just happened that the contact details given were for the relevant archdeacon with the charge for this issue who works as the CEO of Anglicare. I am a priest in the Diocese of Tasmania, I appear on behalf of the Diocese of Tasmania of the Anglican Church with the authority of the Vicar General who is currently administering the diocese. For the past five years I have been the bishop's ethics adviser to the Bishop of Tasmania and have a particular specialisation in areas pertaining to ethics, social policy and teach in that area at a tertiary level.

You will notice, Madam Chair, that the submission from the diocese focuses and revolves around several key discourses of reconciliation, justice and spirituality. The submission sees that those are inherently interrelated and that there are particular issues at not recognising that interrelatedness.

There are of course the dilemmas that you were exploring with the previous witnesses to contend with. We have also sought in this submission, which I substantially authored on behalf of the church, to use the voices of people who identify as being Aboriginal, to show forth their conceptions of reality and especially to show the inherent issue of spirituality for the church is particularly important.

As a church we have had to struggle and we continue to struggle with the issues of reconciliation, both narrowly and more broadly. Perhaps I would also suggest to you, Madam Chair, that one of the issues that you on the committee could certainly take up is not just the narrower issue of the legislation before you, but the broader issue of not just the role of legislation or the parliaments of this country but also how the parliaments can assist us as a community to actually discharge what I would call our corporate responsibility to further reconciliation within indigenous peoples in the community.

It is not just a role of legislation or government saying something, but our parliaments can provide significant leadership and suggestions to us as individuals as non-government organisations. Church agencies have certainly been seeking to enter into that activity. It is not easy and so I do not appear before you as a pious expert who has all the answers and you just need to put the coin in the slot to get them. I appear before you, amongst other things, just to answer any questions or explore any issues that maybe of assistance to the deliberations of the committee.

**Mr WILKINSON** - Can I kick it off with reconciliation. I note on page 2 of your submission it talks about 'theology teaches us the concept of reconciliation and it talks about conversion, forgiveness, change'. With respect. I am after a fuller definition than what is in your page 2 if you can give us that.

**Rev. NEWELL** - I think that is a very broad terminology, Sir. When you say, could you be slightly more specific. Perhaps if I might suggest to you that when I talk about reconciliation - there is the issue

of reconciliation between indigenous and non-indigenous Australians - what I tried to do in this submission is to situate that within the broader issue of all of us struggling with having done wrong, or had a past which is wrong, all of us struggling to seek to rectify those things and to do things. So I would actually fit that within the broader issues of the questions that we all ask about how am I to live; how are we to live corporately and how do we proceed from there? That is why I put that in there.

**Mr WILKINSON** - You hear time and again people say the transfer of land is going to assist in the reconciliation process. That is a word often used but few have defined it.

**Rev. NEWELL** - I sought actually quite specifically to define reconciliation there. It is easy to say, may I suggest, it is a lot more difficult to do.

**Mr WILKINSON** - That is what I am saying.

**Rev. NEWELL** - I think the church recognises the difficulties that we actually have as individuals and corporately in seeking to do that. Perhaps one of the things that we need to also recognise is that it is not just a matter of doing this, that and the other thing, a list of things, and then we will have achieved reconciliation. Often with many deep-seated problems we spend many years struggling and walking. I would suggest to you that this inquiry, this piece of legislation, is part of the broader social struggle to achieve reconciliation between indigenous and non-indigenous Australians.

**Mr WILKINSON** - You may have heard my question to the two ladies who gave evidence before you in relation to: is it true reconciliation if it is causing, and will continue to cause - for how long nobody know - a split within the community, for people in the south to tell people in the north-west coast and the Furneaux Group what to do with their land when they are living, it would appear, quite happily as an integrated society at the moment prior to this legislation being mooted ?

**Rev. NEWELL** - This is of course the dilemma associated with legislation. There are two reasons for why we might do particular things often in the public arena. The first of those is we think it is the right thing to do. The second of those is because it is legislation and we feel that we should do that otherwise some form of retribution will follow. The problem of course is that it is easy to make legislation, it is a lot more difficult to change the hearts and minds of people. For me as a person to change my heart and mind means that I need to enter into dialogue with other people.

I am long-windedly getting to the issue here. Legislation by itself is not actually always the solution with regard to these things. Let me give you an example, I specialise in the area of medical ethics. I often talk about the fact of how it is not just a matter, for example, of getting the next of kin to make a decision or the next of kin not necessarily having particular legal entitlements, but it is actually a matter of recognising that we need to involve people in decision-making processes. If I feel involved then the law maybe quite clear but it is really important that I also feel involved. So you have actually hit upon something very important, that is for true reconciliation to occur then people will need to do that. However, there is the other dimension of the proper role of the State. The role of the State in seeking reconciliation where, if we look at the fact that the Crown helped to create the situation that we have now, then I believe it is proper for the Crown to actually seek to do something about that by a legislative process as well. There may be a difference there.

**Mr WILKINSON** - In 1995 that worked. There was this dialogue that you have been speaking about, there was this general acceptance within the community that the transfer of land to Oyster Cove et cetera', was a good transfer, everybody accepted it, everybody felt a certain ownership of it, as you were just talking about. In relation to this - this is just my personal opinion at the moment - it does not appear that has happened. If there was proper dialogue it may well happen and if there is to be reconciliation is it best for that dialogue to occur prior to a transfer to have the same type of effect as it did back in 1995?

**Rev. NEWELL** - I think that is highly desirable but it also takes a lot of time. I am not sure about you but I also suffer from the nimby syndrome.

**Mr WILKINSON** - What's that?

**Rev. NEWELL** - Not in my back yard. The more that I see something affecting me personally the more I feel an investment there and the longer it's going to take me to feel as if there might be a good reason for doing this. So in the short term it is going to be difficult to achieve the ideal, I think. State makes difficult decisions all the time in terms of we don't get everybody behind it. Also, I think that there is a proper role for the State via legislation to lead with regard to areas where people have been disadvantaged or disempowered or manifest injustice has occurred. Doing the right thing is not necessarily doing what the majority thinks.

**Mr WILKINSON** - I understand that. Is it a journey though and do you have to take people along on that journey with you? I am not saying this is happening at all but I'm just putting a proposition to you. Let's say parliament doesn't vote for a transfer of land. No doubt that journey is going to continue, no doubt the bureaucrats will go back to those areas because they have been classed as being of historical significance to the Aboriginal people and they will talk with the people involved and it's another step in the journey, a journey which at the end may well be a transfer of land. Is it best for it to happen now or is best for it happen in two, three, four years time when it takes everybody with it as opposed to ostracising a few?

