

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

**Ms KAYE McPHERSON**, MANUTA TUNAPEE PUGGALUGGALIA HISTORICAL SOCIETY WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

**CHAIRPERSON** (Mrs Sue Smith) - Thank you for your submission to the committee and I look to asking you to speak to the submission and then the committee will ask questions if necessary. We have a time line as per the others of 45 minutes, if necessary, and we do attempt to keep to that time line because the committee has other work to proceed with. So if you would like to make comments on your submission that is before each member of the committee.

**Ms McPHERSON** - I would just like to clarify two things from the previous speakers. They were talking about the TAC. The TAC actually did represent the entire Tasmanian Aboriginal community until about 1996. In 1995 they changed the rules where they only represented those people from Bass Strait Islands - Dolly Dalrymple and Fanny Cochrane-Smith - and they brought out this - I do not know whether you have seen that -

**CHAIRPERSON** - If you perhaps would like to read what the front of it says and then it is in -

**Ms McPHERSON** - It is the final report of Community Consultation on Consultancy on Aboriginality in Tasmania by Kouri Consultants Pty Ltd, February 1996. On page 19, in section 8, they state that they want to put a representative of their organisation into every government body within the State, which they have succeeded in doing.

**CHAIRPERSON** - Are you happy to table that document?

**Ms McPHERSON** - Well, this is my only copy. I would table it otherwise, but you can get it from ATSIC, I'm told. Sorry, I can table this one.

**CHAIRPERSON** - Thank you.

**Ms McPHERSON** - Mr Lesage and Mr Wolf were also talking about aboriginality and how difficult it is to actually prove your aboriginality. I have made up a folder for each member of the committee. I have had personal experience in the last eighteen months on losing my aboriginality for Abstudy. I have included in this how they do it, what is involved, the process that you go through to get it back. Mine was actually based on an illegal anonymous letter which I got through Freedom of Information. I'm not going to discuss this now because I think we have had sufficient on aboriginality, but I would like to table it.

I own a publishing house. I also have a historical services and TAE, which is the Tasmanian Aboriginal Education, has currently stopped all my books being accessible into the schools in Tasmania. I will table documentation about that as well, which I am dealing through the Justice Department, and I am currently suing them for the defamation of character and slander and through the Justice Department I have charged them with racism. There is a copy for each member with that as well because I thought by doing that it will give you some idea of what the situation is actually like here.

I don't really know what you would like me to say beyond my submission, it is a very rambly sort of submission, but I thought it gave you quite an overview as to the current political situation here. Were there any questions that this raised that you would like clarified?

**Mr FLETCHER** - I have just been reading your paper, No. 70. I think you may have just made a couple of basic errors that I would like to correct for my own reading. In the first paragraph you refer to the Tasmanian Aboriginal Land Council as being the body to which the land has been handed back; in actual fact the land has been handed back to the Aboriginal Land Council of Tasmania, a statutory bound body which is quite separate and distinct from the TALC organisation.

**Ms McPHERSON** - Okay.

**Mr FLETCHER** - I am just wondering whether you were aware of that or whether that was an oversight.

**Ms McPHERSON** - No, I actually wasn't aware of that. I assumed that they were the one body and I was informed that they actually were the one body now. They used to be separate in the past but I was informed that they are now the one body because the only representatives on that committee are from the dominant Aboriginal group in this State. There are no representatives on any committee in this State dealing with any Aboriginal issues that are from free women who are with European men, they are all from documented Aboriginal people. And that is the big definition in this State, there are two communities, not one.

**Mr FLETCHER** - As a matter of law, the Parliament in 1995 set up the statutory Aboriginal Land Council of Tasmania. Representatives are elected to that and that body is charged with holding land in perpetuity for the Aboriginal Land Council so their role is as a land owner on behalf of the Aboriginal people, whereas TALC is not set up under statute - I am not sure how its members are established but I think elected - and they are more land managers rather land owners. So the bodies are, at law, quite separate and distinct even though they may have the same members participating at the management level.

**Ms McPHERSON** - Doesn't that clause a conflict of interest?

**Mr FLETCHER** - Well, that is something for the Aboriginal community to sort out.

**Ms McPHERSON** - Well, no, it's not - it's actually for you to sort out. I mean, you are the people with the power, you are the people who are making the decisions and it is up to you to ensure that the representatives from the second Aboriginal community in this State, which has no elective voice because we can't actually get anyone to listen to us, this is the first opportunity I have had where people are actually willing to listen to what I am saying and it is your power and I think it is your right to ensure that representatives of the second group are actually on all committees so that you actually get a balanced -

**Mr FLETCHER** - I am not sure of your definition of 'the second group'.

**Ms McPHERSON** - The second group of people who are descendant from free Aboriginal women and European men and we are currently the people that they are removing from the aboriginality confines of Tasmania. I mean, they are denying us our heritage and they have completely removed us. We have no access to anything because we don't exist and you will find it's documented, how they do it, in the folder I have just given you. So I think you really should ensure that there is this representative from the second group, especially with the land hand back.

**Mr FLETCHER** - But doesn't that all come back to the core issue, and the core issue is one of the test of aboriginality: is a person an Aborigine or not? I can accept that there is some more work to be done in regard to that matter.

**Ms McPHERSON** - From a Federal guideline, yes. From a Federal guideline, which includes everybody who can actually be identified as Aboriginal from their community, from a whole variety of reasons. In this State you are looking at actually changing that, so you are giving even more power to the dominant group. The new changes are obviously their want, it is not change that the Aboriginal community as a whole want so therefore it is up to you to really seriously consider what you are doing and how much power you are giving to an already overburdened, powerful group.

**Mr FLETCHER** - The fact that this committee is here listening to you speak this afternoon is probably some evidence that that process is in train.

**Ms McPHERSON** - You are willing to listen, yes, but can you actually change things or make sure things become balanced again? They have become very unbalanced in the last four years.

**CHAIRPERSON** - Why would you believe that in 1996 the process changed?

**Ms McPHERSON** - It is documented in that book. Sorry to interrupt you, but it states in there their proposals, what they intended to do, and they implemented them. In 1996 in January I had a car accident and I was out of commission for two years. When I came back to starting to do things again I realised they had placed everybody they said they were going to do, just from that report. They now have people in all areas.

In the second part we were talking about my books. They actually have duly elected bodies that are ministerial advisers. These ministerial advisers are from this dominant Aboriginal group, there are no representatives from anyone else who doesn't have a genealogy.

**CHAIRPERSON** - What I am trying to ask is why would you believe that this powerful, dominant group would not see an advantage in numbers because numbers is power, to a degree. What would be the purpose behind them not accepting, in your opinion, some people as Aboriginal over other people? How is it advantageous to that particular organisation?

**Ms McPHERSON** - Power, money and culture are an issue. They have unlimited power, they have unlimited money. You might say that money is limited but it's actually not; they have access to unlimited funds because they control all the funding. I can't get any assistance to do any research because I have to have approval from the dominant group. It is set up in such a way that if I want to apply for funding, the people who approve it are part of the dominant group. It's like punching clouds. To do anything, I have had to go outside this State to fight things that are occurring in this State, and I am now finding they have representatives in other parts like in Canberra who are sending the information back to here.

They effectively closed my business in June last year - for Tasmania, not for the rest of the world or mainland Australia. I have applied through Fair Trading consumer protection, and I have received a letter last week and it has all been sent back to Tasmania. So I have to refile again from Tasmania, and that is what happens. You do not have any say.

**Mr WILKINSON** - What business was that?

**Ms McPHERSON** - I own the Manuta Tunapee Puggaluggalia Publishers and I write cultural heritage books. They don't want them to be seen in schools, they actually sent a letter to every school in this State telling them not to buy the books, and gave them a phone number. When people rang up they told them they were inaccurate. I am a fully qualified historical geographer and a cultural historian with twenty years' experience. The person who complained, to my knowledge, doesn't have a degree, doesn't have any background in historical information. She is a clerk; she might have an exalted executive position but she is a clerk, that is her training and her background. I don't have a problem with clerks, I think they are important but they don't have the background to make the claims she has made.

**CHAIRPERSON** - The comment has been made in this entire process that we have three different streams here: we have ATSIC who have the money through the courtesy of the Federal Government; we have ALT who have the title to the lands that were transferred in 1995 and would have the title to any further transfers; then we have the local communities who have the knowledge and the local ownership of the areas to be transferred and in some manner there is a need to bring all these groups together, it is no good having a title if you do not have access to funding. What good is the funding if you do not have some purpose to put it to, and so on. Would you like to make some comment on that particular -

**Ms McPHERSON** - I don't have a problem with the way it is set up, I think you need a governing body. I have a problem with the people who administer it, I have a problem with the committees that are set up. I have a problem with the background of the people who are making decisions because they do not represent the entire community, they represent only one small portion - I think it is about 210 they actually represent. At last count there were approximately 15 000 Tasmanian Aboriginal people - or 13 000, depending which way you look at it - but they prefer to keep it around 2 000. With 2 000 people it is manageable.

A lot of their perspective is actually based on misconceptions in history. They keep insisting that G.A. Robinson's history of the roundup of Tasmania is accurate - it wasn't. They like it the way it is, and while they have power and it is their representatives on all the organisations, then you are not going to get a fair discussion about what happens to the land. The organisation is okay, you just need to change the membership or broaden the membership.

**CHAIRPERSON** - There would be some who would say that the role of government and parliament is to agree or otherwise on behalf of the people of Tasmania, to transfer areas of land to the Aboriginal community and then as such it is not the right or the role of the European community, the Government, the Parliament et cetera to interfere in the management of that particular process. Do you want to make a comment on that particular process? Why give us the land and then tell us how to organise ourselves or manage it or set up our structures et cetera.

**Ms McPHERSON** - I think you need structures to do it but I think it should be like a collective where you have input from a variety of places, not just one small group putting the input in. In Tasmania in particular our entire heritage has been rediscovered by non-Aboriginal people; it is the non-Aboriginal people who have rediscovered our rock art; it is the non-Aboriginal people who have rediscovered a lot of the sites. It is not Aboriginal people who knew where the sites were; it is non-Aboriginal people who have rediscovered them. The non-Aboriginal people who have rediscovered them, their opinion is not considered, they don't want to know the knowledge they have. I know of an example which happened in November last year where a very well-known widow, who was a team partner with her husband, they rediscovered aspects of Premengana that had never been seen before. TLAC came in, took everything she had - she was donating it to the museum - they came in and took everything that she had. They did not want her opinion, they didn't want to know where she had got the items from, they just took all of the photographs and now they're not accessible.

It is no good taking the implements that they had found if you don't know where the implements came from, if you don't have the history of what she had. They don't want to know that, all they wanted was to get everything back. They have actually lost so much of our history, I have access to that and I am currently using it but I mean if you don't accept the non-Aboriginal part of our heritage there is no point. It has to be a dual thing and you have to take into consideration the people who actually made the rediscoveries. Does that answer your question?

**Mr BAILEY** - It seems to me a common theme coming through that it is the structure of the Aboriginal Land Council of Tasmania which is the problem, would you agree with that?

**Ms McPHERSON** - Yes.

**Mr BAILEY** - If, for example, instead of having those representatives designated to particular areas, the membership of that council was to come from the statewide franchise and not from regions, how would that structure appeal to you?

**Ms McPHERSON** - I think it needs to be even more simple. I think you need to have representatives from the documented dominant Aboriginal group and representatives from the undocumented non-dominant and basically unknown Aboriginal group; I think you need to have representatives from both. Within the structure if you have representatives from both I think it would work.

**Mr BAILEY** - How would you say that that could work, what structure would you say that should be put in place to implement your thoughts now?

**Ms McPHERSON** - Everything in this State is based on genealogies. Genealogies can only go back so far. I have done a lot of work in the archives because most of my research is archival. So you cannot base it on genealogies, you cannot base it on that sort of thing. It has to be on family histories as well, there's the two types, so you'd have to have the two groups. There are about 8 000 of us who do not have a genealogy. I personally have not a hope in hell of getting a genealogy, a lot of the records were burnt in a bush fire. Because of the shame factor it is only recorded in oral history. Well, that's not accepted here and it is not accepted if you change the ATSIC ruling it will even be less accepted. You will have this dominant groups definition of Aboriginality. But if you leave the ATSIC ruling then you can make an allowance for the two community heritage groups to be part of the committees.

**Mr BAILEY** - Are you saying that the responsibility should devolve and the ownership of land should devolve entirely to the local communities?

**Ms McPHERSON** - No.

**Mr BAILEY** - There still should be a central system?

**Ms McPHERSON** - There should be a central system, yes.

**Mr BAILEY** - So it's a question of how the membership of that system is attained?

**Ms McPHERSON** - Yes.

**Mr BAILEY** - And whether it be regionally or statewide.

**Ms McPHERSON** - I think it should be statewide but you should also make allowances where all Aboriginal people have access to all Aboriginal land - as it stands now we don't. In May last year I was at Greens Creek, they knew I was Aboriginal, I went down to Sandy Cape and they knew I did that trip solely to look at the Greens Creek rock art and Sandown Point rock art and the hut sites at Sandy Cape. I stood within 5 metres of the rock art at Green Point and I was told I wasn't allowed to look at it, I had to show sensitivity to Aboriginal culture - and that was the ranger and that's how it stands now. I was at Riawannah - I did a major project, second major when I got my first degree and I did it on Tasmanian Aboriginal rock art and a correlation between tribal boundaries. They had the TALC group down there doing parks and wildlife management and they took them to four art sites and they didn't include me because I wasn't accepted as Aboriginal and that was the time I was at Riawannah University as an Aboriginal student and I never got to see the arts site and I am writing a thesis on Aboriginal art.

**CHAIRPERSON** - As you've been through this process, how does a park ranger identify Aboriginal and non-Aboriginal on the ground in those particular areas?

**Ms McPHERSON** - Usually it's friends, relatives and cousins and that's how you know how people are and it's the dominant groups again. If they don't know you or they know you're not part of their organisation then they're not going to show you. It comes down to a very personal sort of level and if you're not liked - as Mr Lesage said - they can stop all sorts of things, you end up looking like a sprinkler system.

**Mr WILKINSON** - So, say, if I could prove that my great great grandmother was Truganinni or something like that and I went to the TAC and said, 'I can prove that my great great grandmother is Truganinni, I haven't any records because they got burnt in the 1967 fires' what do the TAC then say?

**Ms McPHERSON** - How do you prove it? If the records got burnt, how do you prove it?

**Mr WILKINSON** - From information from relatives, uncles -

**Ms McPHERSON** - It is not acceptable.

**Mr WILKINSON** - Not acceptable.

**Ms McPHERSON** - In the report I gave you you have a definition of aboriginality in this State. It has to be documented going back to what they call a 'tribal ancestor' - which I prefer to call a 'traditional

ancestor'. There is no such thing; there is no documentation anywhere that goes back to a traditional ancestor. It is all right for the people to say on Cape Barren and Flinders that 'we have documentation of our aboriginality and we can back to a traditional person'. That is oral history; there is no documentation to say that what they are looking at is Robinson's journals and Robinson was not a very accurate recorder and while, okay, they might have a tenuous genealogy that will take them back to a traditional person they actually don't have actual documentation that does it..

