

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

Mr RODNEY TRELOGGEN AND Mr JOHN SANSOM OF THE TASMANIAN ROCK LOBSTER FISHERMEN'S ASSOCIATION LIMITED WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.

CHAIRPERSON - Good morning, gentlemen, and welcome. We acknowledge that you represent the Tasmanian Rock Lobster Fishermen's Association Limited and we acknowledge receipt of your submission, which to us is submission no. 14. I do make the comment at the beginning of the process so you are aware of it that, whilst the Premier's working party originally did have the instruction to look at fisheries and closures of particular areas, commercial licences for Aboriginal catch etcetera, that is not included in the Aboriginal Lands Amendment Bill 1999. I just make that point for your clarification. Certainly access by land to areas traditionally fished by rock lobster fishers would have some involvement. You can see the maps. We are dealing with the amendment bill 1999 and its relationship to the 1995 act, just to ensure you put your emphasis where you feel it most important at this stage. Thank you and we'll hand over to you.

Mr TRELOGGEN - Thank you, Madam Chair and honourable members, for the opportunity to come and take up a bit of your valuable time. Firstly and foremost, we are not here to engage in the debate about aboriginality and the rights or wrongs of the granting of sections of land or otherwise to the Aboriginal community. We are here merely to raise some concerns that we feel can arise out of the legislation as it exists at the moment. I take your point about area 1 with the access. The reason I put the other two points in was that they are probably the three major points that concern the industry and under the terms of reference it had and any other matter seen as relevant to the bill. So I put those in there and with your permission I'll touch very briefly on those.

I'm sure everyone in the room is aware - and I know Mr Fletcher is certainly aware - of the issues that are arising on the north-west coast at the moment with Couta Rocks and Temma and the business with the Aboriginal middens and everything else. We've got a fairly large fishing effort in that area, which is basically undertaken by fishers who have shacks, moorings for their vessels and have a long history in that area. They are people who have traditionally used those areas to go about their business. I don't think they're the sort of people who would be involved in any problems with the vandalism that occurred up there some time ago - which certainly I believe was levelled at some members of the fishing community, not perhaps in general but broadly hinted at. I really don't see that they'd have an axe to grind in that area or be involved in that sort of behaviour to start with, knowing most of the people concerned.

There is an issue where fishers in general - and probably the Tasmanian Fishing Industry Council will cover that with abalone divers who access the water from the beach and those sorts of areas; we really don't have that problem with the people who are there - but we are concerned if any more of these areas are taken and closed off and vehicular access is not allowed into some of those areas it could have a significant impact on those people who are already there.

There are several issues in that. They've got no choice to go anywhere else. The types of vessels they use are mostly designed for shallow draught and smaller-type vessels they are able to moor there. There are a couple of exceptions to that which would be capable of going somewhere else. Unfortunately that leads into another problem that we're having at Smithton at the moment with access to our vessels there, which indirectly can have a bearing here in that the wharf has fallen down there and no-one has any money to fix it up. Everyone's passing the buck ferociously and trying to give it

from one department to another. It's a pity all wheels of government don't turn as quickly as how MAST handed that wharf facility back over to the Port of Hobart authority; I can assure you that government would run much more smoothly if everything happened as expediently as that. But of course that's because they didn't have any money and didn't want to have it. So that's the nearest facility, apart from Strahan, on that area of the coast which even now doesn't have the facility to cater for some of those bigger boats from down there. So if those people were forced out, for any reason, it leads to another problem further down the track.

So basically, as far as access goes, we have no objection to those areas being preserved whatsoever, but we would more favour a code usage area of that where there is room for everyone providing that the whole area is just not put up with a picket fence and someone says, 'No, you can't go there any more'. We've already experienced up there what will happen if that attitude takes place.

Mr WILKINSON - Is that the only area you have a problem with?

Mr TRELOGGEN - That area to start with. We also have the area of Clarke Island and Cape Barren Island, which are two of the proposed areas to be handed back. Then you have a problem with access there where fisherman traditionally right down through the sounds and all around Clarke Island and in particular Key Island Bay and Thunder and Lightning Bay - which are areas on the north-western corner of Cape Barren - where fishermen have traditionally used dinghies to go ashore where they haul beach seine nets on the beach to catch garfish and other things. We have practising rock lobster fishermen who catch garfish to supplement what they're doing, so it's a real worry to them when they see that the whole idea is to take over those two islands.

But that goes back to what I wanted to raise here, Madam Chair, with the areas here in the document that I handed you with the Aboriginal management and self-regulation of taking fish and wildlife. If you look at the map there and look at the shaded areas - the map's the back page - you'll probably see why fishermen are concerned that their future access to all those areas under the proposal would be denied and they would be unable to fish in those waters. That begs all sorts of questions - whether they'd be allowed to anchor there, whether they'd be allowed to go in there with commercial vessels, whether they'd be allowed to go on shore any more. I realise that this has been rejected by the Government at this stage but that merely means that somewhere in the future it will be raised again. That's a very real worry if they were denied access to those areas and also those areas have some of the best and safest anchoring areas there, especially in easterly weather. Preservation Island is an all-weather anchorage where fishing boats - it doesn't matter what the weather does there -

Mr FLETCHER - Rodney, this paper is a draft paper prepared by Mr Mansell on behalf of the Aboriginal Legal Service, I gather, -

Mr TRELOGGEN - Yes.

Mr FLETCHER - and you're in receipt of this by some means or another.

Mr TRELOGGEN - Michael gave it to me.

Mr FLETCHER - So that's a proposal that has been put to Government?