**Rev. NEWELL** - I am not convinced, Sir, that you will actually get everybody agreeing.

**Mr WILKINSON** - I understand that.

**Rev. NEWELL** - I think there comes a time when you balance - and this is what we are really talking about with balancing a variety of considerations, where exploring the dilemmas associated with what is the right thing to do in what for me is a very difficult set of circumstances, competing notions of justice. But I think in the end the right thing to do is in terms of this legislation, but that the legislation by itself is not sufficient and if we are not careful the law is just an ass in so many respects, just ask anybody. You don't necessarily get justice just by law but also how it is applied as well.

When I break the law I need someone who can be nice to me, for example, when I have an altercation with the policeman as opposed to being particularly nasty. I'm not saying are breaking the law, I'm talking about the way which we do this is important and the way in which we continue the activities, so we need to widen our focus beyond just particular statutes, for example.

**CHAIRPERSON** - If I might expand on your knowledge and expertise. You talk about this process should happen and other things happen with it. The Furneaux islands for instance, 20 per cent of their land mass in this proposal would be transferred to the Aboriginal community. I think it is fair for the Furneaux island people to ask, 'Are we, on behalf of the Tasmanian people, to be the ones who make the first move, who make the reconciliation; are we the ones who are to some degree appeasing an urban conscience?' Where do you believe that small communities - and that tends to be what is happening in this process - are the ones who see themselves as paying the price on behalf of all Tasmanians? The other scenario I put to you: Cape Barren Island, 54 in the community and 10 of them children. The committee receives two petitions: one that says 27 people say, 'Do not transfer land' and 13 say, 'Yes'. Most of that community - in fact I would say 95 per cent of that community - are Aboriginal people. Where is there reconciliation and bringing people together et cetera in that particular process at this time?

**Rev. NEWELL** - It is a multi-pronged question you ask me, Madam Chair. The first one was to do with the Furneaux islands, I seem to recall. Sorry, refresh my memory.

**CHAIRPERSON** - Twenty per cent of their land would be transferred, fair and reasonable on behalf of the entire Tasmanian community?

**Rev. NEWELL** - You put it very graciously, you might have actually said to me, 'What happens if it was actually your backyard?'

**Mr FLETCHER** - Mount Wellington?

**Rev. NEWELL** - Yes, that is right, for example.



*Laughter.*

**CHAIRPERSON** - I tried that one earlier with the gate. I am looking at your perspective as the Anglican Church in Tasmania.

**Rev. NEWELL** - As a priest I would say it raises enormous pastoral difficulties, firstly because we have to make sure that people actually feel that their opinions have actually been heeded and the wisdom has been heeded. But at the end of the day the State makes decisions all the time which are to do with the common good and to seek not just to marginalise particular people, but there are proper issues, for example, of seeking to do right. There are issues to do with compensation.

Perhaps from an Anglican perspective as well, let me just re-explore what we mean by land as well. Australian society has been, I think, gifted by the re-exploration of a different notion of land and our connectivity to land and the role of land in our lives. For me as a spiritual person it has taught me a great deal and then I have actually re-encountered this in the Bible - to do with the fact that land is not just to be owned and exploited to my own maximum benefit.

Land is for me a gift from God for stewardship, so the land that I might say that I own I think I need to rethink of in owning in a different sort of way. It's not for me the sort of land that I can do anything with - and likewise with regard to the people of the Furneaux islands - then I think that it is proper to have proper compensation for them. But at the end of the day I think that because we recognise some of the spiritual dimensions to the land that we do need to regive it back, but in giving it back I'm not sure that we are doing all the white or non-indigenous perspective of land in a traditional almost, can I say, masculine way.

**CHAIRPERSON** - The people of the Furneaux island group do not own and exploit the land. It is crown land. They utilise it for their cultural and traditional activities whether they are of European descent or Aboriginal descent. They all see land as a gift from God. Should the stewardship not remain in the Crown for all to enjoy the gift from God to all people?

**Rev. NEWELL** - Yes. At the end of the day it comes back to recognising was this taken from them without giving them the chance to give it in the first place? There is a significant difference between me wanting to give something and me being forced to give something I must admit.

**Mr FLETCHER** - Does this complicate your answer to some degree?

**Rev. NEWELL** - Oh, absolutely.

*Laughter.*

**Mr FLETCHER** - The evidence seems to me now that the islands of the Furneaux group were not inhabited by Aboriginal or indigenous people for several thousand years. Post the bassian land bridge ... up until the time that the sealers took Aboriginal women there as slaves, servants whatever, in the early eighteen century. So the links there are back to the pre-ice age days rather than in modern days as a separate, Aboriginal or indigenous person's culture, whereas the links to Bruny Island, if you like, are much more modern in the 1820s or 1830s that there were tribal people living on Bruny Island. Wouldn't you think that the justification for a land transfer was stronger on Bruny Island, for instance, than to the Bass Strait islands? Do you have a thought about that?

**Rev. NEWELL** - I am not convinced about that and let me tell me you why. One of the things that we are learning is that we find sacredness in a variety of ways with a variety of meanings. You will notice in the submission it talks about spirituality in terms of what it means to live, feel, see, experience and touch more authentically the sacred around me. In order to understand the sacred, in order to understand the spiritual we need to understand what the stories are, where the land connects with those stories. Those stories can be very old, they may be particularly recent. If I can give you an example. I have never been to Jerusalem; I may never get to Jerusalem. Two thousand years ago a man who is very important to me walked on this earth and that was a marked change to me. That land is incredibly spiritual, it is incredibly important to me and yet I do not own it and I think it probably would be difficult to try to establish a claim to ownership.

*Laughter.*

**Rev. NEWELL** - But it is actually important. For me it is sacred, it is important in my story and it is also important that the sacredness of that land is recognised as well. In answer to the question I have actually introduced new dimensions of spirituality and sacredness et cetera, but I think it is helpful if we can reflect on what is important to us and why.

The other thing if I might say is so often it is how we live our lives which show our real values in the world. I think that is also the case with governments. The Legislative Council deals with representation from people about all of the injustices in the world and you struggle to deal with what to do with constrained budgets et cetera. I think at the end of the day you actually do need to say, 'Is this something that we wanted to define as an issue?' Then of course it is up to you, having weighed the evidence - and I cannot weigh the evidence for you - to actually decide what is the right thing to do in the difficult set of circumstances that you face.