**Mr WILKINSON** - Getting back to that, what else have I got to show? If I haven't got documentation because it has been lost in the fires, if my relations can throw some light on the issue that I am just by oral evidence, what else do I have to show?

**Ms McPHERSON** - You can get documentation with a corporate seal and if you are like me they can deny that it is acceptable and then I had it overturned by Jocelyn Newman.

**Mr WILKINSON** - What do you mean by that?

**Ms McPHERSON** - A corporate seal - it is in your green folder - it is what you have to have in this State to prove your aboriginality, it is a worthless piece of paper. You can have fourteen of them and they'll only accept one.

**Mr WILKINSON** - How do you get that?

**Ms McPHERSON** - You have to be known to a corporate organisation.

**Mr WILKINSON** - A corporate organisation.

**Ms McPHERSON** - Yes.

**Mr WILKINSON** - Being what? A corporate organisation or -

**CHAIRPERSON** - One of your Aboriginal corporations.

**Ms McPHERSON** - Yes.

**Mr FLETCHER** - Aboriginal body.

**Mr WILKINSON** - Being your Tas Aboriginal Centre of somebody like that.

**Ms McPHERSON** - The Tasmanian Aboriginal Centre won't do it. I have two pieces of paper in the green folder where representatives from the Tasmanian Aboriginal Centre gave me provisional Aboriginal recognition. That was not accepted, a letter from my community wasn't accepted, the corporate seal wasn't accepted and they sent it to Canberra. It is punching clouds, it is the only way to describe it and it is a waste of energy.

**Mr WILKINSON** - I can see what your saying and understand that you feel justifiably upset when that occurs. What about the people who, for whatever reason, want to become part of the community, even though they have no Aboriginal heritage? Because it would seem to me that the TAC would be arguing that they're trying to stop those people saying that they are Aboriginals?

**Ms McPHERSON** - I can't see why anyone would want to say they're Aboriginal if they weren't, for starters. There is nothing to gain in being Aboriginal, it is just part of your heritage, who you are. There are people who have been raised to believe they're Aboriginal and then found out they're not Aboriginal, but in traditional Aboriginal culture you don't have to be Aboriginal to be Aboriginal. In traditional Aboriginal culture in the past your spouse was accepted as belonging to the community, you could have initiation ceremonies where you actually became initiated into the community - and that is very documented. I should imagine the same would have happened in Tasmania in the past. But that makes you Aboriginal by initiation, it doesn't make you Aboriginal by blood or heritage. I don't understand your question.

**Mr WILKINSON** - I know what you're saying. People who can't prove it because they lost their documentation for whatever reason feel justifiably upset, but are the Tasmanian Aboriginal Centre or TALC or ATSIC or whoever it might be saying, 'Well look, there are people for whatever reason who want to say they're Aboriginal even though they're not. Therefore we have to say to those people, "Look, no, you're not unless you can prove otherwise".'

**Ms McPHERSON** - You have oral traditions, you have people in the community where you live who know that you and your family have been recognising and acknowledging your aboriginality, in some cases for generations. To have someone who has a piece of paper - that is a white man's piece of paper by the way, not an Aboriginal piece of paper - to say that we have this genealogy who say rah, rah, rah, our tribal ancestor, that doesn't make you any more Aboriginal than the person who does not have that piece of paper and to have the piece of paper is a white man's issue, it is not an Aboriginal issue. Aboriginal culture is based on oral traditions. Everybody knows who your family is and in Aboriginal culture it is the mother who is the genealogist, it is the mother who passes down the heritage. You follow your matriarchal line, there is no patriarchal line, it is a matriarchal line and they are denying our matriarchal image.

**Mr FLETCHER** - The previous witness argued that the study of genealogy was really important, that unless there was a genealogical link there was no basis for proceeding any further -

**Ms McPHERSON** - It is very important.

**Mr FLETCHER** - and indicated that the family tree was the record of that. You seem to be saying to me you don't believe that the family tree is that important -

**Ms McPHERSON** - No, I'm not saying that.

**Mr FLETCHER** - that indeed many people can't produce a family tree.

**Ms McPHERSON** - It is important if you can do a family tree and family trees are important to your heritage, it is a white man's way of doing it, that is my personal belief.

In this State you need to have a genealogy, you need to have that piece of paper with a family tree, so therefore genealogists are very important. But the records here, whether you're black or white, are incomplete. If you were a convict you have about a 90 per cent chance of actually having a genealogy coming out of your records and a 10 per cent chance that it's not. In the 1930's they dumped bags of archaeological material into the Derwent - what was in that? There were no laws to make you record people. There are about ten Aboriginal people recorded prior to 1830 by name. There are references and allusions to Aboriginal people doing a variety of things. Mary ran around with bushrangers - who was Mary? Then they used her to capture other bushrangers but they don't record who they are. They talk about half a dozen children in the orphan school but they're only just by name and it's a white man's name, it's not an Aboriginal name.

The implication in this State is that all the ancestors died childless. No men, when they have no women of their own kind, are going to allow Aboriginal women to not cohabit with them. So you're going to have masses of illegitimate children who got ignored when the European women came in.

**Mr FLETCHER** - I'm just having some difficulty identifying the second group to whom you refer, the free women. On the one hand we have the descendants of people on the islands, the sealers and the straitsmen, I suppose by way of a general definition, and then the descendants of the two women concerned and then the third group, the 'free women' I think you called them. Just identify that group of people for me. Were they Hobart people or southern people?

**Ms McPHERSON** - No, they were Tasmanian people. You can actually define it as the people who were removed from Tasmania, a couple of whom came back, and those who never left Tasmania - the Tasmanian mainland - who stayed here. The women were with European -

**Mr FLETCHER** - Put this into the historical context for me. Is it pre-Robinson or post-Robinson or post-Flinders Island?

**Ms McPHERSON** - Robinson is someone who too much has been made of, he left a journal, it happens to be the only well-documented journal in existence or known to be in existence or known to be in existence about Tasmanian Aboriginal culture. The parliamentary papers, there are journals, there are diaries by other people, there are newspaper accounts, there are a variety of records which show that not everybody was rounded up.

**Mr FLETCHER** - So what you're saying - I'm just trying to put it into context - is that the notion that Robinson took the remaining Aborigines eventually to Wybalenna is incorrect -

**Ms McPHERSON** - Yes.

**Mr FLETCHER** - that many Tasmanian Aboriginal women perhaps stayed behind in Hobart at that time or in the southern part of the State.

**Ms McPHERSON** - No, in the whole of the State. There are records dealing with women who were up north, there are records dealing with women on the east coast, there are tribal groupings on the east coast in the 1880s - and I have only found one very vague account of that. There was a tribal ceremony held every year up until 1860 - this is way after Robinson. A lot of this stuff is very well documented, some of it might just be three lines in somebody's journal but it is enough to show that Robinson and the myth that surrounds Robinson was incorrect.

**Mr WILKINSON** - It is pretty naive though to accept that he rounded everybody up, isn't it?

**Ms McPHERSON** - Exactly.

**CHAIRPERSON** - So would you believe that perhaps some Aboriginal women were protected from that rounding-up process by cohabitation with European men? Is that really what you're trying to say, that there would be a lot who would have been protected by that process that they had married or were cohabiting with European men and thus remained within the structure?

**Ms McPHERSON** - Yes. Also you have to remember at the times as well there was a bounty on the heads of Aboriginal - on their ears - and that's still in law I've been told. It was never repealed because we were made extinct so they didn't have to repeal it.

**Mr WILKINSON** - How much was the bounty?

*Laughter.*

**Ms McPHERSON** - You've got the parliamentary papers using the extinction of the Tasmanian Aboriginal people as a political move and that's where it all goes as well. It is a political thing for us to become extinct in the past and now it's a political thing where we're represented by the dominant group. We all have to have been survivors of the round-up.

**Mr WILKINSON** - Can you supply us with a copy of the documentation to assist us, to show that it was obvious as the nose on our face that people weren't all rounded-up? You were saying in your parliamentary debate - are there other documents to show that.

**Ms McPHERSON** - Yes, but it would take me some time. I have it but I would have to get it out.

**Mr WILKINSON** - I thought you would have found it in your thesis that you would have had to prepare.

**Ms McPHERSON** - No, I didn't do that part of it. Justice Merkel's decision shows that in the Federal Court. I mean it's there. I'm currently writing a book which has been delayed in coming out so I'm very time-constrained at the moment. I can get it for you but it wouldn't be before you had to make a decision. Sorry, you'll be getting something on that in the morning.

**CHAIRPERSON** - You've got some good helpers there.



**Mr BAILEY** - On the basis that my memory of the definition of Aboriginal person at the Commonwealth level is the person who claims to be of Aboriginal descent and the community accepts that situation.

**Ms McPHERSON** - Yes.

**Mr BAILEY** - On that basis, when you were denied your Abstudy by Senator Newman, what was the -

**Ms McPHERSON** - No I wasn't denied it by Senator Newman. I was denied it by an anonymous letter at Centrelink in Hobart. I got it back through Senator Newman.

**Mr BAILEY** - That it was denied - your Abstudy?

**Ms McPHERSON** - No. My Abstudy was denied at a State level and I got my Abstudy back on a Federal level.

**Mr BAILEY** - Oh, you got it back on a Federal level.

**Ms McPHERSON** - I got it back on the Federal ruling.

**Mr BAILEY** - I'm sorry. I misunderstood.

**Ms McPHERSON** - I had a letter from my community and my community is Risdon Vale. I've lived there since I was thirteen so that's my community. I had a letter from an Aboriginal woman in my community saying that I was known to be Aboriginal for over twenty years in the community. That wasn't accepted. The provisional Aboriginal documentation from TAC members wasn't accepted. The corporate seal wasn't accepted at a State level and they sent that to Canberra because they had problems with the people who gave it the corporate seal so it was actually accepted on a Federal level by Senator Newman - or Senator Newman's office.

**Mr BAILEY** - Yes, I misunderstood that so I'm pleased I asked the question. But on the basis that it's the electoral role, if you like, for elections for the Aboriginal Land Council - if it were to happen that the Commonwealth definitions stayed in place and those that were receiving or had received Commonwealth benefits were automatically put on the role as having qualified, you would then have only those who are outside who would have to then justify in more detail their Aboriginality. Would that be something that would go towards redressing the imbalance that might be currently on the role where the Aboriginal Land Council can deny that right which ultimately would have to go through under the current proposed legislation to the Supreme Court with a final appeal, which would cost a lot of money or Legal Aid would be denied? Would you advocate that in relation to aboriginality and an entitlement to be on the roll if the Commonwealth definition and you could demonstrate that the Commonwealth accepted your aboriginality, that that would automatically put you on the role.

**Ms McPHERSON** - It should do, yes. I mean that is the only fair definition of aboriginality. Australiawide we should all have the one definition of aboriginality which is now currently in existence, except in this State where they have a State definition of aboriginality which effectively denies more than half of us our aboriginality.

**Mr BAILEY** - No, our definition does -

**Ms McPHERSON** - Yes, that's what I'm saying. That's the one that should stay there -

**Mr BAILEY** - Stay there, yes.

**Ms McPHERSON** - but then you must have a way of implementing that as a reality.

**Mr BAILEY** - In relation to getting on the roll?

**Ms McPHERSON** - Yes.

**Mr BAILEY** - Yes, well if that became an automatic part of the legislation that would satisfy a lot of your concerns.

**Ms McPHERSON** - Oh definitely. A piece of paper doesn't make you Aboriginal. Recognition in your community helps to make you Aboriginal because you're learning from other Aboriginal people in your community. It's so important to have elders, where you can learn from elders. It's so important to have other community members who are Aboriginal because you learn from community members. You learn about their past, you learn about their hopes for the future, you learn about your past, you learn about your heritage and it's a community thing. It's not one person saying that this is true and this isn't true. It's ten families with ten different stories telling you what's happened and what is real. That is your community and that's the people who should actually be able to say 'you're Aboriginal' because it's the community you live in. It's not people from Cape Baron Island who say, 'Oh well, you're not Aboriginal because you don't have a well-known name' - that's ridiculous. But that's what it's come to. People who have always been here, who have never left, and their heritage is tied with the land here. I mean we've walked this land for tens of thousands of years. We've never left this land. This is our land and the people who have been taken to the islands - they were severed from our land and they spent 200 years almost with no ties with this land. They've only been back here 30 years and they're telling us what we can do with our land and it's the non-Aboriginal people in power structures and committees like this in the past have given them that power to actually make these statements.

**Mr WILKINSON** - What happens in other States?

**Ms McPHERSON** - In other States you have a lot of political problems as well.

**Mr WILKINSON** - So to the same degree.

**Ms McPHERSON** - No, not to the same degree. In other States aboriginality is defined by community. It's not defined by one group of people who want all the power.

**Mr WILKINSON** - And that's in all other States - to define aboriginality.

**Ms McPHERSON** - Yes. I mean you'll have group differences, that's human nature, but you don't have one dominant group saying that the other group isn't Aboriginal.

**Mr WILKINSON** - So Tasmania's peculiar as far as that's concerned.

**Ms McPHERSON** - Oh definitely, historically peculiar, yes. You're looking at a culture who's traditional people are extinct. I mean, they don't like that term but it's true. All our ancestors were murdered. They were part of a government body genocide. That is so well-documented - people don't want to know about it but it's true. Some of the tales that happened to the ancestors are absolutely appalling. They used them for dog food, for god's sake! They shipped them off in barrels to museums. Nobody wants to know that part of our history and we've got these people coming from the island who don't even accept their own non-Aboriginal ancestry and don't want to know their own non-Aboriginal history. They just want to be Aboriginal. You can't have one part and not the other in this State. On the mainland you can be just Aboriginal. There are some groups where they've had no non-Aboriginal input into their families but in Tasmania you can't; in Tasmania you're both. We're survivors of a genocide and it's not right that one group has all the say. It should be all Aboriginal people in this State, not one group.

**CHAIRPERSON** - Thank you, do we have any other questions from the committee? If not, would you like to make any closing comments.

**Mr FLETCHER** - Could I just ask a very personal question, which has nothing to do with the committee work - what's your mother's maiden name, Kaye?

**Ms McPHERSON** - My mother was an Archer from Sydney. My father is Keith Farrell.

**Mr FLETCHER** - Oh right.

**Ms McPHERSON** - I look like my grandmother, who was May Wood.

**CHAIRPERSON** - He asks this question of every young lady that comes in.

**Mr FLETCHER** - No, my wife had a very good friend named Kaye McPherson, as a matter of fact, but that was her married name and her family line was Bretons from down Cygnet way.

**Ms McPHERSON** - That's my married name. My ex-husband comes from Dundee so it's a real Scot's name but my maiden name was Farrell and my Aboriginal great-grandmother was Emma Wilson.