Mr TRELOGGEN - Yes, it was totally rejected by Government last year but it just shows the mind-set. That's the reason I wanted to bring it to this committee and, although it may not be relevant, it shows the mind-set of what fishermen are worried about happening if these areas are locked up completely.

Mrs SILVIA SMITH - If I could just interpose, Madam Chair. You are talking about the idea to have co-usage. At this point of time, I mean I'm fairly naive in the knowledge of all this - at this point of time are there are areas in the Tasmanian waters that are difficult for you to get in because of preservation for Aboriginal relics and things like that that you can't get access to?

Mr TRELOGGEN - Not that I'm aware of.

Mrs SILVIA SMITH - Not yet.

Mr TRELOGGEN - There may be, but not that I'm aware of.

Mrs SILVIA SMITH - So you're concerned about some of the areas that we're talking about here might be locked up to the low-water mark and you won't be able to get boat access to them or your people won't be able to get boat access. There's nothing at the moment.

Mr TRELOGGEN - No. It's more we're worried at setting a precedent somewhere - as I said, that could have a very wide-ranging ramifications for a lot of people.

Mrs SILVIA SMITH - Oh, yes.

Mr TRELOGGEN - Especially the people that live in that area. Those particular islands - Cape Barren and Park Island are fished by the fishing industry at large. We've got a lot of - especially in the winter time - a lot of fishers from right around the State.

CHAIRPERSON - Would one of you two gentlemen mind moving to the maps and on the Cape Barren one show us what is used at the moment by the fishing fraternity as the landing sites.

Mr TRELOGGEN - At the moment there is no restriction anywhere. The proposal is an area up at Big Dog which would have no effect on the fishery. But then we go from Apple Orchard Point and the area runs right around to here, then out to an island that's not shown here - which are the Chappell and those islands, which are further up - but right out to those areas. Then we come right around, outside Preservation and Rum Island - which are here - in a point down to Clarke Island and encompasses all of Clarke Island from Preservation up here right around and then back through to what we call Sloping Point over here and indeed all of Kent Bay which is the old whaling station.

Mrs SILVIA SMITH - That's the proposal there, but at this point it's covering what they've already marked in here - this area here.

CHAIRPERSON - The question I'm asking you is, with the proposed transfer of Cape Barren Island to the Aboriginal community, do you foresee that where you are presently perhaps landing is going to create any problems for the fishing industry?

Mr TRELOGGEN - Well, it depends on if there's any restrictions put on other people's access for the area.

CHAIRPERSON - So, on that map, where do you believe the fishermen are landing, if at all at the moment?

Mr TRELOGGEN - Up here - this is known as Thunder and Lightning Bay, then we have Key Island Bay - they're areas that they access a great deal. Down in here in particular, up into Kent Bay, is a safe anchorage area and also on the other side which is Clarke Island which is here, they've proposed the lot of that, haven't they? So you've got that whole area. Now, the Armstrong Channel, which I've said is the best area to work when conditions are bad. The landings, as such - they're not really landings as they go ashore - and this is only a minority of fishermen that do this, but there are fishers now who target these areas in particular for garfish in the winter and they actually physically pull the net onto the shore.

CHAIRPERSON - But there are no jetty facilities that would be used?

Mr TRELOGGEN - No, there's no unloading facilities anywhere through here whatsoever. Fishermen do not unload there anywhere. So it's not a matter of unloading -

CHAIRPERSON - It's safe haven or fishing in the bays when the weather is not suitable to go further out.

Mr TRELOGGEN - Yes.

Mr BAILEY - But they still need to go ashore once they're on Cape Barren.

Mr TRELOGGEN - They would need to go ashore if they were going about fishing practices that they'd done in the past - garfishing and one thing or another, hauling salmon nets.

Mr FLETCHER - Still the proposal, Rodney, is to grant the land to high-water mark plus, I think, 15 metres above the high-water mark is for public access - if that was the proposal, that would in fact -

Mr TRELOGGEN - That would cover that - that would still give them access. My view to that is that, whilst those areas are given back, they may not have problems with fishermen accessing those areas. It might not be a problem.

Mr FLETCHER - Does the association have any problems at all with the recognition by the Government of the hunting and gathering rights and the limitation that they must operate for private purposes within any management plans for the area.

Mr TRELOGGEN - In 1995 when the Living Marine Resources Bill was passed, we supported Aboriginal rights for cultural purposes. I thought that was a really positive step that the fishing industry would accept that and, as far as I know, we've only a couple of isolated cases, that has been very successful. The blocking-off of areas and one thing and another, that would certainly not be acceptable.

Mr WILKINSON - Would it be fair to say, Rodney, at the moment, with what you've heard, that it's nothing to do with the actual blocking-off of areas? The association you're with hasn't any real problems; the real problem that the association has is the fear that certain areas that are being presently fished by fishers are going to be closed off to those fishers, that's the real problem that the association has?

Mr TRELOGGEN - Yes. According to Michael this was the plan that they put. Those areas that are shaded there - which is all this area from here right through and encompassing Clarke Island as well - would be Aboriginal areas only, no take, but there is a significant part of the rock lobster catch, abalone catch - which is not my business - but with the rock lobster catch a significant amount comes out of there.

Mr WILKINSON - But what you understand now with the hand back of lands and the access that you can obtain to the islands, as Mr Fletcher just said, that doesn't cause you the same concerns and in fact it doesn't cause you any concern at all?

Mr TRELOGGEN - No, that's really not a worry to us unless it escalates. The big fear with the fishermen is once they get the land, because over the years - Mr Fletcher would be aware - we have had many ambit claims and many statements made, in particular by Michael - Michael is a very consummate performer but he comes out with these statements every once in a while - where they actually wanted a kilometre to sea; once they got the land they wanted a kilometre to sea. That's just totally unacceptable and he knows that's totally unacceptable. But that's just a little thing he threw in somewhere along the track a few years ago testing the water.