**Mr FLETCHER** - I struggle with a consistency of interpretation. I want to be true to myself in making a recommendation based on the evidence. There has been no-one before the committee who has said, 'If this land is transferred this time that's the end of the penny section, it will never happen again'. So why have I only got to presume that it will happen sometime in the future, perhaps several times in the future at the time I am in a decision-making position? So I am looking for some criteria or some basis for making a judgment with some logic in it, that I can say to myself, 'Well, I made that decision in the year 2000 because, therefore I can make this decision in the year 2005 because'- so I can have some consistency about it.

I have tried to develop is there a set of criteria which sets a benchmark that is not so high that no-one can jump over it, but is not so low that nobody can jump over it sort of thing at the same time and therein is a conundrum. It seems to me to be getting back to the fact that in the name of reconciliation you should be generous to promote reconciliation. Is there a need for a process of assessment or do we simply accept that if the Tasmanian Aboriginal people say that this land is significant to us and the government of the day feels so inclined to transfer it, then we should transfer it?

**Rev. NEWELL** - If I might answer - through you, Madam Chair - of course there is a proper process of assessment and I must say it is one of the reasons why I believe in the House of review. I think it is important to subject many issues to critical review and to do that impartially. I believe in the political process, which is our lives that we are called to, that we weigh all the different evidence and we actually come to difficult decisions as opposed to, say, 'There are five rules, we followed the five rules and that's the end of that'. If I can say, there are two extremes of ethical thinking: there is the one which is the greatest good for the greatest number - parliaments would be unwise to pursue that particular thing because you can deliver injustice. On the other hand, there is the inflexibility of absolute rules and if you ever want to consider the problems associated with having absolute rules just witness the debate in other parliaments to do with mandatory sentencing, for example.

We intuitively know that there are particular situations where we do need to weigh the merits of a particular case. That is exactly what you are doing here, you are taking all these different things, you are saying, 'This is really difficult. How are we actually going to deal with that?' I suspect that you will, some years down the track, you may well actually get another claim. I can't answer the question associated with that because I haven't that evidence before me and I think it is only up to future parliaments to discover what is the right course of action.

If I might also venture to say it could be argued, and I think understandably so, that this particular grant of land is not necessarily the ideal solution. It is, I would say, a political compromise at best and that is what we as human beings struggle with. I can't come up with those mandatory rules but I can come up for you with regard to the criteria. I have tried to suggest to you that there are the issues of reconciliation of justice and the competing notions of justice and spirituality, which for the church are actually central to why you would want to proceed down this track.

**Mr WILKINSON** - But isn't that the easy way out - the sissas way out, if you want to call it that - a political compromise. Shouldn't we be able to say, 'Yes, we believe that is an appropriate transfer

because of the following reasons. Whether it is acceptable or not, our belief is it should occur because of  $x$ ,  $y$  and  $z$ , or it shouldn't occur because of  $a$ ,  $b$ ,  $c$ ?

**Rev. NEWELL** - I think you should say that and I think you should give your reasons. In fact I would be devastated if you didn't give them. I am sure your colleagues would be as well.

*Laughter.*

**Mr FLETCHER** - It is easy to write yes or no.

**Mr WILKINSON** - What I'm saying is a political compromise shouldn't be the way out.

**Rev. NEWELL** - I don't think I am talking about a political compromise; I'm talking about you actually in the active process now of weighing up those particular considerations. I think it is good that you give your reasons. Can I say frankly I think it is actually also good that on any parliamentary question some years down the track - we are not bound by previous legislation. Parliaments, and thank God for this, parliaments explore their responsibilities in governing this State associated with the evidence that is put before them here and now. And that always will be the case because good governance requires that here-and-now approach as opposed to having a set of inflexible rules.

I have suggested, shall we say, some principles that you can utilise and recognising that delicate balancing act that you're trying to do. But I have tried to suggest that in this particular case there are those reasons associated with reconciliation, justice and spirituality which suggest, according to the evidence, that there is a case to be made for this particular amendment.

**Mr FLETCHER** - The Aboriginal people have a claim because they were dispossessed and disadvantaged by a foreign power that colonialised the area and, according to contemporary values, did so in a rough and rude way. Do you see any similarities there between the contemporary Aborigines and myself, say, who is their descendant of a convict, a poor Irish convict who was quite wrongly by today's standards, transported to Van Diemen's Land, taken away from their family - both sides of the family - never to be returned again and transported in a terrible way to make a fresh start out here. Is my sense of loss any different to the Aboriginal sense of loss, do you think?

**Rev. NEWELL** - I can't assess your sense of loss, but I think I would want to respect your story and want to thank you for the story and also to say it is good to tell those stories. I would probably want to know whether it had the same systemic impact and whether or not there are issues associated with that ongoing which require the intervention of the State in order to seek to do justice. It may be there are a variety of people who could claim ongoing injustice. I seem to recall, not necessarily with regard with convicts, but people who were removed from Britain who have established, I think, that because of previous injustices that have actually been done that they need some form of systemic recognition of the problem and some systemic way of actually addressing that.

**Mr FLETCHER** - I just wonder whether this is evolution because in my memory - my father's generation, my father particularly, was terribly embarrassed and very shy about that background. In my generation I am quite proud of that background; it is a fact of life and my linkage to a convict past where we are now makes me feel good. Intellectually I feel strong about that. So I am wondering whether it is the passage of time. But that is obviously not true of the Aborigine, is it, because the Aborigine seems to be more focused, more linked, more closely tied to the past than we are?

**Rev. NEWELL** - Perhaps it is not just the past and the significant traumatic history I would say. But if we actually also look at, for me, what is the continuing story of the land and its spirituality when we see that going back that period of time, I certainly have learnt a lot from indigenous culture. Then I have actually rediscovered for myself, as a Christian, I have actually rediscovered the importance of land and sacred space to me. I've been gifted by those stories that have actually come out and I think we have a lot to learn from our past as we struggle with what our future should be.

**Mr FLETCHER** - So you recognise that you have a spiritual link to the land? I could have a spiritual link to the land?