**CHAIRPERSON** - Thank you, Kaye. Do you have any closing comment you wish to make?

**Ms McPHERSON** - Only that I'd like you to really think well about the power you've got and you have an incredible amount of power for this committee and you really should look well into making it fair for Tasmania, making sure that both community groups have representation in our land. It is so important to us to have our land and we should all have the right to walk on it. It should not be up to the dominant group to say, 'No, you can't access it'. You know, it should be there for everybody and it should also be there for non-Aboriginal people.

**CHAIRPERSON** - Thank you very much. We appreciate your submission and your time this afternoon.

**THE WITNESS WITHDREW.**

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

**Mr LANCE LESAGE, TASMANIAN OF ABORIGINAL DESCENT ASSOCIATION, ABORIGINAL CORPORATION WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.**

**CHAIRPERSON** (Mrs Sue Smith) - Thank you, Mr Lesage, for your attendance today. If I might, in the first instance, ask the question: are you representing the Tasmanian Of Aboriginal Descent Association, Aboriginal Corporation?

**Mr LESAGE** - Yes, I am.

**CHAIRPERSON** - Thank you.

**Mr LESAGE** - If I could start. I am an Aboriginal person. I was born an Aboriginal person and identified as an Aboriginal person from my earliest awareness, as did all members of my family.

In 1962, myself and my cousin, Edward Maxwell Stevenson, who was the first ATSIC Commissioner of Tasmania - the very first - formed an organisation called the Tasmanian Brotherhood League. It was a league of what we called then 'persons of Aboriginal descent'. In 1969 we formed an organisation called 'Tasmanians of Aboriginal Descent Association' which in latter years was registered as an Aboriginal Corporation and all members of that organisation, who were family members, identified as Aborigines. This organisation from 1969 was involved in one thing only and that was compiling all the information we could get for the purposes of Aboriginal genealogies. It is the only Aboriginal Corporation in Tasmania registered solely to research and compile Aboriginal genealogies and the family histories related to those families and to confirm aboriginality.

Now I, myself, was accepted by the TAC up until 1995 when I nominated as a candidate in the Tasmanian Regional Aboriginal Council. The moment I did that I was challenged in the Federal Court. Due to illness I couldn't participate in that case. I never had an opportunity to submit a family tree or any documents of community acceptance from either a local community or any other Aboriginal community and I was found not to be an Aboriginal person.

**Mr WILKINSON** - In the Federal Court.

**Mr LESAGE** - In the Federal Court before Mr Justice Merkel. In 1999 there was a vacancy on the Tasmanian Regional Aboriginal Council and I nominated as a candidate to fill that vacancy. I was elected with an absolute majority of votes as an Aboriginal person on that council. Immediately, I was challenged again in the Federal Court and the case was thrown out of court. I was declared to be an Aboriginal person because, in this instance, I produced my family tree and documents in regard to community acceptance and these documents came from my own local community because I wouldn't expect people in the north of the State to be in any position to pass judgment on community acceptance in regard to me, just the same as I know of a lot of people by name in the north of the State. I don't know them personally and I could not confirm whether they were Aboriginal.

The Aboriginal community in Tasmania is not one community, it is a split community. Even Aboriginal families are split families. I will take a well-known Aboriginal family and that is the Maynard family; there are even divisions in the Maynard family. There is one group who call another group Africans

and so on. So there are divisions in families in Tasmania, just the same as there is not one Aboriginal community as such, but local communities, like in the Channel.

My family come from the Tasman Peninsula and I wouldn't expect people from Rocky Cape in the north of the State to know my family on the Tasman Peninsula. This is why, with community acceptance and the organisation I am with - the Tasmanian Of Aboriginal Descent Association, Aboriginal Corporation - we do not at any time get into the aspect of giving confirmations where there is community acceptance involved from people from the northern part of the State. We mainly deal with the people from our own locality, because we know the people in our locality.

Although I haven't got any documents, I also was excluded from voting in a previous Land Council election, also the Tasmanian Aboriginal Education Council election. The only election I can vote in is the Tasmanian Regional Aboriginal Council election.

In my opinion, there should be one set of rules in regard to confirming aboriginality. Why should there be one Commonwealth one where I was proved to be an Aboriginal person, hence all people genetically linked in my family are therefore also Aboriginal persons? Why should there be a separate document setting out qualifications in regards to what an Aboriginal person is? There should be one set of rules. If you decide to bring in what is set down in this amendment bill then that would make two sets of rules: one that is set down in the ATSIC act and one that is set down in this lands act. This should not be the case; there should be one set of rules.

Just as an example. I have lived all over Australia in different States and Territories, and the confusion with me - and I did end up in court several times over speed limits - I would cross over an imaginary State line where okay, I was legal travelling on 100, I cross over an imaginary line and it becomes 110. If I go the other way, I am doing 110, cross over the line and bingo, I am booked for doing over 100 because it was a different State. The State Government has brought in a change to a lot of road rules in Tasmania so they conform nationally. So it is very easy to go from Tasmania now to the mainland and not get pulled up by the police for breaking certain road rules.

Tasmania is only a little State. In the last ATSIC election there were about 987 Aboriginal who voted in it. They had to comply under one set of rules to be defined as Aboriginal. Then they walk around the corner and they want to vote in an Aboriginal land election and they are faced with a new set of rules. This should not be the case, in my opinion. There should be one set of rules for one State and for one group of people, and I am talking about the Aboriginal people of Tasmania.

During my last court case in the Federal court I brought up the subject of it not being a level playing field. The TAC, via Legal Aid, employed five genealogists in England. This case to the taxpayer cost \$363 000, to my knowledge, for what? It got thrown out of court. In that case they didn't know whether in fact the person I stated in my family tree as my mother was my mother; they stated that the person I was married to could in fact be my sister. I was faced with this; my whole family had to put up with this. That was slander because they didn't research the family tree.

In my organisation I have compiled a lot of family trees for adults who want them for their children for Abstudy and to access other things. I have given them a family tree and all points of reference to do with births, deaths and marriage records, and for confirmation. It has been knocked back because they say, 'We don't know this person or that family to be Aboriginal'. The people knocking it back are people from the north of the State who are entrenched in government departments in the south and the TAC because they don't know them to be Aboriginal, because they do not come from the community they come from. A lot of these people, as I say, come from the Tasman Peninsula or down the Huon, they are born Aboriginals and all of a sudden they are told by somebody from the north of the State, 'We don't know you to be Aboriginal'. It is not good enough.

We should have one definition and that should be the same as the Aboriginal and Torres Strait Islander Commission Act 1989, or a definition which is very close to it so that we in the Aboriginal community who have problems like I have had, and members of my family, and identify for certain purposes, are not faced with having to walk out of one door being an Aboriginal and into another door where they say, 'We don't recognise you as an Aboriginal'. It is a lifelong thing. I have put up with this now, personally, for six years. I resigned from the Aboriginal council that I was on because of the pressures

that were on my family; it affects the whole family, not just one person. This is because of all these different interpretations on what makes a person Aboriginal.

What makes a person Aboriginal is their family tree and being accepted as Aboriginal by the community in which they live. To bring in a different definition is, in my opinion, entirely wrong. It's a negative approach, it's a negative entity.

If you go on the roll in regards to the aspects of this Aboriginal Lands Amendment Bill 10(c)(1) states: 'The Council is to appoint a person to be roll coordinator for the purpose of accepting or rejecting objections to the transfer of the name of a person on the preliminary roll to the roll'. If there is an objection against me then there is a judgment that comes down to one person. If that person doesn't like me then he is playing the role of God. I will give you an example, in my court case it was a court case to do with Aboriginality. I would like to table a document, it says: 'Tasmanian Aboriginal Centre Incorporated, State Committee meeting minutes, Saturday 9 May, 1988, Launceston' - not Hobart, Launceston. It tells you who was present. I go over to item 8, Tasmanian Regional Aboriginal Council aboriginality challenge, that is the challenge against me, and it states: 'The administrator and later the legal manager' - who is Michael Mansell - 'reported on the outcome of the possibility of appealing against the decision. The outcome is not binding on TAC policy and procedures as the case was about ATSIC election rules and not Aboriginality generally'. The whole case dealt strictly with Aboriginality and yet in these minutes a complete turnaround.

**Mr WILKINSON** - The Federal Court decision, have you a copy of that that you could supply us with please, Lance?

**Mr LESAGE** - I can get you a copy first thing in the morning, if you wish.

I go over to item 13, confirmation of Aboriginalities. 'The Hobart branch president' - whoever that is - 'suggested that the committee consider establishing one committee for the south and one of the north to consider confirmations of Aboriginalities as not everyone is known throughout the State' - which is correct. 'The State Secretary stressed that the AGM decided that TAC should confirm aboriginality only for well-known members of the Aboriginal community' - so if you are now well-known you are out in the cold.

There are certain motions - I will not mention the Aboriginal persons names verbally. There is a motion that the Aboriginality of this person be confirmed for ATSIC purposes. Now why should that be the case? So here is an example, so they are going to confirm this person's Aboriginality for ATSIC purposes. What about if it to do with this Land Council? You can't be an Aboriginal for one purpose and not another; you're either an Aboriginal or you're not and this is the problem we're faced with out there. One minute you're an Aboriginal if you're a good bloke, right, if you don't go along with their story you're white scum.

To give you another instance: in my court case a very prominent person in the Aboriginal community tendered an affidavit alleging that I said to him, 'No, I'm not an Aboriginal. I'm a white person helping Aboriginals out'. This person I have known for many, many years and I thought we were very good friends. Three times Mr Justice Marshall in the Federal Court summonsed this person to appear in court to be cross-examined in regards to his affidavit. They couldn't find him, he'd become invisible, so his affidavit wasn't allowed as evidence. After it was thrown out of the course, I won the case, I came across this person and he said, 'Oh, how are you going, cobber', patted me on the shoulder, 'Oh, glad you won your case' and I said, 'Yes, what about this affidavit you put in?' He said, 'No such thing. I never said any such thing'. He completely denied it because he had plenty to say in an affidavit but he wouldn't get in the court and face me or anyone else and lie verbally. All of a sudden, in his affidavit, I am white and he said I said, 'I'm white' but face to face I was the good old Aboriginal cobber again. This is what the community is like and there is going to be a further split in the community if there is a different set of rules for determining aboriginality -

**CHAIRPERSON** - If I might interrupt and query you perhaps on that one for an opinion. In the proposed Aboriginal Lands Amendment Bill 1999, section 9 is amended and in 8(3): 'The Council is to prepare, in consultation with the Chief Electoral Officer, information on the process and requirements for enrolment of the person on the roll, including matters relating to the entitlement of that person to

have his or her name on the roll and the rights of the person to object and appeal' et cetera. Do you not believe that the fact of law requiring there to be a process set up by the Council in consultation with the Chief Electoral Officer that will give you a process to utilise that thus should take away this if you are not one of the schools, so to speak, you will not be accepted? Surely that should encourage you that there will be a proper designated process to follow?

**Mr LESAGE** - No, it doesn't, because eventually it comes to the decision of one person. The people that I have known who have been on this Land Council, the very people who definitely don't recognise me as Aboriginal and don't recognise quite a lot of Aboriginal families in the south - and these people come from the north.

Looking at the constitution of the council: it consists of eight Aboriginal persons, of whom two are to be elected from the south, two from the north, two from the north-west, one from Flinders Island and one from Cape Barren Island. Now if there's one from Cape Barren Island and two are from the south it means there are twice as many Aboriginals in the south as there are on Cape Barren Island. I think at the last count there were about 48 people on Cape Barren Island, so that means there are 96 Aboriginal people in the south.

As an example, with the Tasmanian Regional Aboriginal Council, previously there was just one election statewide - no wards. Now there are wards and it was explained to you earlier that there are six representatives from the south, two from the north, and four from the north-west - which includes the Furneaux Group. I think that was worked out very well as a fair representation of the populations of Aboriginals throughout the State, but I can't see where this breakdown in Part 2 of the Aboriginal Land Council of Tasmania section where it's a fair representation.

**Mr FLETCHER** - Just by way of explanation, I wanted to ask a question. For my sins I must accept some of the responsibility for that particular situation because the argument in 1994-95 was very much along the lines you're putting now: that the small communities would be overlooked in the establishment of the Land Council. So a decision was made - and it was pushed by government to a substantial degree - that because there was a traditional community living on both Cape Barren Island and Flinders Island and because they were remote from Launceston and Hobart and the north-west coast that they ought to have a representative elected from their own community so they would have a sense of ownership or feel part of the decisions that were being made.

The Aboriginal negotiators at the time raised the issue - as you have raised legitimately here - about the imbalance; there's no one-vote-one-value associated with that breakdown, but there was a sensitivity towards the remoteness and the isolation of the Cape Barren Island and Flinders Island people and there was a strong community identifying strongly and for our sins we thought they ought to be represented and ought to participate in the decisions. So that's where that came from, in actual fact.

But having said that, there's no reason why things can't change in the future, why there couldn't be a recommendation that there be a different breakdown. But the crucial question, I think, always is about the communities and I wonder if you'd agree with me that because the TAC and the community that it has identified with has been strong; it has moved the Aboriginal debate forward in a much more progressive way than if there had been a lot of separate communities each speaking on their own behalf, the fact that over the last 25 years there has been a centre and a strong core of political opinion there and that the debate is now far more advanced than it was just ten years ago. The fact that we are openly meeting and discussing points of view is something that wouldn't have happened, in my opinion, ten years ago, so I think what has happened has been political by nature in that political muscle or strength has been used to advance a cause, but it has brought some benefits for the Aboriginal community. Would you agree with that?

**Mr LESAGE** - I agree with that partially. The TAC is not representative of the majority of the Aboriginal population. My cousin was one of the persons who began it all as the first elected ATSIC Commissioner in Tasmania, whereby the TAC got the bulk of the funding from day one. They continued to get the bulk of the funding, ongoing, year after year. Their power rests on a foundation called money. Take the money away and you take the power away. No-one else, no other organisation will ever, as far as I can see it the way the present climate is, manage to build up a power base because every time there is a pot of money there sitting on the table the TAC get first bite of the cherry.

**Mr FLETCHER** - Surely that's your decision?

**Mr LESAGE** - That's not my decision.

**Mr FLETCHER** - But it's the decision of ATSIC eventually. The funds are flowing from ATSIC and you're a regional commissioner representing ATSIC.

**Mr LESAGE** - It flows through the Tasmanian Regional Aboriginal Council. I think the Tasmanian Regional Aboriginal Council this time around - because we're just into a new one - is one of the better councils that I've seen. It's more of a cross-section of the community, where with past ones there's been a very strong hold within the councils of TAC members or people associated with the TAC socially. I've had, from the organisation I speak for today, very comprehensive applications for funding in past years, approved by the funding officer and put to the bottom of the deck when it came to allotting money for organisations. The ones on top are always the TAC and this is what it's like in the community. What they say seems to be the dominant factor. If they say you are not Aboriginal a lot of people are too scared to speak out in support of you because they may require a service from TAC, whether it be legal or whatever. They're too scared to stand beside you and say, 'Hang on a minute, I've known this person all my life and his family, they're Aboriginal' because if they do that the discrimination effects against them stemming from the TAC is relentless.