Mr FLETCHER - Rodney, allied to but different from, I suppose, is the establishment of no fish marine reserves around the State, a different issue altogether, but you have been supportive of the establishment of marine reserves. Have they had any impact upon the fishery, do you think?

Mr TRELOGGEN - We've been supportive of those up to a point and, yes, they have had an impact. In Bicheno in particular, which is probably the best known one, the diving there now and the tourist value of that closed area is phenomenal; it is highly regarded in world circles as a place to dive.

Mr FLETCHER - It's been a very positive action.

Mr TRELOGGEN - Very positive, but that was very bitterly contested by the fishermen at the time but now they would tell you themselves it's the best thing that ever happened. It was such a small area for a very big benefit. But we're supportive up to a point, I would stress that again, because some of the

claims that have been made by the - I will be very careful how I qualify this because I have to deal with some of these people - some of the claims -

Mr WILKINSON - Made by the Greens, is that what you're saying?

Mr TRELOGGEN - Yes, by the Greens. The trouble is we've got some of our departments - I shudder to think when Senator Robert Hill can run around the world justifying the mining of uranium and saying how wonderful it is and yet the fishing industry Australia wide has to be cleaner than clean and clean and we have to do all of these wonderful things. That will happen in time - anyway that is another problem for another place. We do still have reservations about marine areas and the biodiversity is the catch word these days with marine reserves.

Mr FLETCHER - I guess what I was indirectly leading to was, is there a potential for a marine reserve in the Furneaux area anywhere?

Mr TRELOGGEN - I would think so. Well, Deal Island for a start, that area - although that is in -

Mr FLETCHER - Commonwealth waters.

Mr TRELOGGEN - Yes. No, that's State water to Tasmania.

Mr BAILEY - That would restrict the gathering though, wouldn't it?

Mr TRELOGGEN - The Aboriginal gathering or the -

Mr BAILEY - No, the Aboriginal gathering.

Mr TRELOGGEN - That was a very moot point at the time that they would have been able to collect from anywhere.

Mr BAILEY - What, from the marine -

Mr TRELOGGEN - Even from reserves at the time, I am not quite sure of where that actually ended up.

Mr FLETCHER - They were subject to any management plans so if the management plan says 'no take' it means no take for anyone.

Mr TRELOGGEN - I think that was the final outcome of it.

Mr BAILEY - There are no problems on the west coast for your fishermen?

CHAIRPERSON - And on West Point area?

Mr TRELOGGEN - Well, these were the areas of access.

Mr BAILEY - So professional fishermen go out of there as well as the shack owners, do they?

Mr TRELOGGEN - Yes.

Mr BAILEY - And do they moor their boats there?

Mr TRELOGGEN - How far down does that go?

Mr FLETCHER - Well, there may points would be Temmo and it doesn't include Temmo.

Mr TRELOGGEN - It doesn't include Temmo?

Mr FLETCHER - No.

Mr TRELOGGEN - So it's north of Temmo, so there's Couta, is Couta in there?

Mr FLETCHER - No.

CHAIRPERSON - Sundown Point.

Mr TRELOGGEN - The Sundown okay, we have members on to Sundown, an odd one or two there, I think there are three or four who actually fish out of there. But basically the rest of them are below that point. At the Sundown there they actually drive along the beach to access some of the fishing areas there, so that is roughly that.

The other problem that we mentioned there was the problem with TACs - total allowable catches. As you would be aware, having seen the legislation and being part of the legislation, all fisheries are moving towards management. There won't be a fishery in the State in the next few years that won't come under some form of management, whether it be a quota management in the major fisheries and input controls in the other. Where we have TAC fisheries those TACs are there for a very good reason and that is to maintain the stock.

The other thing that was in Michael Mansell's paper here was the Aboriginals being able to take a part of the TAC - like the abalone and rock lobster - without any form of licences whatsoever, and with no restrictions on the amount that they could take. I will not even dwell on that, but if you would just like to note that: that is not the way to manage fisheries anywhere, to have open-ended access to any group of people no matter who they are, into quoted and managed fisheries with no restrictions on them.

Just very briefly, the other thing that I raised there - and it is probably getting away from the central point, Madam Chair - but if I can explain the paperwork that you have there, it is just an overview of what actually happened some years ago in the Furneaux Group with regards to Aboriginal access into our fishing industry, where low-cost loans were granted at the time by the Aboriginal Loans Commission and vessels were purchased, a factory was set up with money from the Commonwealth and State Governments. This has been an ongoing thing over a long period of time, whereas Aboriginals have and are practising in our fisheries at the moment, but they have always been treated in a manner different to anybody else. Did I say that without putting my foot in it? They have always had access to low-cost money that a normal fisherman wouldn't have had. They have always had a place, they have always been part of the fishery and we think that in light of those sort of things that they shouldn't be running around now trying to get some more for nothing, when they have been very, very well treated in the past. And, in fact, they still have access to money through ATSIC at low-cost money to go fishing if they want to.

Mr FLETCHER - It is a bit more difficult these days, Rodney, I think.

Mr TRELOGGEN - Yes, well, the comment to me by a leader in the Aboriginal community was that they just wanted to be able to catch a few fish to supplement their dole - just a few fish. That will go down like a tonne of bricks with the fishing industry on the whole.

The other matter that that leads to is property rights - and legislation will be coming before your learned people later in the year - about property rights in our fisheries. We see this as an area where those property rights could in fact be watered down if this access was to be given. But, as I said, that is a matter for another time. That has basically outlined the problems that we have.