**Rev. NEWELL** - I have started recognising that. And as a priest, having worked with people in a variety of pastoral settings, for example I worked with people in the Port Arthur incident where people came to St David's Cathedral in hundreds. That was a special place to them in terms of encountering the sacred and the spiritual. Port Arthur as a particular site has particular meanings to people now which continue in the current generation and which will change as time goes on in the same way that if you lived there when it was a penal colony it would have particular spiritual meanings associated with it. I wouldn't want to discount any of those sorts of stories, but I know that sacred space for me includes the Chapel of Hope that we have at St David's Cathedral, which is visited by people in need and which we dedicated as a result of the Port Arthur tragedy. Wide-ranging discussions, Madam Chair.

*Laughter.*

**Mr WILKINSON** - It was interesting. I must admit you've improved him though, he was calling himself 'bog Irish Catholic' before you came and you refined that to 'poor Irish Catholic'.

*Laughter.*

**Mr FLETCHER** - A bog Irish Catholic convict.

**Rev. NEWELL** - It has been wonderful to have that dialogue with you.

**CHAIRPERSON** - We do thank you very much for the time you have given us this afternoon. I did note you did quote an Aboriginal elder from Daily River, how important it is to listen, and I can assure you that the committee have listened and listened well.

**Rev. NEWELL** - Thank you, Madam Chair, for your time and I do wish the committee well with its deliberations.

**THE WITNESS WITHDREW.**

**THE LEGISLATIVE COUNCIL SELECT COMMITTEE ON ABORIGINAL LANDS MET IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART ON MONDAY 10 APRIL 2000.**

**DARLENE MANSELL**, KOOPAROONA NIARA ABORIGINAL CULTURAL CENTRE, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

**Ms MANSELL** - I have written a couple of pages to open with, if you don't mind sparing me the time to read through that. I am an Aborigine and have identified as such all of my life. I am of the bloodline of the Moonbird people. My father, now deceased, was the great chief of the Moonbird people; my mother, who is still living, is also a great custodian of the Moonbird culture. I am from the Mansell clan, born to parents who both take their clan status from the Mansell family. The bloodlines of my parents interconnect my family to the Maynard and Thomas clans. I am a mother of two children, Rory and Ralla. Both my children have non-Aboriginal fathers. However, their cultural identity is determined by their bloodline connections, family clan status, and their understanding of their responsibility with their clan business to that mob and the broader Aboriginal community generally.

I would like to offer a definition of Aboriginal culture for the purpose of understanding the context in which I speak today. Aboriginal culture involves a holistic approach where traditions are embodied in the songs, stories and symbols of the people, as well as in land and the environment, the intangible interlinked with the tangible. From an indigenous perspective, it is very difficult to separate the tangible from the intangible. Aboriginal communities can only maintain those aspects of our cultural heritage and identity through access to and the protection of locations of spiritual and cultural significance. Our right to carry on cultural traditions can only be achieved effectively if rights to land and country are acknowledged and maintained.

I hold a very strong view on aboriginality. I was born an Aborigine and will die an Aborigine. My cultural knowledge is founded on the oral traditions of songs, yarns and stories passed down to me from my mother and father. These stories I will continue to pass to my children. I have proudly referred to myself simply as a 'blackfella' or 'blackfella' - it depends which school you went to - and have grown up in a small but strong community.

I do not accept the present situation in Tasmania whereby government statistics indicate a number of approximately 12 000 Aboriginal people, which equates to literally millions of dollars. I accept that there have been casualties as a matter of consequence from Tasmania's horrific history in race relations between Aborigines and non-Aborigines, but I do not accept these present statistics on Aboriginal population. In fact I would like to point out the following issue of identity to the review. In the early 90s Federal funding was available for cultural retrieval. This is the basis of the language program conducted by the Tasmanian Aboriginal Centre. At a community meeting in Launceston the name Palawa was introduced as a traditional lingo name of identity for Tasmanian Aborigines. This meeting never accepted the Palawa identity then and, in a broader sense, the Aboriginal community of Tasmania has never accepted it. However, despite this community feeling, certain organisations and individuals have chosen to use this name as a means of identity. Through this process there has been an assumption by the broader Tasmanian community that everyone who has an Aboriginal identity is in fact a Palawa and happy to call themselves that. This is not the case at all. I and many others take great offence to it. This new Palawa movement is being propped up by non-Aboriginal government and structures because, in my view, it is a safe position of comfort zone for everyone. The Aborigines have a real identity and that makes them feel good as well as us feel good attitude. This has in fact led to much deeper conflict within our community. Aboriginality is our identity crisis and we should be looking at practical ways and means of dealing with the issue. Governments and their agencies need to understand their role in the process and not take over the process. There are not that many Aboriginal elders living in our community who have the knowledge to deal with this issue, and I challenge the review to take heed of Aboriginal warnings that it is indeed our issue to solve.

I have mentioned in my previous written submission to the review that I was a member of the Aboriginal working party to negotiate land and cultural rights with government. I have also stated in my written submission that I believe the Aboriginal community consultative process, if you could call it that, was indeed very exclusive. For example, there were blatant efforts to exclude the CTAC representative from discussions as much as there were real attempts to disenfranchise community blackfellas from the process. For example, many meetings were held at TAC offices. There is a widening gap between organisations such as the TAC and the Tasmanian Aboriginal Land Council with the Aboriginal community, and these consultations were utilised primarily, in my view, to exclude community people. I am happy to answer any questions you have on that matter. There is much more deeper and meaningful discussion needed between Aboriginal people on land and cultural issues. The so-called Aboriginal organisations, funded primarily to assist the Aboriginal community, are simply not doing their job. Instead, in my view, they are more interested in widening the gap between the rich and the poor in our community.

Through the wave of activism in the 1970s and 1980s, which I was directly involved with, the Aboriginal community has indeed founded a culture of corruption, as I call it, and a culture of survival. This culture of corruption, I would suggest, is totally ingrained within our cultural community structures in a modern day Tasmania, whether we like it or not, through the organisational process. This exclusive club, as I refer to them generally, have the monopoly on funding and decision-making, therefore they have the power. It is this very power which has been abused and which has created the situation of the haves and have-nots in the Aboriginal community.

The issue of reconciliation is integral to our growth as a healthy society. Within my submission to the review I also identified the Kooparooona Niara Aboriginal Cultural Centre project in concept. This project has the opportunity to become a truly iconic Tasmanian venture in the best interests of reconciliation. I am again happy to answer any questions you have in relation to this project. It is presently at somewhat of a standstill due to, I would prefer, bureaucratic bungling, and needs support from all levels of government as well as the broader Tasmanian community.