**Mr WILKINSON** - It seems to me that these divisions you've spoken about between south and north and whatever and there are also divisions - there are the TAC; there is the Tasmanian Regional Council; there is TALC, Tasmanian Aboriginal Land Council; there's ALC - should they be the one body?

**Mr LESAGE** - No.

**Mr WILKINSON** - If that's not the case, aren't you always going to get these divisions in relation to certain bodies, maybe fighting for power, maybe fighting for more money whatever it might be?

**Mr LESAGE** - If you had one big organisation it would be full of people at each other's throats because that big organisation would have to be representative of the whole community, the islands, the north of the State, east, west, south. The Aboriginal community in Tasmania at the time when Europeans came, these tribes didn't get on with each other, they were at war with each other, some of them had different dialects, they had boundaries. How they functioned then is how the community functions now.

**Mr WILKINSON** - But certainly if we are striving for reconciliation, reconciliation to me means a oneness. If there's to be reconciliations between Europeans and Aboriginals we shouldn't be coming from all different sectors, we should be assimilating into one. My question is: shouldn't there be an assimilation into one of the Aboriginal community because if there can't be assimilation and reconciliation amongst the Aboriginal community, how can there be reconciliation with the Aboriginal community and the European community because the Aboriginal sectors might be saying, 'You're favouring one group as opposed to another group'. So if that's the case there's never really going to be this reconciliation.

**Mr LESAGE** - I agree totally with what you're saying and I'm in full support of reconciliation like the process working towards those ends but I can never see it happening totally, not in my lifetime.

**Mr FLETCHER** - It's not unlike the broad-band of politics where you have Labor, Green and the Liberal parties all arguing with one another about the best direction so you're going to get those differences of opinions in any group of the people, aren't you?

**Mr LESAGE** - Yes, that's correct. As you are suggesting, if you have one body controlling everything, then there is going to be so much internal fighting in it that that body is not going to be able to function. It will destroy itself from within; it will be like a cancer. You have to have separate groups but there has to be more equality between them, not have a dominant group like TAC that gets its power from the foundation built out of dollars, there has to be more equality.



**Mr WILKINSON** - But in the end hasn't somebody got to make the decision. Hasn't somebody got to be there at the pinnacle if there's ever a dispute to be able to say, 'This is the direction we should go'? It there's that equality and everybody's got the same say there's not going to be that final decision-making.

**Mr LESAGE** - Let's say a group of people that is structured fairly, equal representation - in other words, if you've got twenty Aboriginal groups, cooperations, each representing their own community then. let's say, you have two representatives from each one, that forms a coalition, so the coalition becomes like a senate to handle all complaints coming from those separate organisations. I think you might see pigs flying through there first.

**Mr BAILEY** - Do you see the principle of one vote, one value in relation to that regional representation? Let's look at Flinders Island and King Island where there would be probably small bases of Aboriginals compared with, say, the whole of the northern region or the whole of the southern region. On the basis of the one vote, one value would you see that determining the numbers that should come from each region?

**Mr LESAGE** - We talk about communities on an island. A lot of decisions are being made on mainland Tasmania, especially down south, by people from the islands. All my family - I know the previous speaker here, Mr Wolf, all his family, they have been here always on the Tasmanian mainland, they never left mainland Tasmania for the islands, so they never left, they didn't have to come back. You are talking about the Aboriginal community on the islands, they come down south and it becomes very political because of their influence in the Aboriginal community in the south, which have never left the south. It shouldn't be the case but it is, it's a reality.

**Mr BAILEY** - But how do you overcome it, if they want to come and live in the south and they get elected by those -

**Mr LESAGE** - Seeing we're dealing with this amendment bill, as I mentioned with this constitution of council, the representation - two from the south, two from the north, two from the north-west, one from Flinders Island group, one from Cape Barren Island group. As I said, that is a totally unfair representation of the Aboriginal population which constitutes Tasmania.

**Mr BAILEY** - That is what I was coming to on the basis that it seemed to me your two main points were that the existing definitions should stay as it is in the current act, rather than the one -

**Mr LESAGE** - Just butting in - to comply with the ATSIC act, so we have one definition.

**Mr BAILEY** - The definition under the existing act is that an Aboriginal person has the meaning given to that expression for the purposes of the Aboriginal and Torres Strait Islander Commission Act 1989 of the Commonwealth.

**Mr LESAGE** - Correct, yes.

**Mr BAILEY** - And that is an Aboriginal person, so that same definition would apply to aboriginality in Tasmania. So it seems to me you are advocating that.

**Mr LESAGE** - Yes.

**Mr BAILEY** - The second thing you were advocating was the fact that there is an imbalance in the representation between the regions on the Aboriginal Land Council of Tasmania.

**Mr LESAGE** - According to the known population, yes.

**Mr BAILEY** - Yes, and I was just following that through to say should the representation be - if there are 50 000 in the south and 50 000 in the north it should be equal representation.

**Mr LESAGE** - Correct, yes.

**Mr FLETCHER** - Could I follow that question? My question is: what difference does that make? The role of the Aboriginal Land Council is simply to own land in perpetuity on behalf of the Aboriginal community and to decide or to allocate community organisations to manage the day-by-day affairs, to approve management plans to manage the day-by-day affairs. Where do you feel aggrieved because there might be an imbalance in the ownership structure?

**Mr LESAGE** - It goes deeper than that. If, for instance, there are 2 000 in the south - forget the division about north, north-west or the islands -

**Mr FLETCHER** - But how are their decisions affecting you in a negative way? What negative impacts are you suffering because of the structure of the Land Council?

**Mr LESAGE** - Let us take Oyster Cove. I had occasion to go to Oyster Cove last month in the company of a member of the Regional Aboriginal Council. We were called 'white scum', or to that effect. That is Aboriginal land; I have as much right to be on that land as somebody from Cape Barren, and I know for a fact the people who were present there on that day, if they weren't from the Bass Strait Islands they were from Launceston, and there is a very close link between the Aboriginal population in Launceston and the islands. We were called 'white scum'.

I go over to the land at the cove, the pyramids are locked up. I walk around and I can't see it being used for any purpose. I made a request of the TAC, as the managers over there some time ago, to run some programs in regards to kids at risk. I never even got an answer back. I sent another letter and still got no answer back because I was who I am, as far as they are concerned - a non-Aboriginal. That land over there, all my family, all Charles Wolf's family, have just as much right to walk on that land as somebody from any other part of the State, but it's not the case. Two years ago I went over there and there was a group of Aboriginals there; two of them I know to be from the Bass Strait Islands. I went over there with my wife and a visitor from Melbourne and the expression was, 'What are you doing here, you white scum, get off this friggin' land'. 'Friggin' was not the word, but it was an 'f' word. This was in front of the visitor from the mainland and it wasn't very nice. This is what goes on.

**CHAIRPERSON** - Mr Lesage, I am aware that you are also our next person who is making a submission, so what I am going to attempt to do in the next three minutes is to close this particular section and then we will have a short five-minute break and then introduce you as representing the First Aboriginal Contact Tasmania so that you can switch yourself to that particular subject. So I am looking for the committee, in the first instance, if you have any other questions you wish to ask of Mr Lesage at this time.

One if you could answer for me, Mr Lesage, because both yourself and the previous person brought out instances of where you were not accepted to be able to have a vote. What, in your opinion, would be different if all those people who were not accepted to have a vote had been accepted and had voted? What is your emphasis on how things may or may not have been different if the people who were not accepted had been accepted and you had voted at the last elections?

**Mr LESAGE** - If those people who are Aboriginals from the southern communities were allowed to vote, I know there would be possibly a lot more candidates standing in the south. Seeing I disagree with the constitution of how many from each part, if that was more correct, in my opinion - let us say, for instance, there were four from the south - we would have better representation on there. In other words, the two elected from the south would not be two from Cape Barren Island, for instance - that is without singling them out - or Launceston. Down here in the south, stand in the election, get elected, or their brothers or sisters may have stood in the election up north and they get elected. So that is unfair representation internally.

If we could get more people on the roll in the south allowed to go on it - and I am talking about family groups, which would be quite a lot - then there may be a better chance of getting a better representation on there in the way that the two candidates from the south are in fact Aboriginals from the south of the island and not imports.

**CHAIRPERSON** - Do you believe it is ever possible, regardless of the representation around a table, that when those representatives come together they could and should be representing the entire State

and the islands, regardless of which pocket they were elected from? That, to me, is a principle that regardless of where I come from I, as a representative of the people, must look at the entire Tasmanian population. Is this something that you believe is possible in the Aboriginal community, that regardless of where you are elected from it is the entire Aboriginal community that you should be representing when you are elected to those particular positions?

**Mr LESAGE** - If they are civilised humans and not biased people; seeing they are elected and have a job to do, they do it correctly without saying, 'I don't like him so we'll brand him a certain name'. As long as they do their job, I suppose the same as government. A lot of politicians I voted for have been very disappointing in their functions once they are elected, but once they are elected it is very hard to get them out.

**CHAIRPERSON** - Thank you, Mr Lesage for your representation on behalf of the Tasmanian of Aboriginal Descent Association, Aboriginal Corporation. What we will do now is take a five-minute break and then we shall recall you representing the First Aboriginal Contact Tasmania Organisation.

**THE WITNESS WITHDREW.**

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

**Mr JIM BACON**, PREMIER OF TASMANIA, BRIEFED THE COMMITTEE

**CHAIRPERSON** (Mrs Sue Smith) - Mr Premier, I welcome you to the Legislative Council Select Committee inquiry into the Aboriginal lands transfers. I thank you for the interest you have taken up to now. We did understand you requested to brief the committee at the beginning of the process and we welcome you to the Table. I will not introduce you to the faces because I know you are well aware of who they are, so we will hand over to you to make your comments.

**Mr JIM BACON** - Thank you, Sue, and thanks to the members of the committee for having us this morning. I am a little bit in your hands as to how you want to proceed with this. I could certainly give you a fair old spiel about it all but it may be better if I give a brief overview. Certainly the officials I have with me - Richard Bingham, secretary of the Department of Justice and Industrial Relations, and Greg Brown from the Office of Aboriginal Affairs - are here and they are, I think, appearing before you immediately after I have to leave.

What I would really like to say to the committee is that we are here - I will give a brief introduction. The officials can certainly answer all the detailed questions you might have about discussions that have been held about the process we went through to develop this legislation, but I am happy to do it in whatever way suits you best. I have only a reasonably short time so we want to make sure we do cover it. Perhaps if I start and committee members, as I am sure they will, should feel free to interrupt and ask questions if they would like but they could just bear in mind that Richard and Greg have all the information on the detail and it may be easier if those questions are directed to them.

I did want to impress on you - and I was anxious to appear personally before the committee - how important the Government sees the Aboriginal Lands Amendment Bill 1999. We do see this as a major step towards reconciliation between indigenous people and the broader community in Tasmania and we very much see it as in line with previous legislation that has been before the Parliament and which, from our point of view, is very good and has been supported by all sides of the Parliament and by all members of the Parliament.

The legislation we are now putting forward is in the form of amendments to the Aboriginal Lands Act of 1995, and as much as possible we have attempted to keep the legislation along the same lines as that legislation. What we have proposed is very much, we believe, within the spirit of that legislation and within the spirit of the decisions that the Parliament has made in recent years in relation to reconciliation and matters between the indigenous and the broader community.

We do believe that governments of the day in Tasmania have a responsibility to do whatever they can to overcome divisions which have been created in the past in Tasmania, and, in my opinion, the most fundamental of those divisions - that is, the one that is the most long standing - is the division between indigenous Tasmanians and all of the broader community who have come here over the last 200 years. It is not in any way not to recognise the contribution that others have made to Tasmania, but it is to recognise the special position that indigenous people have.

I think it only really needs mentioning that of course the High Court of Australia, not to mention international law, has determined very clearly that indigenous people do have rights which are unique to indigenous people. We believe very strongly that those rights should be respected and protected. The first point is, it is very much in line with the legislation that has previously been before the Parliament. I do not intend to go through what the bill actually proposes, you have it before you; I am sure you have all studied it and know what it involves.

The view has been put that the way we have announced this in fact has created problems around the place. I want to explain to the committee that in the Government's view there are two separate phases to this issue and to the legislation, and to moving forward with reconciliation. We believe very strongly that the fundamental issues of principle involved are properly a matter for the Government and then the Parliament of Tasmania, representing all of the people of Tasmania, to determine. Those are the underlying principles of the legislation, the actual principle of what we are doing.

At the same time as I made the announcement of the legislation and what the package contained I said then that a large number of Tasmanians also have interests in various parts of this land package in particular - this is just talking about the land transfer part of the bill. The Government does recognise that those people, some for generations, have also had activities or carried out recreation or whatever, either in close proximity to or in fact on some of this land that we are proposing should be transferred to the Aboriginal community.

We believe that local concerns, for instance on the north-west coast around West Point and Sundown Point and also in the Furneaux Group, that people do have legitimate rights and legitimate concerns but those cannot be held up to prevent, if you like, or to hold back the fundamental principle. What I did say at the time of the announcement was that the Government was prepared to listen to all points of view about this and to take into account in drafting the legislation, the concerns that others might have who had legal rights of access, for instance, a lease or licence holders or whatever.

After I made the initial announcement, before the legislation was introduced into Parliament, there was substantial consultation with groups and individuals all around the State about the issues that they raised with us about this land transfer package and in the main we believe that those issues and concerns that have been raised have been addressed in the legislation. There may be some who consider that they haven't or that they haven't addressed their concerns satisfactorily but I believe that the work that we have done since then, the final form of the legislation in fact does address a large number of those concerns. I also, as you are aware, delayed further debate on the legislation in the lower House specifically so that your committee could provide a forum for people in the community who feel that their views have not been listened to, to have the opportunity to come before you and put their views about the legislation and particular concerns they might have. I might say that I am pleased that you have received the submissions you have but I would still encourage all Tasmanians who have an opinion about this or have particular concerns, to take the opportunity that this committee provides to come before you and to put those points of view very strongly.

As Premier, I want to say to the committee that I will very seriously study whatever recommendations you might make in relation to this legislation. We are anxious that if at all possible that this gets the unanimous support in the Parliament that recent decisions in relation to reconciliation have done. I think that is an important factor in demonstrating the widespread support in our community for reconciliation, the fact that the Parliament has in recent times made these decisions unanimously. So of course we will remain committed to the principles in the legislation but I would encourage people who have concerns to come before you and I give the undertaking that we will very seriously consider what recommendations you might make and we will certainly take those on board in terms of future passage of the legislation through the Parliament.

I think that is all I would like to say by way of introduction unless there are specific questions about it. As I say, we can look at various parts of it in particular but I am concerned that with the short time I have available and the committee has, that committee members have the opportunity to ask me or to point to particular parts of the package they might want me to comment on before we go into further details with the officials.