CHAIRPERSON - Thank you, Rodney. Do any members of the committee have any further questions? Thank you, gentlemen, for your attendance this morning. It has been appreciated and your particular expertise as regards the maps we have before us. We thank you for your input to the committee.

THE WITNESS WITHDREW.

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

JUSTICE PIERRE SLICER WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIRPERSON (Mrs Sue Smith) - Good morning, Justice Slicer, and thank you for your attendance here this morning. Your input to this select committee is appreciated. The committee, originally when they extended an invitation to you to appear, did so because they felt your extensive knowledge in this particular area could be of great benefit to us in our deliberations. I do note that you are appearing as Chairperson of the United Nations Committee on Human Rights as well as possibly in recognition of yourself as Justice Pierre Slicer. I would ask if you would like to make some comments on your submission and then undoubtedly the committee will look to make some inquiries.

Justice SLICER - I first of all thank the committee for the opportunity to appear before it and for the courtesy of the committee in its wide process of consultation. I remember with bemusement my last appearance before a select committee of the Legislative Council which led to an exchange of pleasantries between myself and one of your predecessors which led to mutterings of contempt and the like. But I remind you of that because I appeared then with Michael Mansell who was then the second Tasmanian Aboriginal lawyer of this State and I pass to the committee his regards. He will not be appearing as a witness or appear as a person making submissions to the committee, not out of any disrespect or disdain for its work, but as you might know he has been ill. He has two problems to overcome and the way he is overcoming them is to take his boat to the islands and he has been there since the 26 December and he is regaining his strength and energy.

I spent some time on the islands with my family in late December and into mid January on Cape Barren Island, Clarke Island and Big Dog Island and we discussed the work of the committee, we discussed the sorts of philosophical propositions that I would be putting forward and his non-appearance is not disinterest, is not an ideological position, it is simply a personal one and please don't think that his absence in any way shows disdain for your work or for the process that is being undertaken.

I had hoped to appear jointly with another of my old friends or members of the family, Clyde Mansell. I think he was to have made a submission before the committee but we just couldn't get our coordination right.

I've made the submission in as short a form as I can and I suppose really the essence of it is really this: that the Parliament of Tasmania has made significant steps in the last twenty years in one way or another towards both redress and progress - that is, the Parliament has recognised in statutory form that which the High Court recognised in Mabo in a common law form. There were always going to be problems in Tasmania with giving effect to Mabo because of the break in nexus between continued occupancy or continued links with the land in legal terms, which because of the size of Tasmania and the history of Tasmania, would be impossible to implement a Mabo here.

It seems to me that what Parliament has been doing is to give effect to Mabo by means of statute and by means of legislative enactment or regulation which obviates the need to go down a Mabo path and by and large I think that the Parliament has shown a willingness to embrace the philosophy of Mabo.

I think the second thing I would like to say is that it is often claimed or said that the process is one of envisionist process of history. That is that we as a society are giving effect to collective guilt and that a

process of saying sorry, a process of redressing the past, somehow or other impinges upon our own subjective conscience.

I prefer to look at the debate in a different way. I don't feel personal guilt about the treatment afforded a race of people one hundred years ago, fifty years ago, two hundred years ago. I don't feel that I personally bear blame for those processes, but what I do know is that I live - sorry, before I say that - the second philosophical proposition that I have within myself is that I come from a different culture. I come from a culture which I suppose is primarily Anglo-Saxon; it comes in turn from a Greek or Roman culture; it comes from a mix of cultures who have made Australia what it is, who have come to this country primarily since the second world war. So I inherit a range of cultures.

I am not ashamed of my culture, I am not ashamed of the cultures which give me my values, but I do know that I live quite well. I do know that I have an affluent lifestyle, I do know that I have a rich background of culture, values, systems and traditions about which I am quite proud. I have reservations about some of them; I will debate, argue, challenge, harass parts of our society with which I do not agree. But by and large I accept where I have come from and I accept that I know basically where my society is.

A society can never know where it wants to go until it knows what or who it is, and it cannot know what or who it is until it knows where it has been. So that approach to history is simply one of saying, 'Where have we travelled from, what has that made us and where do we want to go?' So that's the first reason why I think this process is important in that the predominant culture or mainstream culture can't know what it wants to be until it knows where it has been. That is not a revisionist view of history and it is not a view of history laden with subjective guilt.

It follows from that that if I have a good lifestyle, I have a good income, and I have inherited a society which is a wealthy society, but I derive that from the misfortune of others. We got our land for nothing; we got the riches associated with that land for nothing. That may well be a process of history, but the problem for our society became that we beggared another race in the process. They suffered, our gain was their loss. They survived and they survive with problems associated with dispossession, and those problems associated with dispossession are material, physical and spiritual, and by spiritual I mean in that sense of the psyche of people of perceiving who they are, of having some nexus with the land within which they live.

So that process of my enrichment at someone else's expense drives me or motivates me to say, 'Okay, I owe'. To that extent one has a subjective responsibility, but that is not subjective guilt, that is subjective responsibility to redress a problem which I did not cause. Why - because I have benefited from that process. I think that is the sort of process that is happening within the Parliament within Tasmania, within Australia as a whole. It goes forward, it goes back, it stutters, it has counter-forces to it, it has misunderstandings.

We end up with debates about black armbands of history, and so on, which I don't think is what the debate is about at all, but the process is ongoing. It hasn't gone as far as I had thought it might have, it may take directions that I do not foresee, but the process of discourse, of understanding and of exchanges of philosophical propositions is the sort of thing the select committee is all about and I welcome the opportunity to put my paper to you. There it is, and I welcome the opportunity to put my philosophical basis for presenting the paper to you.