In conclusion, I sincerely hope this review will determine that there is a sector of the Aboriginal community that has been disenfranchised and looks at measures to ensure a more equitable and fair process for Aborigines, as much as the review has to address the broader issues for reconciliation between Aborigines and non-Aboriginal Tasmanians. Thank you.

**Mr WILKINSON** - But how can you do that?

**Ms MANSELL** - I've got a great idea, the best idea since sliced bread.

I ummed and aahed about whether I should actually - and a few people have seen me carry this weapon under my arms over the last couple of years - bring it in and show it, but I think I will formally put it in to be part of what is shown to the select committee. Some members have seen it. It relates to the Kooparooona Niara Aboriginal Cultural Centre project and it is conceptual images of what an Aboriginal cultural centre might look like if we were to create one in this State. So really that's what is in there. If you have read the submission you probably would know a little bit where the Koopa project is.

**CHAIRPERSON** - Darlene, you made comment that in your estimation there was absolute minimal consultation from ALCT to TAC and TALC prior to the Government announcement. Governments have to deal with somebody or some organisation when they are looking at any issue, whether it is land transfer or anything else. If they didn't deal with ALCT who hold title to the 1995 transfers, or the TACT who as the Aboriginal Centre have a recognition, one would say, in society as representing Aboriginal communities, who would they deal with? How would they get on the ground to get opinions if they didn't deal with those two organisations?

**Ms MANSELL** - My view stems from my cultural understanding and principles, and that would be that government ought to be dealing with the cultural structures within the community, the protocols thereof of having elders and custodians who are people of high knowledge. I don't know if it is too late to re-establish something along those lines. However, I do not believe that we are progressing with the present structures that government used to negotiate Aboriginal issues with.

**CHAIRPERSON** - Am I to interpret you as saying that the present structures we used are distancing the Aboriginal community on the ground rather than taking them with the process?

**Ms MANSELL** - I would clearly state that, yes. I am an Aboriginal woman who lives in Kooparooona Niara country, which is commonly referred to as the Great Western Tiers area, so geographically I am in the middle of the State. I have a personal history of activism from the creation of the Aboriginal organisations from the seventies on a State and National level right through. I have disconnected myself from Aboriginal organisations for some years now because I still don't believe they are actually listening to their constituency, the community blacks. We know there was an eruption a couple of years ago with unhappy Aboriginal community people with some of the corporate organisations, as I call them, the TACs of the world, and I don't think there have been any real attempts since then to heal some of those issues so that we can progressively, in some form of unity, discuss really significant issues. And so therefore I think a lot of the community viewpoint is missing from the table, a lot of the appropriate people who aren't at the table, so really government is getting a very exclusive viewpoint from a certain small sector of the Aboriginal community.

**CHAIRPERSON** - You make the comment in your submission that whilst you were a member of the Aboriginal Working Party Mount Roland was on the list and then it was taken off and the comment made that it was too controversial. What made Mount Roland too controversial but not West Point in Circular Head or Cape Barren on the Furneaux group too controversial, in your opinion?

**Ms MANSELL** - I am glad you added 'in my opinion', because I am probably the wrong person to ask.

**CHAIRPERSON** - Well, we're looking for opinions of individuals who have put submissions.

**Ms MANSELL** - I understand that there certainly were issues, because I live not far from the township of Sheffield, and there certainly were issues for non-Aboriginal people with some cultural significance being given to Mount Roland around there. I didn't understand that it was that controversial that it couldn't be talked through. I was approached as a working party member because Mount Roland was the country which the community involved with the Deloraine Aboriginal Cultural Association - which was at that time where I worked - actually identified as being culturally significant for lots of reasons. It was in the immediate sense part of the initial discussions of the working party with government. It had been proposed that government representatives would go out to these certain locations that were being named to have land returned. I was approached, as a working party member, to lead Richard Bingham and Rodney Gibbins to the top of the mountain to point out Aboriginal cultural significance to them. I said, 'Yes, I have no problem with that', and if there were any other Aboriginal community people who wanted to come to the top of the mountain too they ought to be able to come too. However, I had an expectation the trip would occur and, when I followed up about making a couple of appointments for the trip up, it never ever occurred, and those were the words simply given to me - 'the Government said it was too controversial, so it has been taken off the list'.

**CHAIRPERSON** - 'The Government said', not the Aboriginal representatives?

**Ms MANSELL** - 'The Government said' it was too controversial. That was expressed to me by other working party membership.

**CHAIRPERSON** - I believe there were no representatives of the Circular Head area on the working party, either at the Government level or the next level down. Do you think that could have made a difference as to why Circular Head in, Mount Roland out, sort of process? One understood Mount Roland and the controversy surrounding it early in the piece and didn't understand the Circular Head area and the controversy that would erupt later down the track, for instance.

**Ms MANSELL** - I did explain in the submission, as I understand, my involvement in and the initial setting up of the working party structure. It did stem from the NTRBs, which is the Native Title Representative Body set up nationally, and at a significant forum in Launceston - as I said in page 2 of my submission - there was an NTRB set up for Tasmania. It had the primary organisations, which were 8, and they were: the Elders Council, the TAC, Tasmanian Aboriginal Land Council, the Aboriginal Land Council of Tasmania, Cape Barren Island Aboriginal Association, FIA, DACA and CTAC. They were the 8 primary organisations which form the NTRB and, as a flow-on from the NTRB, I don't

think there was any significant process where our community or leaders from our community said to the rest of the community, 'Look, the NTRB stuff is over here, but we have to do some negotiations and discussions with our State, so let's set up a new structure, or what will we do?' I think it was just a matter of course, and it just all flowed from there and, whether people were happy with it or not, that is the way it happened.

I was instrumental in the northern forum of making sure for the NTRB process that Palawa representation, as far as I am concerned, was not there, because I don't accept Palawa representation has a place at the discussions of race relations in Tasmania. That is my individual viewpoint. So my primary motivation for the NTRB representation was to make sure community people would get fair representation by their so-called 'primary organisation'. I think we were successful there, but the process thereafter in relation to State issues collapsed pretty quickly, and the primary organisations were involved with it. For instance, the northern forum, which created the NTRB representation for Tasmania to discuss native title issues, west coast people, Circular Head people, had the opportunity and we were at that forum. They didn't get their case heard because they simply weren't strong enough, I suppose, in the end.