**CHAIRPERSON** - Thank you, Mr Premier. It is open to the committee.

**Mr WILKINSON** - Premier, there seems to be at the moment a working party looking at what actually is reconciliation and properly defining what is reconciliation. Has the Government looked at the definition to say what reconciliation is, because we are talking over a number of years we have to have this reconciliation process but there doesn't seem to be a proper definition as to what it is. Can you help us with that or are you still looking at it along with the Federal parties?

**Mr JIM BACON** - I don't know that it is a difference about what reconciliation is, I think there is certainly ongoing debate, as you are saying, about what form a statement about reconciliation might take. I think in fact there is very broad representation and support for the national reconciliation committee and the various State committees that have been established. I met with Evelyn Scott just prior to Christmas who is the National Chair of the Reconciliation Council. Without getting into a debate about semantics, I think it is an area where certainly my understanding of reconciliation is that we work to eliminate those causes of the friction, if you like, or the conflict between the indigenous community and the broader community. So very much it depends on what issues the indigenous people are raising as being obstacles to them feeling that they are accepted as full members of the community with their own specific rights in some areas and that the broader community is working to eliminate those differences which cause trouble for both communities. I don't think there is a hard and fast definition of it but I think the areas of activity of reconciliation do depend largely on what it is the indigenous people raise as being matters for them.

Nationally, this debate in recent years has certainly been heightened by the Mabo decision and subsequent Wik decision in the High Court and all the debate that has gone on about that nationally and particularly in some States like Queensland and Western Australia about how that applies.

Previous Tasmanian governments - Ray Groom's government and Tony Rundle's - and my Government recognise that the straight Mabo-type land rights decision is not available to indigenous people in Tasmania because of some of the history. The fact that they were removed from their traditional lands has broken the link that could be argued in some parts of Australia as being there continuously.

But what previous governments and my Government have said is that in the absence of that strong Mabo-type land rights position, that it doesn't mean that indigenous people in Tasmania don't have rights and there isn't a need to pursue resolution of those differences which occur. In fact I think the previous governments and ours really see this legislation and the preceding legislation which has been introduced over the last five years as being a specifically Tasmanian response to the whole issue of reconciliation.

I give the example there of Wybalenna. Wybalenna would not have been transferred under a native title-type claim under the Mabo regime, but there is no question that Wybalenna is of immense significance to the Aboriginal community. It is of significance to the wider community but there are special reasons why, for the Aboriginal community, that is a very sacred place as they describe it and yet it doesn't relate to a Mabo-type analysis of the situation.

So I think very much, Jim, it is the issues which are causing problems, if you like, and it is a question of us doing what we can to resolve those.

**Mr FLETCHER** - Mr Premier, you referred to Mabo and Wik and to the native title legislation and to the advice - I think that has been consistent over a period of years - that claims for native title wouldn't be successful in Tasmania given the Tasmanian circumstances. It seems to me that the claims for the transfer of land for whatever reason is going to continue in the future. Have you considered enacting legislation in Tasmania which might establish an open transparent process with criteria that allows some fair assessment of claims for native title-type ownership in Tasmania?

**Mr JIM BACON** - Not necessarily in legislation, we haven't thought of that. I think the issue of potential future claims is in one way a bit of a red herring. I don't think it is possible for the Government to say or for the Parliament to decide that claims of this sort can't be made. It seems to me that certainly we have dealt with the claims that were made as part of this process but I don't think it is possible to say what future generations might say about it. There are different categories. I'm trying to respond to your question, Tony, specifically about a regime. I just wonder how a regime could be developed.

**Mr FLETCHER** - Premier, I take you back to the ad hoc land use decision-making processes of the late 1980s, I suppose, with regard conservation areas and areas of special value. There was a process established whereby some rigorous discipline was applied to the process of assessment and in taking that course of action, I think the public at large felt better about the process, had more confidence in the process and were more willing to accept the outcomes of the process.

It seems to me that if there is to be an ongoing process, then it needs to be measured against some criteria and a form of legislation specific to Tasmania might be the best way to do that.

**Mr JIM BACON** - We haven't considered that and I would be interested in the views of the committee about it. I think obviously any claim, before it would be seriously considered by this or any government, would have to be based on substantial evidence of connection, if you like, with that particular part of land, bearing in mind that there are some whose views are that all of Tasmania is Aboriginal land. Governments of the day though of course have to take cognisance of the fact that over the past 200 years, there has been all sorts of legal ways that land has been alienated from its natural state, if you like, and that those legal changes have given people who hold land rights as well. So I think on particular parcels of land, clearly if they were to qualify in line with these parcels, they would have to have strong historic connections with the Aboriginal people.

In all of these cases there is evidence of pre-European Aboriginal occupation and use of these parcels of land, some going back many thousands of years. As well there is evidence in these cases of continuing Aboriginal involvement after European occupation.

I just wonder how you can actually set a form of criteria, if you like, that then could apply to every situation. Really I suppose one answer to that is that whatever we might put in legislation, there may well still be claims in the future, this generation or future generations may take a different view about it and may make a claim. How the government of the day then deals with that is a matter for their government policy and for the general community feeling at the time.

**Mr FLETCHER** - Just one final question to I guess test your thinking in relation to this specific matter, the record is now showing that under Commonwealth Native Title legislation that something less than 50 per cent of the claims are being accepted, so one presumes that 50 per cent of the claims are being rejected as being non valid and Tasmania would be in that category. How does Tasmania differ from those other areas or groups who have their claims rejected on a national basis?

**Mr JIM BACON** - It is a bit hard to compare without looking at specific cases. I am not sure why particular cases nationally have failed except that probably it would be because continuous connection to the land hadn't been established.

The point I made at the outset about the history of Tasmania being that the Aboriginal people were deliberately removed from their land in fact broke any continuous connection. I'm not certain - Greg or Richard may have a better understanding of national decisions that have been taken - but as far as I am aware the ones that I know of that have failed have been because continuous involvement couldn't be proved.

**Mr BAILEY** - Mr Premier, on the basis of the benefits that obviously flow from land grants to the Aboriginal community - because I have a great interest in the land and a great affinity to it - would you be looking as a measure - that Mr Fletcher referred to before - as the use to which that land is put and the benefits which are then gained by the Aboriginal community in general? If so, has there been any measure taken against the land which has already been granted and the benefits to the Aboriginal community and to the remainder of the population at this stage?

**Mr JIM BACON** - Well certainly the management of the land once it is transferred is a matter for the Aboriginal community. I am loathe to get involved in a situation where we say, 'Well we transfer the land, you have management of it and you have rights in relation to it, but we want to tell you what you can do about it'. Now I am not suggesting that's what your question implied at all but we do believe that it is primarily and overwhelmingly a matter for the Aboriginal community.

However, I am aware and we have certainly encouraged discussion to start and work to start, and particularly this will be the main feature of my Government's activity over the next year apart from this legislation, is to better bring together, if you like, the various funding streams, the various groups, to really look at how the transfer of this land can lead to better outcomes in relation to employment, in relation to education, in relation to health, in relation to all aspects of Aboriginal life. So certainly I think the view of the Tasmanian Aboriginal community would be very strongly that the land that has been returned already in past legislation has given the community a very strong sense of having a place

which they all could relate to and which they have particular rights in regard to and I think that has certainly helped the Aboriginal community come to terms with the situation as it exists now.

I think it's quite clear that for further development of things such as tourism activities in relation to this land, that there is a fair bit of work that would need to be done to get successful enterprises up and running. I have made the offer and we certainly will ensure that it is carried out, that all the resources of government in State Development and the other agencies are there to assist and we would hope that the Aboriginal community, and particularly the Federal funding bodies for Aboriginal affairs can, if you like, be brought closer together so that the funding can relate to the land transfers and help the Aboriginal community to actually move forward with further development.

I think, quite frankly, Mr President, there may be a view that not much has happened with the land that has already been transferred. I think that would be wrong firstly to look at it as not much has happened because I think you would have to ask the Aboriginal community what it means to them in terms of what has happened and I think for them it is very significant. I think possibly the interesting thing from the wider community's point of view is that a lot of the dire predictions that were made about what would happen in fact, with very few exceptions, have been proved not to be the case.

I think if the broader community or those who are concerned about the current legislation were to look at what has actually happened with the previous land transfers, they would see that it has been positive for the Aboriginal community; has been, I think, positive for the wider community but certainly has not created any of the difficulties that were put forward at the time of that legislation as being likely.

**Mr BAILEY** - Just to follow up, does the State make any significant contributions to the Aboriginal Land Council in relation to the development of the lands and the promotion of tourism ventures, that kind of thing, which might more strongly lead to an understanding of the Aboriginal culture.

**Mr JIM BACON** - I would be quite wrong if I said to you that we make a substantial contribution, of course substantial is relative to what it actually means. But the main responsibility for funding indigenous people's activities in Australia rests with the Commonwealth and certainly we do provide resources through the Office of Aboriginal Affairs and, as I say, I would be most keen for the Department of State Development, including Tourism and other parts of the agency, to work with the community to advance it and we would certainly allocate resources so that that could be done. I think there have been meetings in recent days involving the Office of Aboriginal Affairs - Tourism, I think.

**Mr BROWN** - Yes, and also we have been trying to bring together ATSIC and the Department of State Development to look at enterprise opportunities for the Aboriginal community, both on the areas of land and also Aboriginal individuals and organisations as well, so that is in train as well.

**Mr JIM BACON** - I have just yesterday signed off on a decision about our main areas of activity this year and certainly, Mr President, that is number one for us subsequent to the legislation because I do think that there are very strong opportunities, I think not only in the Furneaux group but I think West Point and Sundown Point are relatively close to big centres of population like Melbourne. People in Melbourne spend tens of thousands of dollars, as others do from New York, London or wherever, to go to the Kimberleys and Uluru and Kakadu and yet there is evidence of Aboriginal occupation on the north-west and west coast of Tasmania that goes back just as long, within an hour's flight and a short drive from Melbourne. I think that is clearly an opportunity that could be developed, mindful only of the need to recognise the Aboriginal community's right to decide these things. We certainly stand ready to provide whatever assistance we can to make sure that they can go along that path if that is what they decide.

**Mr WILKINSON** - Getting back to the question, if I can, that I am struggling with in relation to the definition of reconciliation and taking into account the answer that issues which are causing problems and what we do to resolve those problems, it seems to me - and I am just putting it to see what you say to this suggestion - that reconciliation is not only the transfer of lands but it is also in relation to giving indigenous people the ability to be reconciled or consumed into the community to live as one. Therefore, in relation to reconciliation, we are also looking at health issues and educational issues as well. So it is not just a hand back of land but it is also, and perhaps more importantly, the ability for Aboriginal people to cope on a level playing field as opposed to behind the eight ball. That to me looks



at other issues such as the education issues and the health issues, probably more importantly than the hand back of lands, especially if funding is looked at and you say, 'There's funding to go into this basket or does it go into that basket?'

**Mr JIM BACON** - Yes, except that that is complicated by the differing responsibilities for funding from the Federal Government and the State Government.

**Mr WILKINSON** - Sure, I accept that.

**Mr JIM BACON** - Since the 1967 referendum I don't think there's any question that the responsibility lies with the Federal Government. Whilst we want to do our part, we have enough fights stopping the Commonwealth taking things off us that we are not really having a crusade to get some back off them. So it is their responsibility and we are quite comfortable with that situation, but I do agree that we can do more in different areas that is appropriate for the State Government to be involved in.

I think too your point about reconciliation, it is not necessarily about any one measure. I think various types of measures move towards reconciliation but fundamentally reconciliation has to be about a better understanding of the history of the indigenous people and a better understanding of how they see all these questions currently. The land transfer, I agree with you, I don't think that that is the be-all and end-all to reconciliation by any means. I think it is one part of it but I think it is a crucial part because it is so important to the Aboriginal community that they see it as being not just a sign of good faith or anything like that, they see it as a very practical expression of recognition of the rights of indigenous people and that to me is what is important.

I also take the view that my Government and the governments that have preceded us are the direct descendants, if you like, of the colonial governors of the early nineteenth century. I have no doubt that agreements were reached between the indigenous community and the then authority of the Crown, if you like, in Tasmania that were then broken. Those agreements were broken. I do think that governments, however long the distance between the breach of trust, have a responsibility to do what they can to resolve it. In that sense, I think the Groom Government legislation was a huge step forward in that and we see this really as continuing along that path.

**Mrs SILVIA SMITH** - Premier, just broadly on the idea of what reconciliation means, in your earlier comments you talked about the rights of indigenous people to be protected and respected at all times. I just wonder if you would broaden your thoughts a little bit on how that goes in concert with protecting the rights and the ideas of the rest of the Tasmanian community, keeping in mind our broader thoughts on what reconciliation means. We are seeing every now and again these little spurts of division and what we don't want in this whole process is where we end up dividing Tasmanians. We want the reconciliation process to meld Tasmanians together without having this line of black and white Tasmanians, for example. So I just wonder if you could broaden your ideas on how you think that's going to be managed by your Government so that we don't cause that division.

**Mr JIM BACON** - Firstly, it is a question of recognising the fact that indigenous people - and I'm not just talking about Australia now - indigenous people do have rights that are unique to them. That has been determined not only by the High Court in different decisions, it is part of international law that indigenous people have rights that are unique to them. They also enjoy, as part of being the broader community, the rights that all Tasmanians enjoy: the right to free speech and all the other rights - the right to vote - everything that the broader community enjoys. But in order to protect the unique rights of indigenous people the Government and previous governments have taken the view that particular parcels of land should be transferred to the Aboriginal community for their management and ownership. I think, as I said, the fundamental principle involved, which is the transfer of land - at least in respect to this part of the package - as a demonstration of the desire for reconciliation by the broader community is represented by the Government and Parliament and the indigenous community is one part of it but others too enjoy rights in relation to at least some parts of that land. Within the normal, everyday existence in Tasmania, there are various people, private, public bodies, that manage different parcels of land. In relation to most of those, other members of the community who have had a past right or past connection by way of lease, licence, or whatever, continue to enjoy those rights that those leases or licences give them. None of this affects any freehold land, it only affects crown land and rights of access.

For instance, an issue that has been raised in relation to the Furneauxs, the rights of people to access islands, to be able to go along the coast, to be able to land boats on islands, and all these sorts of things, of course they are important issues for those people and they are protected in the legislation. So I don't see that we are giving, if you like, indigenous people - other than those unique rights which they do have under law - anything other than we do with other land managers around the place who manage land, whether they own it, lease it or whatever they do with it. The rights of public access has been a very important part of all the discussions I have had with people, the officials have had with people, and we do believe that most of those concerns have been addressed.

**CHAIRPERSON** - Thank you. I have a question, Mr Premier, about the Aboriginal Lands and Cultural Issues Working Group which perhaps you should answer. I think it fair to say that the community would say this is one of the strongest decisions this Government have made in this particular legislation. I also make the comment that governments today are more open in their involvement of the communities, your Government moreso than many on the partnership process.

I find it interesting that the actual working group that was set up by your Government consisted of representatives of the government agencies and members of the Aboriginal communities, yet I cannot help but wonder why, when it was quite evident that some of the land that would be talked about would be specific to particular areas, that perhaps in the process of openness there wasn't perhaps an inclusion of some externals to government agencies and the Aboriginal communities which I think in hindsight may have helped the process to be explained in some of these communities when the package was announced. Would you like to make some comment on the makeup of that original working group?