CHAIRPERSON - Thank you very much. Now it is open to members of the committee.

Mr WILKINSON - Can I ask, Judge, what do you believe is a fair definition for reconciliation? A difficult question, I know.

Justice SLICER - If I could answer that, there is a Nobel Prize somewhere in that for me. I think if I am to look at it only from a Tasmanian perspective - and that's impossible - we have undertaken, I think, three or four phases so far: the first was the debate commencing in the 1950s, but certainly culminating in the referendum of the late 1960s, of recognition. We had, as a society, attempted a number of approaches and policies, primarily the one that was discussed most was that of assimilation.

When I first began my involvement with the Aboriginal community in Tasmania, there was still a position held by government and by the community at large that there were no Aborigines in Tasmania. So the first step was recognition. The second was, I suppose, a public debate or a public movement within which guilt was used. Let's not have any misunderstanding about this, we played the guilt card, we played the conscience card, primarily because it's all we had. I don't want to say that this guilt debate was one sided. As Australians we have this ethos that you barrack for the underdog. Well, it always helps to be an underdog, it always helps to lash the conscience of others by showing where you're at - pluses and minuses and that, I understand that. That was our second phase.

The third phase I think, and I suppose to the credit of conservatives in Australia, was an implementation of redress. Fraser was a central player in that, and some of the best ministers I ever worked with were probably Chaney and Viney who were opposite to me in political terms. I suspect in that process the recognition, implementation of social programs and implementation of land programs in the 1970s, enabled us to go to another debate and that debate became one of cultural recognition of a growing awareness that in fact a culture which had survived in this State for probably 26 000 years, in other places probably 40-45 000 years, had something for us as well. So we can almost call that parallel integration. We began to understand some of the culture and beliefs and mind sets of another race of people and that became part of the fabric of Australia. So we will call that, I guess, concurrent integration.

I had thought that at that stage we were about to enter the final part of the debate of a cards-on-the-table, where do we both want to travel. You might recall there were debates about sovereignty, there were debates about whether a race of people could live within another race, have two nation status or two nations within a one nation State. That seemed to get sidetracked and I suspect that we have two phases to go. The first is now to look at the effectiveness of concurrent integration. In other words, the sorts of debates that people like Pearson and so on are starting to raise about: we've got problems. We've got problems with alcohol, we've got problems with treatment of women, we've got problems of a social welfare mentality, we've got problems within our various communities. We've also got problems with what we'll call the continuum of tribal people as distinct from the fragmentation of urban Aborigines.

I think we are in that phase of the debate, that is, what is effective and that debate I suspect probably has five to ten years to go. Then I think we can get to the final part of the debate of accepting that we recognise that which is the Aboriginal culture and understanding that which is our culture, how do the two get on? How do we advance each other in the process? I suppose the final phase of reconciliation would be mutual acceptance.

The Aboriginal community itself has some distance to go. The Aboriginal community does not, nor should it, speak with one voice. It has a series of internal processes itself to undertake. It has some questions that it needs to answer. But that final phase which I think will come after the effectiveness phase will be our real process of reconciliation. Where does Australia as a nation State, as a collection of - it's not different cultures, it's an existence of cultural streams - where does it want to go as a nation State? We have some work to do, I think, and we have some distance to travel.

When I earlier said we hadn't gone as far as we had gone, I had misunderstood or wrongly analysed a process, I thought we had gone a step further but if you look at the current debates about ATSIC and government, sorry days, prime ministers, referendums and all those sorts of things we still have some work to do as a society.

Mr WILKINSON - How does the hand-back of land assist the reconciliation in your view?

Justice SLICER - It has been said that we have two different approaches to land. One is ours which is, I guess, either an English/Irish affection for land that the peasant farmer, the battler in the bush, the pride in the scenery, the wonderment of nature around us. You can look at the way we approach land in a number of ways. It is said that what is unique about the Australian Aboriginal was - and it probably wasn't unique but we will say indigenous people - was an affinity with land which we don't have or which we don't understand. So my first answer is, we take pride in the land which we collectively own if you look at, say, Cradle Mountain reserve, if you look at our appreciation of some of our natural beauty spots. We take pride, it somehow rather defines us. If we look in terms of history, and now of

the farming community, they take pride in their land for different purposes. So there is a need to have some base, some home, something which defines you.

If you are dispossessed and you have nothing, then the first thing you want to do is to grab hold of something. To that extent land becomes important in that it is ours. Clarke Island is ours and I say ours in my other hat as a member of the family. Just knowing it's there is one answer to the question.

The second is that, as I said, I travelled - Tonia and I and Kieran - we towed the Zodiac across Bass Strait in the storms and camped at Kangaroo Bay on Clarke Island and enjoyed the storms and the wind and so on. In the process stayed at the settlement for two nights and then made our own way to somewhere deserted - we went back to the settlement - where Aboriginal youth program is being run. The kids get up at seven - they don't do that at Ashley - they start work at eight, they work through the day, they round up sheep and they catch cattle and try and separate feral bulls, which scares the hell out of them, they build fences -

Mr WILKINSON - I thought you were going to say something else then.

Justice SLICER - At night time they might go shooting, shooting roo for cray bait, they might go fishing. The change in their approach - most of the kids that have come there have usually been banged out on drugs, they're zapped out, there's no purpose and so on - they're clear-eyed, they're healthy, they begin to reconnect with something. It's not reconnecting with the tribal culture in the sense of 1788, but it's reconnecting somehow or other with their own community from a position of safety or for a position of 'it's ours' and there's a difference between doing something on your own land - anybody who does a garden will know that. There's a difference in doing it on your own land, of having a safe place, than on someone else's land.