**Mrs SILVIA SMITH** - Just briefly, Darlene, I probably missed it in your explanation, so I will ask it: I think you mentioned a figure of 12 000 Aboriginals in Tasmania - I am not too sure, we have been discussing the issue of aboriginality and the number comes up all the time - I do not know whether your inference was to tell me that there were at least 12 000 and probably more or that there were a jolly sight less -

**Ms MANSELL** - A jolly sight less, Silvia.

**Mrs SILVIA SMITH** - Okay. So that brings on the question of aboriginality and these people who are claiming aboriginality in ... under your consideration to have no right to it. The legislation has a definition of what an Aboriginal person is and there are three requirements for it. I just wondered your brief views on what you thought of those three requirements being, firstly, Aboriginal ancestry; secondly, self-identification as an Aboriginal person; and thirdly, communal recognition by members of the Aboriginal community - that is, elders, et cetera. Is this the way to go from your point of view or have you a better way that people should be claiming aboriginality and we are not getting all these thousands and thousands that are making claims?

**Ms MANSELL** - I don't know about a better way; I certainly have a stricter way. I think that the definition is too loose and in my opening statement - and I think in my written submission - there is a culture of corruption and we can't not face that and I just think that Aborigines haven't addressed that issue themselves obviously. I think within that process and that culture of corruption we can see that thousands of people tick a little box. I don't know what motivates them to tick the box. Even as an Aborigine I sometimes decline to tick that box and I will make my own square and my own Aboriginal definition and I'll tick that box, quite frankly. But recent statistics I read two years ago from ABS indicated that Tasmania's Aboriginal population was secondary to the Northern Territory in terms of national figures. Now that is absolutely ludicrous.

I accept that I came from a smaller Aboriginal community when I was younger to what exists now. I was interested in Cassandra Pybus' viewpoint on identity and the issue of half-caste because I was actually referred to by non-Aborigines when I was a young girl, all my life up until I was a teenager, as a half-caste. However I had an Aboriginal father who had an Aboriginal mother and father - and I can go back generations - and I have an Aboriginal mother who had an Aboriginal mother and father. But that was what I was referred to by non-Aborigines. I, myself, knew what I was and I still, like I did then, call myself a black fella. Black fellas are becoming very rare because there are so many new cultural identities coming up these days - and that is where I make the reference in trying to understand the differentiation between the growth of the Palawa movement I think, and only they can answer you because I'm not a Palawa, I'd define a Palawa as a casualty of history who is trying to reconnect themselves with their cultural belonging to Aboriginal heritage and who don't practice nor participate on a continuing level in community affairs and cultural business. That is what I call a Palawa and they have actually been accepted by a lot of the government structures and the government agencies and



within institutions such as schools and there is that general assumption that Aborigines like myself or members of my family are Palawa but we're not, clearly.

I think the issue of identity is a very serious one because all around the world indigenous and Aboriginal communities are facing it. It's not just about here, about little Tasmania, too; it's about, I think, ultimately in a global text. Many of the native peoples of the earth have actually been discovered by the majority and in that process of discovery I think science and all sorts has played its role so that we are at a very confused state of mind. We have a very traumatised, confused Aboriginal community out there, and let me tell you, they are very traumatised. You might see that in some statistical information and justification of funding for programs and things but on the ground level there is a big gap between rich and powerful black fellas and the poor community blacks who are still struggling out there from fortnight to fortnight.

They weren't consulted on land issues. They weren't consulted. I live out in the bush. It was actually suggested to me if I wanted to participate, after I was dumped from the working party, in the negotiations I would have to travel from country to city. I said, 'Well, as far as I'm concerned, that's not a black fella way because if you're going to discuss some land business you're going to go out to your land and discuss it and not go to the city'. So I and many other community blacks said 'No, we will not go into your TAC offices or into the city to discuss our cultural issues. You come out to the land'. And that's why I make reference to a very exclusive process. I don't think that discussions have been deep and meaningful enough between ourselves to identify which particular areas and locations around the State and islands are really primarily important to us whereby we ought to be given some form of special status to protect them because, for me, it's not an issue of public access, it's an issue of public respect. I've learnt that over a long period of time, and it's not public access - that was a political strategy used by the Aboriginal working party to scaremonger other stakeholders to make everything emotive and to try to get a deal view through is my direct opinion to you all.

**Mr FLETCHER** - But Darlene, the history of the last 25 years, I suppose, shows that if the Aboriginal community is to make progress it must speak with a single voice or speak with a voice and the more you fragment the community into smaller groups the less clout they've got when it comes to the negotiating outcomes progress.

**Ms MANSELL** - That's exactly true, Tony, and your experience yourself. I mean, all of you would have probably seen that over a period of time. I have been part of that experience myself as an individual and I speak constantly to all sorts of people. I work on the outskirts of tourism in terms of welcoming all sorts of visitors to this State and I give them a strong opinion on cultural heritage, Aboriginal heritage, if they want it and there are a lot of them who want it and want an Aboriginal experience but aren't getting it because we're simply not resourced to deal with that. That's another issue before it gets too out of hand by the powers to be - the tourism opportunities that exist here. As I understand it, we'll have Tourism Tasmania and other government agencies taking control, that's what they're trying to do now, of the process.

I may point to clans in a cultural context, and I'll make the point that there were clans, there were tribes, there were nations and federations of nations prior to colonisation. You can relate that to the context of life now because we have our clan structures. There are certain protocols within those clan structures but I think from the 1970s to where we are now, in such a short space of time, our community is simply a microcosm of white society and the negative of it, unfortunate to say, because there's lot of positive out there in non-Aboriginal society, but we are a microcosm because we are a smaller populated group. I mean, you are always going to have your different hierarchal structures and that within the group but I think that survival in white society is having power. You only have power if you sit in the decision-making seat or you have lots of dough, as I understand it.

**Mr FLETCHER** - I would like to ask you a question because I'm interested in what you're saying. In your judgment, is it more important to empower the Aboriginal people by providing them with land that has tourism commercial opportunity of some nature than just to transfer land that has links to the past?

**Ms MANSELL** - I have been up-front about this before. I would like to see Tasmania create, whether it is the Kooparoona Niara, but an Aboriginal cultural interpretative centre to deal with, primarily,

reconciling - which, to me, is coexistence and trying to deal with the issues on a daily basis. And we're all different, we've got lots of trauma, not only Aborigines, non-Aborigines have too.