**Mr JIM BACON** - I would. It really goes back to what I was saying which was that I do not see that the actual issue of principle involved here - just talking about the land transfer for a moment - is a matter of government policy, of government decision subsequently considered by the whole parliament but that issue of principle can't be made by parts of the community in different parts of the State. That is why I said, at the time I made the announcement, that before the legislation was finalised we would meet with those people and listen to their concerns and try and include them in the legislation.

On the actual principle, we can't have principles like that and what action flows from it decided in a higgledy-piggledy way all over the place with people saying, 'Yes, we agree', but, 'No, we don't', so it doesn't happen there. The actual issue of principle is a matter of government policy and government decision, as I say now in relation to the legislation before this committee, and people will have all the opportunity to put their views. But the issue of the land transfer and the reason why we set the working group up they way we did was that I saw it fundamentally as being negotiations between the Government of Tasmania on behalf of the whole community, and the Aboriginal community, as we have said, that do have unique and special rights.

I don't think - and it may be a matter of opinion - that those discussions, negotiations, if you like, could have proceeded in a situation where every single thing they discussed - and there were lots of other bits of land they discussed that aren't part of this package - was then all going to be out in the public, having consultations about it, when in fact it wasn't part of the original government decision. The working group was established by me, and I charged them with the responsibility of discussing all outstanding issues that the indigenous community wanted to put on the table that they saw as being ongoing with the Government on behalf of the whole community. I asked the working group to provide me with recommendations about how we might address those outstanding issues.

I put no limit on the agenda and that was what we did, and I think the way we did it was entirely proper as part of the Government negotiating, the Government making a decision on what it wanted to do. However, as I have said constantly, we never intended to finalise the legislation, much less have it go through the Parliament, without there being the opportunity for all the ancillary questions that local communities around the State - Furneauxs, the north-west - do have a right to have a say in but their own right.

I am much more interested in the views in relation to access, ongoing rights of the people in those areas than I am in what the opinion of people in Hobart might be about it. The issue of principle is different from the issue of how the decision is actually managed and what detailed final form the action actually takes.

**CHAIRPERSON** - Thank you. Are there any other questions from the committee of the Premier? We have taken much more of his time than we originally presumed; if not, thank you Mr Premier for your time this morning.

**Mr BACON 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 you 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, AT PARLIAMENT HOUSE HOBART ON TUESDAY, 1 FEBRUARY 2000.**

**Mr CHARLES RAYMOND WOLF**, TASMANIAN REGIONAL ABORIGINAL LAND COUNCIL WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

**CHAIRPERSON** (Mrs Sue Smith) - Thank you Mr Wolf for your attendance. Firstly, if we could clarify, are you speaking as a representative of the Tasmanian Regional Aboriginal Council or as an individual?

**Mr WOLF** - An individual.

**CHAIRPERSON** - Thank you for that clarification. If you would like to present your submission and then the committee will ask questions if they feel a need.

**Mr WOLF** - Thanks a lot.

My name is Charles Wolf. I originally come from the Channel area of Tasmania, down Middleton way - that's where I was born and raised until 1967 when the bushfires came through. Down the Channel it was a pretty close-knit community and being in the countryside of Tasmania back in the 1960s it was a pretty tongue-in-cheek community to live in when you're black. With that we moved to Hobart and we became a bit more active and seen a bit more different culture, moving to town from the country, if you know what I mean, like bowling alleys, skating rinks, whatever.

With this bill at the moment that is going through there are major problems. Unless you are in an Aboriginal organisation, you have been confirmed by that organisation, you can't vote in it. The people sitting on that committee, ALC or whatever, truly represent the north, there is no southern Tasmanian representative in there born and bred. It is like having one party, like having one Labor Party in Tasmania and no other parties, no Greens, nothing Liberal - no Greens, Labor, Liberal or whatever.

What it is to us in the south is a heap of northerners coming down here determining aboriginality that we don't know. It is like me going to Cape Barren or taking Tony to Cape Barren with me and we determine the aboriginality up there. We can't do it, we don't know those people. That is what is happening in this bill and that's why the aboriginality part has to be looked at better.

I was taken to the Federal Court on aboriginality a few years ago with some other Tasmanian regional councillors. One person was removed - they lost. I stayed on the council, so I won in the Federal Court on my aboriginality but I'm not allowed to vote in this election. I can't vote, I'm denied voting in this election at all because the thing is my aboriginality is questioned even after winning in the Federal Court.

I run in the regional council elections this time around and so did my son. We didn't need preferences to get in because we got a lot of community backing. My son is the youngest regional councillor in Australia's history. He never had any preferences to get in but if he goes to get legal, health, if he goes to vote in this election, he's not allowed to, he's denied voting.

**Mr WILKINSON** - How old is he?

**Mr WOLF** - He's 20. Even myself, I can't vote in this election, I was denied voting, my family was denied voting in this election. I know plenty of people in the Channel area, they're black, I know these people and they were denied voting in this election.

Clyde Mansell's report - the first part of it - was put a few years ago, we had no say in that, none of the people. As I say, it's just like having one Green party in Tasmania and everyone has to vote for that

Green party and if you don't vote for that Green party you're no-one and that's what could happen in this. We've got no say on the lands in the south, none at all.

A few years ago I worked for an Aboriginal organisation. They said we want you to bring the old people and young people together and I said, 'Great, I will.' So I set up a cultural camp on Bruny Island through the State Government. I had a lot of help from the Liberal Party and the State Government, it was great, and we sent this camp up down Bruny and all the State was invited even though we only got a lot of people from the Channel, school groups and whatever. It was a great camp, the kids learnt how to mutton-bird, they'd never mutton-birded. The first night they were missing their Atari's, their video games and the tele. The second night we couldn't find them because they were watching the penguins come up the beach and we showed them which burrows had snakes in them, we taught them a lot, how to dive and all. It was great with the school groups and that. The next year we put in for it and were denied that camp through the Department of Aboriginal Affairs on advice to Max Kitchell from Parks and Wildlife that we weren't black. There's a lot of people here that have no say.

The same as if you are not in an Aboriginal organisation in Tassie you can't go for services because you've got to come up with the confirmation. There's powers of association - I don't have to join a union if I don't want to, I don't have to join this if I don't want to but I have to join an Aboriginal organisation to identify that, it is totally wrong.

Years ago when we moved to town, a few years after, I went for job interviews at the TAC, the Aboriginal Centre. I was smoking mutton-birds - I've still got the papers where I went for job interviews, the whole lot. I was accepted, nah, everything was great, earning money and whatever. As soon as I trod on one or two toes in there - I didn't believe in some of the philosophies - I was branded white. If I go for legal service I can't get legal service and that's the way it is.

Firstly, I think you have to look at - the word is around the community that a lot of this is already done, it's only out of courtesy you're talking to people, with the greatest respect. But, I don't believe you would do that. I think really you've got to talk to people from across the community in the south. You've also got to look at people like Benson and that in the north. With that land in the north, a lot of people in the south don't care - it's not our land. Our lands are down here, our lands are in the south. When it comes to the southern land, the people are born, grown up, they've got their roots in the south. When it comes to the southern land, yes, it would be great, but I can't see by putting together one party of northern-based people to judge who is black, who is white, who can walk on land in the south, I can't see that it's going to do any good for the southern community.

If you look at the boundaries in Tasmania with the last regional council vote, there was a north-west, there was the north and there was the south. Now with the last regional council vote that came up, you had four reps from the north-west, two from the north and six from the south to make up the twelve regional councillors. That shows there's more Aboriginal people in the south than there is the north or north-west, but if you go through this it is totally different: you've got two from here, four from there - I can't see where you get your numbers from.

**Mr WILKINSON** - How many voted, Charles, are you aware - in the elections?

**Mr WOLF** - I think there were about 600 down here and probably 300 in the north, and they weren't compulsory voters. I know a lot of people who refused to vote because the three years before when they voted they had their aboriginality questioned. Even when we went to the Federal Court and we won on aboriginality, Justice Merkel noted this northern influence which came here as an exclusive club - it's in the court transcripts. It's a total joke what's going on here. We cop more persecution - what can I put it down to - we have more persecution, we're pushed away more from our own community throughout Tasmania than we are the white community and that's the way it goes. I can be accepted no matter where I go.

I go to WA working. I catch a plane and go and work on building sites throughout WA or Melbourne when there's no work in Tassie and I'm totally accepted, I've no problem. Then you come back here and I'm totally accepted in the south by our southern people down here but you walk in the north and some of the old people pull me to one side - some of the old elders there - and they say, 'We know who you

are but we don't dare back you. We can't back you. We'll be alienated ourselves' and that's the way it goes here with aboriginality in Tassie.

The thing is, the same is going to happen with our kids or whatever. There was an Aboriginal children's school set up in the south here and it was like Jones Town. It's closed since. The anthem was 'Michael Mansell is our hero, Michael Mansell is our saviour'. That's the anthem in the school the kids would sing every night. 'Goodnight, Michael; goodnight, Heather'. It's closed down since. It was a total Jones Town. I couldn't believe what's going on over in Tasmania. You tell the old people on the mainland about it all and a lot of the old people, like Rose Monks, who played Jedda in the movie and that - are great friends. There are a lot of old people through the Northern Territory, young people or whatever and they know what's going on here. It completely blows them out.

But I don't think the Labor Party in Tassie - Bacon or whatever - has got a clue what's going on here. I worked with Jimmy in the Kimberleys 20 years ago - Jim Bacon. I was a union rep on the Bowen Bridge when he was working for the BLF. I also bumped in and saw him from time to time at the Tasmanian Trades and Labour Council. I have rung him before and said, 'I need a job in WA, Jim'. He rings up a fellow and helps me get a job, but you come back and try to talk aboriginality to Jim now, you've got to go through Mansell. If I go to see one of the ministers on Aboriginal affairs, I have to go through the Aboriginal Development Unit, Premier and Cabinet. That's no good. Why should I be a member of any club to talk to someone when the average person can't.

It's like, with all respect, you Chairperson; can you look down the back and tell me how many Aboriginals are in the back? You don't know these people. You've never met them before, how can you judge them?

**Mr FLETCHER** - What should the test be then?

**Mr WOLF** - There's not an Aboriginal community in Tasmania, it's Aboriginal communities. There are communities. Each community should have the right to determine their own aboriginality. It shouldn't be put down to one board what has supposedly got elected people from the south when they don't come from the south, they've no roots in the south. The test should run along the same as the ATSIC act.

**Mr BAILEY** - Can I just follow Tony's question up? Under section 6 of the act, we are talking about the Aboriginal Land Council, aren't we?

**Mr WOLF** - Yes.

**Mr BAILEY** - Well, two are to be elected from the southern region to represent the south, two from the north, two from the north-west and one from each of the two major islands, are you saying the people who are elected from the south are not representing the south?

**Mr WOLF** - No, of course they're not. The people who are elected in the south now, can you tell me who they are?

**Mr BAILEY** - Well, that was going to be another question: could you tell me who are the members of the council?

**Mr WOLF** - I know one is Michael Mansell, who has since moved to the north. Now you can read any documentation you want on Mansell, he claims to come from the Furneaux Group, he's not from the south. When the bushfires were on he was running around up north rubbing noses making out he was a Kiwi. We don't know this person.

**Mr BAILEY** - Are you of Tasmanian Aboriginal descent?

**Mr WOLF** - Yes. But from the south. Don't forget, you can read any history book you want, there were about 23 tribes in Tasmania before white settlement was here. She was a waring tribe and she is still a waring kind of community now, but you have your north and your south mainly. A lot of these small groups in the south are tied together. There's one group down at Cygnet, the South-east Tasmanian Aboriginal Corporation, and they won't sign anyone into that corporation who lives above

Kingston. They don't want the people above Kingston. All their people are down the Channel there. Then you have other groups around Hobart, they won't sign people in who live on this side of the river.

**Mr WILKINSON** - So you are saying Charles, in summary, that in your belief there are divisions within the Aboriginal community within Tasmania and those divisions are big divisions.

**Mr WOLF** - Yes, they're massive divisions and the thing is if there is some kind of board set up on land and you have representation to the State Government or the Federal Government from this board, it's an unfair board. The board that's put up now is an unfair board and it's totally wrong.

**Mr WILKINSON** - Can I ask you, how do you solve that division within your own communities?

**Mr WOLF** - I reckon the community groups in that area that are already set up should be looking after that land. I have no trouble with the Tasmanian Aboriginal Land Council, not this new board set up but the Land Council has a good history of looking after the land and doing this and I know a few blokes on the Land Council and rangers and that that speak highly of the Land Council and these same people are ringing me up saying, 'This new set up is a total joke'. They're not trained in it. But the thing is with the Land Council itself, I still can't vote in the Land Council elections because the Land Council people, a lot of them are from the north any way, they weren't in the south of Tassie 30 years ago.

**Mr FLETCHER** - Charles, I don't believe you are correct when you say the system is wrong, the problem is that there can't be a decision by the Aboriginal community or communities themselves as to who is and who is not an Aborigine and who should and who should not vote because surely that is the responsibility for the community people rather than for the Parliament of Tasmania.

**Mr WOLF** - I totally agree with you, Tony, but the thing is, as I say, it's not Aboriginal community, it's communities. You've got these community groups that are rock solid in that area, that person in the south-west can identify that person in the south-west, they are a member of that corporation. Now there are a lot of people that don't want to be members of corporations.

**Mr FLETCHER** - But didn't Merkel substantiate that proposition, didn't Merkel's judgment accept that a community could accept a member and that that person was therefore an Aborigine?

**Mr WOLF** - Yes, that's right Tony but at the same - now you take a person from Uluru comes to Tasmania, right, an Oomaha (?) from the Simpson Desert or wherever comes to Tasmania. That person can move to Tasmania, that person can join an organisation and that person as well can determine, if they sit on a board like that, who's getting what land here. So that person all of a sudden decides on if there is a land claim on Partridge Island that's successful in the south of Tasmania in the D'Entrecasteaux Channel, has full say on that.

**Mr FLETCHER** - The legislation proposes that the onus of proof is with the applicant. If a person claims to be an Aborigine they would have to furnish the proof to substantiate that claim. Is there a problem with that if we just deal with your specific case?

**Mr WOLF** - I can go to ATSIIC now and seeing as I am a regional counsellor I could probably put in for a home loan if I wanted one or a loan or something and if I qualified I could get that loan through - if I'm working or if I can pay it back or whatever. But if I go to the Tasmanian Aboriginal Centre and ask for legal, totally denied, because they say, 'You're not an Aborigine, bring your family tree'. So if I take my family tree and 'No, you're not an Aborigine' but there's no-one qualified up there to do that family tree even after winning the Federal court case or whatever.