The second thing, as I was leaving Mike was bringing his boat back to Cape Portland and was taking people - it's called Back to the Islands. I don't know how many went this year because I wasn't part of it but I think last year 70 or 80 people went from the urban areas and so on and went back to where their parents had been, where they may have been as kids and they sit around camp fires and they go to Big Dog and see how the birds are going and the kids bring in a snake - they did, they brought it into the kitchen, live. 'Oh look, we found a snake'. 'Get it out of here'. It's reconnecting. Kids say, 'Oh, I remember my dad used to take me around to this point, don't take your boat in there there's rocks in there'. Now how kids remember that from fifteen years ago when they were only three or four or five when they last went there, I don't know but there is that, I guess - I don't like using the word spiritual because I'm not sure I know what it means - a nexus between something which is mine, something which is a continuum of where my people had been and that piece of land that we're standing on now. I think it's just got to be seen to be believed.

Now that is no different from traditional owners in the Northern Territory who have an ongoing affinity with the land - here it is a reconnecting with the land - but the process is the same although the method is different. I don't know whether that answers your question, it's a hard area.

Mr FLETCHER - Judge, it's a really interesting proposition. Although you of your mixed background explained to us read that and get that feeling because of your associations with the Tasmanian Aborigines, do you deny me that communion with my ancestors and my association with the land simply because I haven't associated with Aboriginals.

Justice SLICER - Of course not.

Mr FLETCHER - Well is it exclusive to Aboriginals, then that's the point I'm making.

Justice SLICER - No, no. Sorry, I was clumsy in the way I was trying to say we have two different approaches to land, what I will call the Anglo/Irish approach - the love of the soil. I grew up on a farm, I grew up on a dairy farm in the Huon. I did my 4.30 a.m. stints in winter in the Huon. It's hard to get an affinity with the land at 4.30 in the morning when you're up to your knees in mud. But of course not.

What I am saying is that we have an approach to the land which is different, we have an approach to the land if it's productive. Farmers on the north-west coast, those people out at Sassafras with their 7

foot of chocolate soil love their land. We have a love of land because it is productive, because we have built our country on it, because in many cases three or four generations of farmers have lived on the same land and they know the back paddock or the top rocky outcrop and so on, we have a collective love of the land.

If you look at the passion, say, in the Franklin River debate, that had a number of parts to it but one of them was a love of the land which was Tasmania; we have a love of Cradle Mountain. So the answer is no.

Mr FLETCHER - I have misunderstood you because I thought you were claiming the affinity of the Aborigines because you were a member of the family, when in actual fact your feel is still the Anglo/Irish feel for the land. Is that what you were saying?

Justice SLICER - There are two questions in that: do I deny others a different affinity with the land, the answer is no. One would be absurd to say that. Of course Tasmanians love their land, it's part of that which is Tasmania. We pride ourselves in our beauty, we pride ourselves in the wonders of Tasmania. What I was trying to say was there is a difference in the Aboriginal history of affinity with the land than that which we have inherited. They are both real but they have different forms or different bases. When you ask do I claim a special affinity because I am family, I don't know.

Mr FLETCHER - You spoke with a passion when you were speaking on that.

Justice SLICER - I spoke with a passion because I understand the difference, I'm not sure that I can feel the difference, because I'm not of it. Being accepted in the family does not make me Aboriginal, it just meant that I can still call family home. If you scratch me I don't think that I fully understand the processes because I'm not of that culture. I can tell you that I can glimpse it and I can tell you that it's different. I'm not certain that I could honestly say I feel it in an emotional sense as distinct from an intellectual sense. We can understand things intellectually but not be able to feel them, and if you can't feel them then you haven't got the whole picture. I don't think that I can give you both sides of that.

Mr FLETCHER - So at the end of the day that special feel, that special affinity, comes through genetic links to the tribal people, to the ancient people?

Justice SLICER - Pass.

Laughter.

Justice SLICER - That was the fight I got into before about social Darwinism. I will stay completely out of genetics. I remember talking to Alma Stackhouse, Ruby Ruckley, and I've forgotten the third person. It was one of those late nights on Flinders, a couple of wines and a bit of honesty and you just get into it, sort of thing. They were telling me that during the birding season the boats would go around to the islands and collect the families, because they still had a large number of people living on the various islands. They would round them up to go birding, but you needed to centralise them. So they would go on the boat but they wouldn't be taken to Whitemark because they weren't allowed to use the jetty - these are women now - what's Alma, 70? They were taken to Trousers Point, put in dinghies and put ashore at Trousers Point. Then the boat would go to Whitemark and the whites would get off at the jetty. They would then walk from Trousers Point into Whitemark.

In order to avoid trouble they would then be herded into a big hangar-type shed and the doors locked. They would be kept there for the night - men, women and children - to make sure they didn't get up to trouble, and then they would be let out the next morning, taken down and put on the boats which were going to Big Dog, Little Dog, Chapel, Babel, to go birding. They didn't feel terribly kindly about that - in other words that experience formed their approach to us. They were still being told stories by people who were one generation removed from tribal people, so that was passed on.

I did my first court case on Flinders Island in 1973. Two Aboriginal kids on Cape Barren had taken two horses from ... Station - had gone out, as kids do, for a ride. They brought the horses back, rubbed them down, put them back in the paddock, and that was their big day out. They were charged with illegal use of horse. I appeared at lunchtime, I took the mothers of the two children and the two kids to the

Whitemark pub for lunch and I was told they couldn't come into the dining room, there was a special bar for Aboriginal people, which was narrow, about the size of this table - a snug type of thing. There was a fight about that, and that was 1973. They couldn't go with me into the dining room because no-one had. As it turned out they did, with mutterings about, 'The JPs are over there, the prosecutor is over there, how's your licence going, do you know about the Licensing Act of the State of Tasmania? I'll make sure you lose your licence' - other exchanges of pleasantries. Two tiny stories. Multiply them, then the attitude and the approach becomes one not of genetics - and I don't want to enter that area - but one of history and passing on stories. I heard stories from before this century being told by people who had been told it by their grandmothers and so on. To that extent they are shaped by us.