**Mr FLETCHER** - Yes, sure.

**Ms MANSELL** - But I think, and I said in the submission, the Aboriginal community would be taking on a liability if we took on a national park. The irony for me was that three years ago I wasted a whole year - and you know very well because I lobbied you very hard - for Government to support within the initial RFA process the return of land in the form of a national park to the Aboriginal community. We don't seek that any more.

A practical process like creating an Aboriginal cultural interpretative centre offers a lot to Aborigines and non-Aborigines, primarily Aborigines. I think the flow-off is a natural evolutionary part of reconciliation that we would be dealing with and I don't think you can define that just in a couple of words. There would be more practical progress to the Aboriginal community in terms of employment, education, and we can go on, and we have listed them within the Koopa process, rather than returning a national park that has a lot of liability, in my view - I don't understand the whole make-up but what I do understand it's a lot of liability - and that a lot of Aboriginal people don't actually get access to. Because if there is a perception out there that, as much as we can Aborigines try to get to the land, but it's different if you come from a community and you're just using your cousin's car than trying to get access to a TAC fleet car because that's simply how community blacks refer it to, and if we don't laugh about that we will cry about that because those assets are ours in fact and that is the most disheartening part of the whole process, that we are disenfranchised from community assets.

The TAC has a bigger fleet than Hertz and we can't get cars to get out to the scrub to the land, so how does it work? I am giving you direct insight into what life is like from the inside and, believe you me, it's hard. It depends where your placement is. I come from a strong clan, I come from strong parents who taught me strong principles in life. That has been my survival only, nothing else, because you have to stand on your own two feet and my head has been on the chopping block, in a cultural sense, for many years but I know my responsibility to my culture goes far beyond what we sit and say here today and what the findings are because my responsibilities go as a parent into my children, into the kiddies of the world. When you see the young ones - and I have young ones - there's a connection but there's no reality to their cultural connection to an area or a place. I want them to actually be part of going to country, going out walking country, feeling country, listening to stories of country, not reading it in a book, not wondering sitting back and feeling pressured that you don't know how it feels as a young person. If young Aboriginal people were approached by other people and asked, 'What about that area of land?' and they haven't even been there, yet they are placed in that position here and now because the powers to be of our movement want to negotiate deals that seem to suit them more than it does the community.

**Mr WILKINSON** - Your views on reconciliation - you may have heard it while sitting in the back waiting to have a say for an hour or so - and one of the questions has been the definition of reconciliation. What would your definition of reconciliation be? I heard you just mention a short time ago coexistence and -

**Ms MANSELL** - Well, I'm living it, to be honest with you. I live in a place called Mole Creek, about ten minutes from Mole Creek.

**Mr WILKINSON** - A good spot?

**Ms MANSELL** - A beautiful place - absolutely beautiful. There was once upon a time possibly, to be really frank with you, I would have ten years ago when I moved out there said, 'It's not too bad in red-neck wonderland. No prejudice, no offence'. However I'm very proud of the red-neck wonderland out there now because we're actually giving it a go about how you do coexist with different principles, value systems and ideologies. I live in a community and I'm in a minority Aboriginal community out there too with the broader stakeholder groups. The thing is I'm living it day by day because myself and other non-Aboriginal people and stakeholders with different ideologies and value systems are trying to deal with our issues on a daily basis.

An example would be the Kooparooona Niara proposal. Myself and some other Aboriginal people, who like to be referred to certainly as non-organisational, have carried the concept of creating a cultural centre as far as we can. We took it to the local Mole Creek community and they supported us and they actually don't object, where I think they may have done ten years ago, to Aboriginal initiatives - potential development within our area. I'm saying they're actually open to discussion now, which is very different to ten years ago. So I think reconciliation is actually happening - coexistence and how you deal with your past cultural traumas - and I would actually formally say that the Mole Creek example and what myself and other Aborigines have been trying to do out there is a glowing example, but not many people know about reconciliation. A lot of people laugh it off. But I think in a nutshell, Jim, it's somehow about coexistence and showing respect to the different ideologies and value systems that exist. I mean, you just have to deal with the issues as they happen. For instance, we identified Wet Caves Reserve - which I identified within the submission as another area of land which ought to be considered for cultural significance as well as - to actually build, if it was so determined by our community, an Aboriginal cultural centre there.

Obviously that issue raised the hairs on the backs of a few people up in the Mole Creek region. We're talking about their land as they see it. It's the way you deal with the process I think and I don't have the right words - I'm just saying, I'm living it. I'm trying to give it the best shot I can and I'm trying to respect that. Although I have different cultural principles to the people I live with, coexistence is about respecting those different principles that you have.

**Mr WILKINSON** - That's the underlying theme that's coming through in relation to most people who have lived it like yourself, from my understanding anyway.

**Ms MANSELL** - It's a satisfying experience; it's a wonderful experience. I thrive on the fact that I live in a community that is trying and willing to give such a sensitive issue and such an important issue a go. So I love the fact that I'm a local Molecretion these days. I felt rather displaced but I think I'm finding home.

**Mr WILKINSON** - You might have already answered it, but how do you think this process, the process of the bill that's before us now, is assisting in reconciliation or don't you?

**Ms MANSELL** - I don't think the way the Government of the day is handling the issue is assisting because I just think we've got lots of issues internally that have to be sorted out. How they get sorted out, I'm not really clear.

**Mr FLETCHER** - If land were to be transferred or if an arrangement were to be entered into to establish a centre of excellence in the interpretation of Aboriginal culture and it was to be the pièce de résistance for the State, would that be in the ownership of a statewide body or a local community group, do you think?

**Ms MANSELL** - I think the ownership would be much broader than that. I think the ownership would belong to clans and be embodied within a communal structure. I think the management probably is more specific to -

**Mr FLETCHER** - So the concept of the Aboriginal Land Council of Tasmania devolving management responsibility to a local community, is sound?

**Ms MANSELL** - Oh, God no, I don't think anything is too much sound within the hands of an Aboriginal organisation funded by Government. An Aboriginal organisation that may have stemmed and created its own birth and it nurtured itself and maintained its principles, fine, but I think many things are dangerously left in the hands of Aboriginal organisations because I'm sure you've heard, it takes almost a tick in a box, you can become, it's like an instant black fella - sorry, because black fellas are really rare - an Aborigine. And I just think that almost we've got a situation, as much as we've got leaders who are accepted prominent leaders from clans and people within our community, we've got a lot of people that actually aren't and they ought not be up there at these levels negotiating for us.