Now the thing is - they're trying to bring out now you have to go back to a full blood ancestor or whatever but the thing is if you can go to a half caste that's not good enough. You have to go to a full blood ancestor. So that half caste doesn't count; that half caste must have come from somewhere. It's the way they determine aboriginality as well. I have seen some people be questioned on aboriginality by them because you see they might have the name Jones but their sister that works up there or their sister is high up in one department is an Aborigine person has the name of Smith. Seeing we don't have that Jones person up there, 'Oh, I don't know them, they're white', it's as simple as that, that's the way it goes.

The only way to determine aboriginality in Tasmania is for each group to determine their one. With that determination they get confirmation, that's when they should be able to take it to this board and say, 'There, there's our confirmation, you accept that confirmation according to the ATSIC act' and that's it, that's the way it should be done.

If they have a discrepancy with that, take them to the Federal Court, if they win in the Federal Court, great. But look at all the cases in the Federal Court on aboriginality so far. The Centre got one person, the last one after the Regional Council one cost an absolute fortune, it was thrown out. All of ours cost the taxpayer or the community a fortune, it was thrown out, that's the way it goes.

It's hard looking in on this when you're not involved in this, it must be shocking hard and that's the way it is. You don't know what's going on, so you talk to this person, you talk to that person but put yourself in the situation, unless you can identify any people sitting behind me as black you shouldn't judge but that's what these people are doing.

**Mr WILKINSON** - What are your views, Charles, in relation to the hand-back of certain lands? Do you believe that that's going to create reconciliation?

**Mr WOLF** - Well, with certain lands. I can't really understand this hand-back because the thing is if there is any economic development earned off these lands the State Government makes money out of it, you still have to pay rates on these lands. The only land ever handed back in Australia's history, 100 per cent Aboriginal control, is the tip of Cape York, a tiny little tip of Cape York. Bowen Park is not, Oyster Cove is not. This other land you're talking about handing back is not now, if you find minerals or gold six foot down, some way this Government's going to dig it.

The only reason why the tip of Cape York was handed back was when the Americans got thrown out of the Philippines caused that and the only reason that was caused through the Anzas Treaty they had to sail from one ocean to the other, they couldn't sail through the Australian waters any more so: give it to the Aboriginals will do, what are they going to throw? Throw spears at us when they come through their waters, we have the whole Yank fleet sailing through our waters in the north of Cape York and that's the only land 100 per cent handed back and that was caused through a foreign government influence.

**Mr FLETCHER** - I think the need is to deal with the reality. The reality is that there are certain propositions before this committee; there is a range of conflicting evidence and a lot of evidence. What the committee, or what I as a member of the committee, would like to know is whether you believe the transfer of land to the Aboriginal Land Council is warranted. Is it a just action for the Parliament to take on behalf of the people of Tasmania to transfer this land back?

**Mr WOLF** - I can't speak for the northern people, I can't do that, and that's the way it is with me, Tony. The thing is, you can read and hear a lot about this hand-back of land, and I think it is probably a great thing that this Government is doing something. But how it came just out of the blue with Bacon announcing this and that - I know I have a lot of white friends in the north, Benson and all those, and it really blew them out. I know a lot of fishermen down at Marrawah and places like that are starting get worried. Traditionally they've had fishing villages there for 150 years, what about them?

What about Temma and places down through the coast there? I have family that works out of Temma and a bloke there - his grandfather has one of the slips there and a boat out of there, they've worked there for generations. Where does it leave them? He's Aboriginal, but he doesn't get up and identify as Aboriginal. You see what I mean? You can look at both sides of it there, but when it comes to land in the south -

**Mr FLETCHER** - Charles, you put a proposition that the ancient people were tribal people and fiercely tribal by much of the history, anyway. They defended their territory and were aggressive and warlike in defending that territory; they spoke different languages or different dialects of the language. Therefore you seem to be suggesting that the modern situation should reflect that tribal scene, that rather than there be a single community, if there is to be consideration it ought to be considered on the basis of ancestry to the tribal people of the past.

**Mr WOLF** - No. What I am saying is, Tony, I can look at your name - Tony Fletcher, Murchison - and you go down the list what area you represent. But the thing is, when you are part of the land, when you are tied to that land like the Channel area and all the people I know down in the Channel area or from around this area, those people there should be voting for who is representative of that area, not have someone from the north move in, stay for a couple of years, hop on a matchbox - you see them on tele, whatever - run in it and these people are denied voting in it. He gets his position in it and then he says all of a sudden, 'I'm a representative of the south', when 90 per cent of the south weren't allowed to vote for that person, they weren't allowed to vote in that election. If you are going to have representatives from the south on this, they have to be representatives from the community, not just one elite group, you see. That is what I am saying, Tony, it's like having one Liberal Party in Tasmania, no Green, no this, no that, and everyone has to vote for that party. If you don't vote for that party, they'll make all the decisions on the land or taxes, or whatever, but you're not allowed to vote, because that's what's happening down here.

**CHAIRPERSON** - We might condense this, Mr Wolf. Your main concern is the election processes within the Aboriginal community for them to go out and represent their communities in the wider sphere.

**Mr WOLF** - Yes. My main concern is the party put forward to look after these lands is not truly representative of the people.

**CHAIRPERSON** - The point I make is, they have been elected by somebody -

**Mr WOLF** - Yes, they have been elected.

**CHAIRPERSON** - and as such the Government of the day is dealing with them as the elected party. Your argument is that you believe the election processes are flawed in their acceptance of who can and who cannot vote.

**Mr WOLF** - That's right, Madam Chairperson. We weren't, and I can give you at least 400 to 500 people who weren't allowed to vote in that election. I can give you 400 or 500 people, even the education isn't allowed to vote in that election, vote in the TALC elections - the whole lot. There are a lot of people denied because the people running the show are from the north, they don't know the southern people. Turn the situation around and put me there, and all the people from the south determine the land in the north and they would be giving you the same story as me. They're not allowed to vote because we don't know those people, they don't know us. They come down here and unless you are Fanny Cochrane-Smith's mob or you come from the Furneaux group, you're white - simple as that. You can go back and read the paper twelve months ago in the *Sunday Times* where they went mutton birding in the south here at South Arm. Unless you are Fanny Cochrane's mob or you come from the north, you can't go mutton birding. That's the way it is. I can show you people down the Channel who are black as the ace of spades and would make anyone from the north look anaemic, but they'll never be accepted. Their history can show who they are and where they come from, but they'll never be accepted, and they're our old people.

Even the old stories down the Channel when they were setting up the signal stations there, after there were people put at Wybalenna, after the Aboriginals were rounded up from the south, I can show you stories written in there in the archives where they sent an Aboriginal kid up the flagpole because the flag got caught up. Everyone was meant to be on the islands in the north. It's proven history there were blacks in the south, there were half-casts, quarter-casts in the south after the Furneaux group and when everyone was meant to be at Wybalenna. There were people out on the coast, but the people from the north won't accept it because they've got too much of a power base here.

The only way to put this thing together that you are proposing is for each community to recognise and do their own aboriginalities as well. Any person with a common seal from that community group to be able to vote in the election, that's the way it's always been and it's hard enough getting through that, why complicate things? If I go to a community group and they confirm me as an Aboriginal and I ask for a common seal on that, what they should provide - or some of them don't - that's when I should be entitled to vote in this election, not to walk into it and all of a sudden you have the Department of Aboriginal Affairs and Premier and Cabinet saying, 'You're white, because we all come from the north,

we don't know you'. Or, 'my great grandmother doesn't know yours' because that's what's happening here. There are one or two people in there for their own gain, they don't want any takeovers, it's not a democracy any more, you can't live like this in the Aboriginal community.

If I wanted to I could run as an independent in the Channel, I'd probably get enough votes to get in, I don't know, but in the Aboriginal community you can't do that because you're denied voting so are your people, you are denied voting.

**Mr BAILEY** - I don't understand how you're denied voting if your name is on the role.

**Mr WOLF** - You're denied voting, I can't go and vote, I'm not allowed to vote.

**Mr BAILEY** - Was that because you're not on the roll?

**Mr WOLF** - Yes I'm on the roll. I had to be on the roll to run in the regional council election but if I have to vote for land council and that I'm not allowed to vote because I'm not allowed to be a member because they question my aboriginality.

**Mr FLETCHER** - But aren't we talking about different roles here? The ATSIC roll is different to the roll that is put together for the -

**Mr WOLF** - That's right, there are two different rolls.

**Mr BAILEY** - Yes, I am talking about the one that's under this act that we are dealing with.

**Mr WOLF** - I'm not allowed to vote.

**Mr BAILEY** - Under the Aboriginal Land Act?

**Mr WOLF** - No, I'm not allowed to vote, my family is not allowed to vote, my ancestors, my cousins, hundreds and hundreds of people in the south and I don't know how many in the north, are not allowed to vote, we are denied voting.

**Mr BAILEY** - Have any of those people to whom you referred, do they get any special benefits from the Commonwealth in any way?

**Mr WOLF** - Yes.

**Mr BAILEY** - So they are accepted by the Commonwealth?

**Mr WOLF** - Yes, under the Commonwealth definition, yes. Like myself, I am on the Tasmanian Aboriginal Regional Council, I was on the last one.

**Mr BAILEY** - They get Social Security benefits as a consequence of their aboriginality?

**Mr WOLF** - Yes.

**Mr BAILEY** - But they are not on the roll to vote for the Aboriginal Land Council?

**Mr WOLF** - Can't even get on the roll, it's a closed book getting on that roll, mate. I've got no chance of getting on that roll. I've got as much chance as you of getting on that roll. As I said before, I can give you hundreds of names of people that aren't allowed on that roll. We're not allowed to get on that roll because we might vote. Now if we vote, one day the tide might change and there might be a takeover, we might put a new chairperson in or something like that. It's Merkel's decision and it's the same kind of thing, it's an exclusive club.

**CHAIRPERSON** - Mr Wolf, under the 1995 act did you seek to have your name entered on the roll through the Chief Electoral Office?

**Mr WOLF** - Yes.



**CHAIRPERSON** - You did?

**Mr WOLF** - Yes.

**CHAIRPERSON** - And you have documented evidence that he refused to accept your name onto the roll in 1995?

**Mr WOLF** - My mother who is sitting here did, she was denied.

**CHAIRPERSON** - By the Chief Electoral Officer?

**Mr WOLF** - Yes.

**Mr BAILEY** - Does she have a letter confirming that?

**Mr WOLF** - Yes. If our old people can't get on it, what chance do we have. What chance does my son or my daughter have to vote? I'm not talking just about my family, I'm talking about a lot of people down here.

**CHAIRPERSON** - So we can presume that when the process happened in 1995, there was an objection to the inclusion of your name on the roll and that objection was agreed to?

**Mr WOLF** - Yes, we got a letter saying, 'No you can't vote, you're white.' It's like many other letters we have in the past when I have gone for legal services. I usually give it to mum, she files everything. You just learn to go around it and go on because that's what we've always done.

There's a confirmation for that same person from the Commissioner of ATSIC and these are copies of other people's too, there are lists and lists of them.

**Papers tabled.**

**Mr WOLF** - When I made that declaration when I started - I haven't gone from that declaration - I have no problem with anything I tell you or anything you ask me or anything I can give you.

**Mr FLETCHER** - Charles, it is said in other evidence to the committee that sometimes the test is the question: were you an Aboriginal in the hard times? How would you respond to that question?

**Mr WOLF** - I think we were down the Channel area. We always identified, a lot of people I know from the Channel area never. I know people that are pretty high in the centre, like the Sculthorpe's, at school they never identified. But the thing is in the hard times, the hard times must have been probably 30-40 years ago. I know people 20 years old, were they Aboriginals in the hard times, they weren't even born then, my son wasn't even born then, was he an Aboriginal in the hard times.

Through getting up and identifying 20 years or 30 years ago, 'Oh, we're Aboriginal, we want to go mutton-birding, this and that.' Down the country, as I say, a lot was tongue-in-cheek. There was a lot of people that did identify but there was a lot that wouldn't, you couldn't do that. There were a lot of laws and that back then. You had to get permission to vote, marry, travel from State to State. Your mother and my mother got a job, my mother took a three-quarter pay. They were Federal Government laws. Namatjira went to gaol for buying his own house so a lot of people weren't going to identify as black if it is going to penalise them, are they, that's the way it goes.

**CHAIRPERSON** - Do you believe that the changes may be of an advantage to you in attempting again to have your name put onto the roll under the amendments?

**Mr WOLF** - I totally believe that another roll should be set up and that's a Commonwealth electoral roll and every person on that roll should be entitled to vote. The ordinary electoral roll where you go to vote Labor, Liberal or Green, that should be the roll; you should not have this independent roll for the elite because a lot of people - and from the papers that my mother just tabled - you can see that it's all selective.

**CHAIRPERSON** - Under your interpretation Mr Wolf, then the entire Tasmanian population would elect the ALC board, is that what you are saying?

**Mr WOLF** - Yes, the entire Tasmanian black population. People aren't going to stand up and go into this unless it's part of you. A person doesn't usually go and identify as being black to cop discrimination for nothing, why should you do that? It's like setting yourself on fire sometimes.

**CHAIRPERSON** - If I can just go back to the changes to the election process in the Aboriginal Lands Amendment Bill 1999 which would allow you to register your name through the process and then if there are any objections, for you to appeal first to the council and then if you are not satisfied with that, to appeal through the Supreme Court. Do you believe they are improvements on the 1995 act - your opinion?

**Mr WOLF** - Who is going to knock this back? If I go to vote, who's going to knock me back, that board that's sitting there at the moment? Of course they'll knock me back.

**CHAIRPERSON** - But there are processes here that allow you to go further. I suppose I am asking the question: are you satisfied with the processes, that they are an improvement on the 1995 act?

**Mr WOLF** - No, I'm not satisfied, not at all. I know people who are black that have gone for a home loan.

**CHAIRPERSON** - If we could just stay on the channel of elections at the moment.

**Mr WOLF** - I know people who would come and if they were knocked back would walk away and say, 'Oh they can stick it.'

**CHAIRPERSON** - When you make application to go on the roll to be able to vote, who do you believe should be the organisation or the individual who should hear appeal processes?

**Mr WOLF** - I don't think there's one set up, there never has been.

**CHAIRPERSON** - But you must have an opinion as to - if I, for instance, having no Aboriginal heritage, wish to put my name on the roll, quite evidently, I should be excluded. There should be an appeal process where people who believe they have been mistreated can appeal. I am asking you as you see the council process as not being the appropriate body to which appeal to, who do you believe would be the appropriate body?

**Mr WOLF** - I believe that anyone who wants to be on this roll should have confirmation from an Aboriginal corporation whether it be the north, the south or wherever. But that confirmation should be accepted by that and go on the roll. That's when you come to another one, the power of association. Why should I as an Aboriginal person in Tassie have to be a member of a corporation to be black because that's what it will come down to there as well. I know a lot of people that won't join corporations and always identify.

**CHAIRPERSON** - I am still looking for perhaps an opinion from you that if you as an individual wish to put your name on the roll and there is an objection and you wish to appeal that objection, who do you believe would be the fairest process to use as an appeal process?