I think I said in the paper that one of the problems of identity and why land was important to identity - going back to Mr Wilkinson's point - was that we had defined Aborigines by a process of exclusion. Go to the turn of the century, the last Tasmanian has died - Truganini. She probably wasn't, but for the purpose of the exercise or history, she was. Therefore we have no more problems; we can get rid of whatever guilt was held in the 1880s - it was terrible but it's happened. Maybe if we'd left it there we might have a different outcome, but we didn't. We began to define by a process of exclusion who was not mainstream. If you were a Mansell, a Maynard or a Burgess, when you went to get a job you probably wouldn't get one, no matter who you were. We began to define by process of the Cape Barren Island Reserve Act, half-castes living on island, half-castes not living on island, quarter-castes - we named them in the schedule. Look at a 1935 reprint and you'll see it's still there. That forced them into the wagons forming a circle, it became a defensive community defined by a process of exclusion and it was strong enough to survive and it revived itself or re-emerged within the Tasmanian consciousness in the late 60s. I don't know whether that answers your question.

Mr FLETCHER - I think you're way ahead of me but I'm trying to lead you in a certain direction and I think we've reached the nub of where we want to go because that is the general question of aboriginality and how do we define aboriginality. In the paper you presented to us - and there's been lots of evidence about this so far from people who have wanted to claim their aboriginality and in some way are denied that, who have already presented papers to us and will give further evidence at a later stage - and I'm coming from the base I've explained to you previously and you've made mention of this morning, that it is our right to feel proud about where we come from, our roots are important to us and we find lots of troubles when people deny us our heritage. I think that's the crux of where I'm coming from.

But in your paper you did disturb me I've got to say a little bit this morning because in the matter of self-defining, you were suggesting that the question that needs to be asked was, 'Where were you in the hard times? Were you an Aborigine in the hard times?' That almost seems to suggest to me that being an Aborigine is like being a member of a club where you've got to win your spurs to belong to the club and you belong to the club for the benefits that it provides. If that is your position, I find that difficult to accept because I'm sure we are in a transitional stage where people are emerging and wanting to embrace their heritage and feel good about it and yet there is a pressure to deny that to some people. I don't easily see how we move past that but it is important in my opinion.

Justice SLICER - I can't answer that. I've thought about that and I can give you two views. I'd probably start with an anecdote. I was at a conference at Monash in the early 70s which was attended by American Indians, Maoris, people from Papua-New Guinea, Aborigines and so on - police commissioners, judges. At the dinner, one of the people got up and said how badly off their people had been, which led the Maoris to sort of go into one of those, 'Luxury! You've had it tough? We've had it tough', which led to the American Indians going, 'You think you people have had it tough? You didn't get Wounded Knee!', and it was on. There were war stories from all over the place as to who'd had it tougher and it was an all-in brawl as to which mob was the worst done by by the white, fascist, imperialistic et cetera, et cetera. It was an hilarious night but it was in a way your point about wearing your badge of honour by past hardship.

I thought that I had said it was a political process rather than a legal process and I'm not sure the definitions, no matter how we try to put them on the ground, work. Let me give you the two competing views as I understand them within the community. The first is that when I first became involved in the Aboriginal Legal Service I knew by name almost every person claiming to be Aboriginal in Tasmania.

One question: 'Who was your mum?' Ah, got you! We do that within our own community but we were fixing people by reference to, I suppose, a post-tribal element. 'Who was your family, your clan; who was your mum?' Once I knew who your mum was I could fit you into a pattern. They were the people who had been Aboriginal by a process of exclusion.

As the social policies began to be put in place, two things occurred. There was no longer a feeling of shame in being Aboriginal. When I first went to Cape Barren Island people would put their hand up to being South Sea Islander, Maori, Mauritian, anything other than Aboriginal. As the social policies were put in place, it became more acceptable to identify as Aboriginal. In that process however, many people became involved or identified for economic reasons - scholarships and so on. At one stage we came across a set of figures that showed that there were eighteen Aboriginal graduates in Tasmania - this was about 1977 or a bit later. In Tasmania you know - and I didn't know any of them - there was a vet, a doctor, there was a lawyer we didn't know about, still don't. We said to the Feds, 'Well tell me who they are'. They said 'We can't, its confidential'. So we had almost like a, we'll call it a black middle class, emerging in Tasmania and I didn't know any of them. The suspicion began to be were they fair-weather Aboriginals. That's what I call one side of the debate, that we know within the community who were and there's no joining the train at station four.

The other side of the debate which I have argued and if I had a personal view I'd be more inclined to go the other side of the debate which says, 'It is possible to reconnect with culture'. If you look at the generation of stolen children who were removed for well-intended reasons and lost their contact, can't they come back. I have had differences with various members of the Aboriginal community about this debate. I say you can come back, but you don't just come back by putting your hand up, you've got to come back by a process of reintegration within the community and that may take some time.