I believe something along a cultural structure. I believe that it is unfortunate that this review probably isn't getting as much access to more relevant Aboriginal elders as you should. I think that's just part of

a process which is really difficult for them to involve themselves in because again the pressure put on you - as you know yourself, the life you lead, the political life, if you buck the system, if you don't agree with the group, you're out and if you can't stand on your two feet that's hard and that's how elders get treated in our community too. If they don't toe the line with an organisational viewpoint they will be ostracised, whether they're an elder or not, don't you ever doubt that. Don't you ever doubt that, that is just a process of humanity, whether we like to hear it or not. That's why I'm so anti-organisation, because the powermongers and the groups that have set themselves up for their comfort zones are abusing that type of cultural business and law.

I think somehow there ought to be a tribunal of elders or custodians that ought to be directly involved at a high level discussion as to how certainly to manage a cultural interpretative centre, but where you go from here about aboriginality and some of these other land areas -

**Mr WILKINSON** - Who do you think are the elders we should be speaking to?

**Ms MANSELL** - Well, again, here we go. I don't want, on many levels, to get into that. I hold a firm viewpoint, from my value system that has been taught to me, as to what defines an elder, but life's a price these days and even elders have to survive. You know, whether you are an Aboriginal or non-Aboriginal elder, that really life's quite difficult. A lot of people - young people and older people - will take representation on boards for a sitting fee which will help and be a subsidy to their weekly or fortnightly income. That's a reality of life.

**Mr FLETCHER** - Darlene, the elder system wasn't part of the ancient pre-history, was it? There were strong chiefs. They didn't have elders or advisory councils in their set-ups.

**Ms MANSELL** - Well, no, I think they had prominent members along the lines of chiefs and in that context, as I describe my father, even though my father was killed twelve years ago he was a great chief in a contemporary context. You can go out and ask anybody in the Aboriginal community and if they didn't know who he was well you would want to question their aboriginality for a start. But he was known as a great chief and accepted by other clans and that was because of his cultural knowledge in relation to his cultural teaching of mutton-birding.

But I was interested in that point you make. I think it does relate to clans these days. I think it's the status of clans that we have to hold on to. But recently I was disturbed about a process, yet again another program, or process of trying to share information, I think was the motivation, but in the end elders are placed in the position where they actually sell cultural knowledge, I suppose you could say, because it's all at a price these days. That's where I think we've really gone wrong. Because there is this need by non-Aborigines to find out everything Aboriginal you will find anybody who will tell you anything or sell you anything at a price and it's really how gullible who you believe.

I have a teenager who is fourteen and he's in the high school system in grade 9. All my life when I grew up in Tasmania and went to Brooks High School in the north there was an identity crisis process there - all the constant discrimination you suffer. I find it very difficult because you have got an institution which is teaching one thing which really isn't true and really isn't anything we've approved as a broader Aboriginal community or different clans even, and it's even got uglier and messier in there now. I mean, once upon a time I was a descendant or a half-caste but these days they say to Rory, 'Are you a Palawa, are you an Aborigine, are you black fella, are you part of this one - some of the names I can't produce, I couldn't even attempt to, some of the new tribes that are coming up. So I think we've actually regressed a lot in terms of that identity issue. It's unfortunate.

I do want to make a point about the cultural centre concept, and some people are sick of hearing it from me and it was something I probably brought up with Tony Fletcher four years ago and I have still been on about it ever since that day and I probably will go a long way yet with it. I believe this proposal is one of the best proposals that you could offer this State in terms of reconciliation. Even though these might be cultural images and concepts of an Aboriginal cultural centre, I believe that it is really important, because it's a big issue out there, that a lot of non-Aboriginal people don't have any understanding of Aboriginal history nor present day culture or aspirations.

We approached Henry Reynolds recently, because we obviously knew that he'd been thinking about this idea for a while too, and he likes the idea as much as we do and, quite seriously, we have sought to have a meeting with Government about this process. This has been put under the nose of the Premier and other high level people. The Office of Aboriginal Affairs has offered no help to this project and I have much evidence to support that statement, and I suspect that's because it's from non-organisational black fellas, commonly known as troublemakers by those people. But we are simply people whose voices aren't being heard and we are absolutely sick of it.

This should be given support at the highest level of government down to local government. We have been working with non-Aboriginal people within the Meander Valley area as much as the Mole Creek region on this proposal. There is a lot of support. There is also market research figures we can give you in relation to tourism that 86 per cent of international and interstate visitors to our State are seeking an Aboriginal cultural authentic experience. Out of those 86 per cent of visitors our market research actually proves - which was astounding for us and we were just rapt with it - that 90 per cent of those visitors actually want an authentic product if they can get it - that is, rather than the boomerangs that are made around some little souvenir shops around Tassie; you can buy them for \$25 - they actually want a basket Darlene's weaved because of whom I am, because of the energies I have put into it and an authentic product at the end of their experience.

We gave those figures - that market research was done four years ago. I've been working - attempting to work - with Tourism Tasmania to get some product development with cultural products. Obviously because I'm probably seen as the chaos factor in it all, the troublemaker, you don't get a lot of support. Recently the example - I mean, I've worked in tourism for seven years and Tourism Tasmania is presently trying to pull together a forum to discuss the future opportunities of Aboriginal tourism in this State - I think as a reaction to this review too - and they've just finished a research project and they came nowhere near me even though organisational representatives said, 'You must go and speak with Darlene because she has the experience and the knowledge' they choose not to. So that's the way it works.

But I think that the Koopa cultural centre, as I've said to many people, ought to be given priority and ought to be built before the next big major celebration of Tasmania, such as federation. We proposed something that probably costs - and these are guesstimation figures - \$4 million but with the millions and millions and millions of dollars which come federally for Aboriginal affairs and State dollars, there is still room enough to fund and support a project like this and we cannot work out why it hasn't been given the support. We've been lobbying hard at the ground level. We have a lot of white fellows, a lot of non-Aboriginal people, and they are really supportive that this project gets the high-level support but it's not there quite yet.

**CHAIRPERSON** - Thank you, Darlene. I thank you for your submission and for your patience with your friend and family as well. We thank you for your presentation here today and I can assure you it will be taken into consideration.

**THE WITNESS WITHDREW.**