**Mr WOLF** - I wouldn't have a clue. I wouldn't have a clue unless it's an organisation that you're a member of. If I'm a member of an organisation, yes, they can do me a letter, a confirmation that I can give to that board, that that board accepts that confirmation I'm black.

**CHAIRPERSON** - That again, on your own evidence, excludes the individual who you say may not wish to be a member of a corporation.

**Mr WOLF** - That's right, who don't want to join up.

**CHAIRPERSON** - Thank you. Mr Wolf, it is nearly two forty-five. Do other members of the committee have any questions they wish to ask of Mr Wolf. If not, you have two minutes, Mr Wolf, if

you wish to make some final comments.

**Mr WOLF** - Before you make any decisions on this you should listen to - and I am not saying you're not because I've known Tony for probably ten years now and Tony is pretty aware of what's going on - Mansell isn't the spokesman for Tasmania and the TAC aren't the spokesman for Tasmania. The communities are their own people in Tasmania, we're not drones or puppets, we don't get led around by the nose. If you don't go to the system and you don't tread on their system, you are branded white. They can take me to the Federal Court, I will still walk out smiling, I don't care. I don't need the Federal Court or that to tell me I'm black, or Aboriginal or whatever.

I don't need a board to be set up to tell me I'm black. If you are going to set this up and if you have any influence on setting this thing up, take heed of the little people, not these people on their matchboxes, not these exclusive clubs. Put yourself in our situation if you can do it and a lot of people's situations. Think about it because the thing is there's more to this than really meets the eye with all this stuff. All it is is a power base for a lot of people and probably an Aboriginal provisional government later on or whatever.

The thing is there are a lot of people out there who would like to vote, they would have liked to have done a lot of stuff on this. It's not just these elite and they should be listened to before you make any decisions on this. I think that's from both sides of the community really.

**Mr WILKINSON** - In relation to the case where you said you went to the Federal Court, it was Justice Merkel who decided that. Have you got a copy of that decision?

**Mr WOLF**- I can get a copy of that decision, I've got no problem with this. Thanks for hearing us out. I would like to see something good come out of it but the thing is if we're cut off from voting in it, we'll go around it. There might be civil action, I don't care. We'll just keep on going, we've been here for a long time now, we'll keep on going. If it's not me it's going to be my son or his son and that's the way it goes. Thanks a lot.

**THE WITNESS WITHDREW.**

**Mr LANCE LESAGE**, FIRST ABORIGINAL CONTACT TASMANIA WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

**CHAIRPERSON** (Mrs Sue Smith) - Thank you, if you would like to make your presentation.

**Mr LESAGE** - First Aboriginal Contact Tasmania is a registered Aboriginal organisation carrying out children-at-risk and youth-awareness programs because we see that the children of today are our future. In our children we are attempting to instil a new mentality in the Aboriginal community, an unbiased mentality, a fair mentality. These children, their identity at present is all based on acceptance of their parents as Aboriginal people, which has been a big problem in the south.

A lot I was going to say on behalf of this organisation, I think I dealt with it with the previous one. With the question of aboriginality, I would like to ask the question: here I have before me a select committee. Is anyone on the select committee a qualified genealogist or any experience whatsoever in genealogy because, if not, then where are the qualified judgments going to come from in determining what is past and what is not in regards to these amendment bills to do with aboriginality? If it comes down to these people who are elected to the Land Council, will any of them have any experience?

At the moment there are people out there in the community and in government - Federal and State government departments - specifically to do with Abstudy, law, sitting in judgment of questions to do with aboriginality and they haven't got the experience. It is people in the Aboriginal community who are suffering because of that because of inexperience in unqualified judgments being made. I would hate to think of an amendment bill going through dealing with the question of aboriginality if it is based on unqualified judgments. I'm possibly the only person who has been a qualified genealogist who has had anything to say to this committee. But I can tell you, with many years experience as a genealogist and dealing with confirmations of aboriginality for the Aboriginal community, it is not a thing you can deal with quick, there is a lot to it. The organisation I am with that deals with aboriginalities, we have to make sure we do the right thing because it's our head and credibility on the chopping block.

With the children we deal with with FACT, the organisation called FACT, all these children seem to be accepted as Aboriginals in the community but not their parents - that is another side of it.

On behalf of FACT I just express the same thing as I did with TADA, we have to have one definition and I think the opportunity is with us now to resolve a problem that exists in the community and not make it worse by having two definitions. What is going to happen when these children - and I have had this raised to me by one youth who is only twelve years old - he knows both his mum and dad are having problems being accepted as Aboriginal within certain government departments because they have gone to these government departments to access certain things for their children and been knocked back, so the children suffer. This twelve-year old child said to me, 'Am I going to be able to vote in an Aboriginal election when I'm eighteen?' I honestly had to say to him, 'I don't know.'

If it is not dealt with now - and I think the opportunity is here for it to be dealt with - I think it can be dealt with by having one definition in the community and not two, to give these kids their identity now and not later because I know there are various ones in the community who are in prominent positions, either with the TAC or government departments, hoping this proposed definition in this amendment bill does go through so they can shoot a few people in the head and say, 'Well you're not Aboriginal, you're white'.

**Mr WILKINSON** - So it is the same argument as before -

**Mr LESAGE** - Yes, but in this case I am saying let's look at the kids in the community now, try and establish their identity as Aboriginals now and not say to them, 'Well, you've got to wait until your 18 until you vote to see if anyone is going to challenge you'. We've got to deal with it now. It still comes

back to the question to do with aboriginality. It has to be dealt with by qualified people because if we talk about community acceptance, what is the use of dealing with community acceptance if you don't have qualified people doing the genealogy because if you don't have the genealogy then community acceptance doesn't even come into it but if you have the genealogy those kids are safe.

**Mr WILKINSON** - Can I get you off that point because we've heard a lot about it in relation to the last half hour or so with TADA. Do you believe that the hand back of lands is going to cause reconciliation or will assist with reconciliation and if so, why?

**Mr LESAGE** - I think the hand back of land is a good thing; I think there should be more of it, only if it is managed correctly by the right people and by whatever guidelines exist on the day. I have certain members on Bruny Island. On behalf of those Aboriginal people on Bruny Island, if I put in a land claim for a section of land on Bruny Island and that is granted and we get the land, this land council, as I see it under the act, they can decide on whoever they want to manage that land. My opinion is that that land should be managed, if there is an organisational locally, by that organisation that represents the Aboriginal population in the vicinity of that land, not a situation like - Oyster Cove is a good example because that was the first handover, being controlled by Cape Barren Islanders and ones from Flinders Island and Launceston and anyone from the south goes to that land and it is, nick off, they are not accepted on there. Even if they accept you as Aboriginal they don't accept you on that land, you're not one of them.

That land down there, now for instance we have a prominent Aboriginal corporation at Cygnet, I think that the SETAC should ideally in these days control that land.

**CHAIRPERSON** - So your principle, Mr Lesage, is that ALC should be utilising local communities to manage the land that is deeded to ALC in perpetuity.

**Mr LESAGE** - Totally.

**Mr BAILEY** - That power is already in the act, isn't it, that the Land Council can appoint local management committees to run the land and I think that it did that at Wybalenna.

**Mr LESAGE** - Can, not shall, may.

**Mr BAILEY** - May, yes that's right.

**Mr LESAGE** - The chances of that happening in the south is nil.

**Mr BAILEY** - Are you advocating that an Aboriginal body is better to manage the land in Tasmania or is better to have it managed by the department? Where are you coming from in relation to how it should be managed?

**Mr LESAGE** - I would think using SETAC, as another example - and that is at Cygnet - that the membership of that organisation are Aboriginals from that community. If there is a handover of land in that community I feel that the management of that land couldn't be any better managed than by that local community there.

So far the two sections of lands that I know, right there and over at the Cove, are managed by the TAC. The people making all the decisions in regard to that are from the north of the State, not the south - the south has no input whatsoever.

**Mrs SILVIA SMITH** - Could I just go back to the issue of aboriginality because it has been worrying me ever since you first sat at the table and I thought I would wait to see what you had to say in this lot. You are starting to clear it up a little bit but I would like you to take it further. Firstly, you said that you are a qualified genealogist so I would like you to answer: what qualifies you as a genealogist? I do know just a little bit about genealogy having, like most people, looked at my family tree. Could you just explain to me just to clear my mind - how, in the search for aboriginality, you can say that you are Aboriginal? I am only going from the little bit I know about tracing my own family back, which is

through Denmark. Where and how does it say on paperwork that that relative, that descendant, was Aboriginal? Can you explain that for me.

**Mr LESAGE** - After settlement there were quite a few years before it was legislated that births, deaths and marriages be officially recorded. Although now there is a database, pioneers index, that is a record of all recorded births, deaths and marriages and christenings and, in some cases, funerals up until the year 1900.

**Mrs SILVIA SMITH** - Where known, I would suggest.

**Mr LESAGE** - There are several instances on there where - I think the earliest one on there I found was 1808 -

**Mrs SILVIA SMITH** - That's here in Tasmania?

**Mr LESAGE** - Yes, solely Tasmania.

I keep on harping on the TAC; it's just because they're so prominent in the community. The TAC say if you belong to the family of Fanny Cochrane-Smith or Dolly Dalrymple or are from the islands, then you're Aboriginal. If you're not descended from either of those two people definitely, you're not Aboriginal.

**Mrs SILVIA SMITH** - That's where my query comes in because somewhere on some historical paperwork it has got to have said that those two were Aboriginal, but surely there have to be a lot more -

**Mr LESAGE** - There are.

**Mrs SILVIA SMITH** - And how do you identify them?

**Mr LESAGE** - There have been a lot of myths installed into the mentality of the people in the community, both Aboriginal and non-Aboriginal, via books being written. I've got one of the earliest book ever published - it's about three inches thick and I call it the Aboriginal bible. There's a lot of information in there; I can trace families back to certain people mentioned in there. A lot of books have been published in later years and the more books that are published as time progresses you pick up more mistakes. You go back to where they're getting their information from and say, 'How have they put that in there?' Perhaps because it suits their cause or it may be through lack of research, so they -

**Mrs SILVIA SMITH** - A history is only that person's view of the times.

**Mr LESAGE** - Yes. Now, can I give an example in the case of my family, when I was challenged? There was a taboo of not mentioning the names of the ancestors, like my grandfather. Before he died I was asked by my grandmother if I could take him back to his roots. I took him back to his roots and he stood in places and looked, maybe for five or ten minutes, and things were coming back to him. He was an old man in his nineties and he told me a lot. He told me where his old grandmother lived - he referred to as the old black lady - where she lived with her husband, and the indent was still there in this bank on the edge of the water. I said, 'Why didn't they live down in the community?' 'Because she was black and she wasn't accepted by the community' - so a lot was still going on then which is going on now.

The oldest house that the family lived in was at Koonya. If you go down to Koonya - some of you may know Koonya well - opposite the church there's an old house falling down and it had a 'Trespassers Prosecuted - Keep Out' type of sign and it's been like that for a number of years. A journalist came over from the mainland and was snooping round and there was a big rock on the verandah. He lifted it up and there were two letters under there and they were to do with the family's history; one was written in 1843 and the other in 1848. What they were doing under there I don't know, I don't know how long they had been under there; all I know is that no-one had lived in that house since 1919. I ended up with copies of those letters and then I started going round to the older members of the family who still existed and I got further letters written back then. There was no reason for people to lie back then to do

with the question of aboriginality. The word 'aboriginality' is only a recently new word, with all sorts of consequences stemming from it, but one of the letters even referred to what I said about my old grandfather - he said that his grandmother couldn't live down there because she wasn't accepted, an old black lady.

There are a lot of letters in the community - bibles - you can go back to wills, there's a lot of information in wills. There are all sorts of documents that exist, going right back to the earliest days, where you can get information. In my case, my first ancestor in Tasmania, Charles Brown, was a British soldier who had come here with his company and there was no record of anyone coming with him, such as a wife. Then there was a daughter born - I'm not going to mention her name because I follow the taboo because she was Aboriginal - but her mother just gave her a Christian name, which was consistent with that given to Aboriginal females. When he left a short time later it was checked - he left without a wife and child; they stopped where they belonged. Then I came upon a family letter about where she was buried - and I can take you right to that place - and describes what she was, an Aboriginal. Another letter describes her half-caste child.

That's where I get my information from and quite a lot in the community can. It's there if you're lucky enough to come across it in your search or if you're lucky enough, as my family was, to have certain documents handed down through the family. There was no great significance put on them until I went out there in the community and said, 'I'm Aboriginal and I'm proud of it'. It's very frustrating some of the hours I've spent - I've sometimes spent weeks with very little sleep researching desperately to say to a person, 'There's your family tree'. It's a beautiful feeling to say that; other people have tried and failed and I've come up with it. They go away and then they come back and say, 'It won't be accepted; I need confirmation', so we say, 'Right, to prove it we'll have a meeting. Who will move a motion confirming the aboriginality of this person? Someone will say, 'I've known their family years and they've always been Aboriginal' so we'll do a confirmation. Out they go and they're still knocked back. What more do they have to do?

**Mrs SILVIA SMITH** - In many instances you can't confirm by actual certificates, can you, when you're looking at genealogy?

**Mr LESAGE** - There's no other way. If there are documents there to say a person was born or christened - in a lot of cases there's records of a christening but not a birth - you've got to make do with what's available and for someone to say, 'We don't accept that', then they have to come up with evidence in rebuttal - which I've not known them to be able to do. It's quite easy to say, 'I don't accept you as Aboriginal; I don't accept that family tree', but in a lot of cases they're not accepting what's on the official records. What more can we come up with? We can only use what's available.

**Mrs SILVIA SMITH** - So are you suggesting that this definition of how to prove aboriginality will be the right way to go - section 3(a) - or preference to the ATSIC one?

**Mr LESAGE** - No, I think we've got to stick with the ATSIC one because if you bring that in and we say that is right - the one in the amendment bill - then we have to go out and try to shoot this Commonwealth one down and where's a person going to get the money? Again, Madam Chairperson raised the subject of appeals. In my last Federal Court case I was in danger of losing my house to my lawyer because to prove I was Aboriginal I had to go and get the best lawyer available that I could - which I couldn't do, and that would have been Michael Hodgman; I had to get somebody else that Michael Hodgman named. If I had lost that case I would've lost my house. I knew I was in the right but you don't know that judge sitting up there; he's the one person who determines the outcome of all the evidence given and if he'd said, 'I don't accept your evidence that you're Aboriginal', I would've lost my house. This is what happens with appeal processes but if I was to go up Elizabeth Street and apply for legal aid I would've got knocked back because they don't accept me at Elizabeth Street - the TAC - as an Aboriginal. It's all right to say the law is there and you can take it to the Supreme Court but the thing is, where do you get the money to take it to the Supreme Court?

**CHAIRPERSON** - Thank you, Mr Lesage. Do any members of the committee have any questions or closing comments to make.

Thank you very much for your attendance this afternoon on behalf of both those organisations.

**Mr LESAGE** - I thank all the members for listening patiently.

**THE WITNESS WITHDREW.**