There was a young lawyer in Tasmania who, for all intents and purposes, was raised within the white community et cetera, et cetera. Now her grandmother had been one of what we used to call the lost tribe who'd gone to the north-east. If you look in the 1905 legislation, you'll find reference to families called half-castes not living on island - schedule 4, I think. Some of those went to the north-east. This person's grandmother had lived in her community, was subject to trouble, harassment - nigger, black all those sort of things. She'd passed on some of her feelings and so on to her granddaughter who became a lawyer, who worked within the Aboriginal legal service. She had rediscovered. I had a book of the missions that went to the islands in which she could find her great-grandfather and great-grandmother, reference to them being married on a particular island on a particular day by the missionary. She wanted to reconnect and could not, was excluded. She might have been accepted as I am, as family, but not as - who's right? I don't know.

I don't think though that I can say you can impose a solution and that's why I said I thought it was political - I'm not quite understanding your concern. All I'm saying is I can't answer it, I don't think you can answer it by legislative - you're going to have to pass legislation, there's no getting round that. But I'm not sure that the real answer lies in that process, it's got to be internal to the community to sort themselves out. I don't think I can help.

Mr FLETCHER - We have this strange anomaly where the Commonwealth Government recognises a person as an Aboriginal -

Justice SLICER - Who is of Aboriginal descent and identifies with or is identified by the community. It's been a definition since 73.

Mr FLETCHER - And validated in recent times through the Federal Court and yet that person steps outside and goes to a State jurisdiction and the State says, 'You're not an Aborigine'. It seems to me there is an enormous torment of a person there in that anomaly.

Justice SLICER - I couldn't agree more. The Canadians solved - well, I'm not sure the Canadians did solve it - the Canadians attempted to solve it this way: if a lodge would accept you, so did the Canadian Government. Now lodges were almost like societies in the various towns and cities and so on, an Inuit lodge or a tribal lodge and so on. If they would have you as a member of the lodge then the Canadian Government said, 'It's not our problem'.

In a way that's partly what we've done here with these Aboriginal associations which have flourished to 45, I think, that were incorporated in Tasmania, which surprises me. If you're accepted into an Aboriginal association, then you must be from a mix ... religions or Kosher.

If I had to take my 'family' hat off now and speak to you with a different hat and say, I don't see how you're can get round it except by following the Federal definition. It would be absurd for a person to be an Aboriginal in one part of the State and not to be an Aboriginal in another part of the State, the State of Tasmania. I really don't think you can solve it, I think it's got to be a process of politics within the Aboriginal community as distinct from legislative enactment. All you've got to do is paint a brush and walk away. Is that the bit that I said that worried you?

Mr FLETCHER - The part that worried me is this - I suppose if I used my own stories. My background personally is by Irish poor convict background, that's were I come from.

Mr WILKINSON - It shows.

Laughter.

Mr FLETCHER - My father was terribly embarrassed about that in his generation. He didn't want to speak about that at all, wouldn't raise it in the family at all. Through the transition of the years I'm proud of that, I feel good about that.

Justice SLICER - Yes, I understand that.

Mr FLETCHER - So if I recognise that in myself, I've got to recognise that in some Tasmanian Aborigines or descendants of Aborigines that they're not formally recognised. I don't accept the proposition that I have to win my spurs to be able to claim my convict background or my Irish background or whatever it happens to be. You seem to be saying to me that the community will say, 'Where were you in the hard times? If you weren't there in the hard times you can't claim to be an Aborigine when the going's getting better.

Justice SLICER - I can understand and admire your pride in your Irish ancestry, it doesn't make you Irish. If you went back to Ireland, you would take some time to be accepted as an Irish person although they would have an affinity with you for having a shared history up to a point. So you really are an Australian, who is also a Tasmanian, who is a mix of various backgrounds and so on, which doesn't make you Irish, it doesn't make you Celtic but it makes you you who have inherited a series of processes.

A person may have Aboriginal descent and they might take pride then in knowing that part of their gene pool, if I can go back into genetics, but part of their background includes an Aboriginal component. I have a nephew who is Aboriginal. My brother's partner is a Mansell, they had a child, so I have a link through blood. It doesn't make me Aboriginal.

The history of my family may help. My father was an American serviceman who came out during the second World War and married my mother who was born in Dover, Tasmania. She had joined the WAF, she met him, they married, he was killed. His parents were Scandinavian who had gone to America, to Chicago, in the time of the Scandinavian troubles, the 1880s and 1890s.

My first wife was born in Prague, her father was a Cossack of the Don who fled in 1923 during the revolution and made his way to Prague. My children therefore have American, Scandinavian, Cossack, Chez, English, Cornish and my step-father was a Kelly, a Richmond Kelly. Now that is a fairly rich tradition to hand down to one's grandchildren and a very proud tradition. It doesn't make any of those children American, Russian, Chez, it makes them Australian with some of the parts.

Mr FLETCHER - I've got you, only in the intellectual argument.

Laughter.

Mr FLETCHER - I then have to say to you that the Tasmanian Aborigines of today, particularly the descendants, the straitsmen, if you like, and the descendants of those, also have that mixed background.

Justice SLICER - Yes, I understand that.

Mr FLETCHER - So they can't claim to be Aborigines according to your argument.

Justice SLICER - No, no.

Mr FLETCHER - Well, if your argument is true with regard your own situation, isn't it also true with regard the other situation?

Justice SLICER - I understand that and that is what the debate is about, isn't it - predominant straitsmen, predominant people who come from the 1905 Cape Barren Reserve Act - and they maintained an identity by our process of exclusion or definition by exclusion. In other words they can say, 'We were that mob in the 1910s, 20s, 30s, 40s, 50s. We can tell you, we can touch, therefore by the 1970s and 1980s we are the 'true believers', the others are the nouveau riche who have come on board.'

Mr FLETCHER - I don't have an argument with the aboriginality of the people from the island at all.

Justice SLICER - No, it's the next phase.

My own view is that there can be a going back, a reconnection. That isn't a view which is shared certainly by one section of the Aboriginal community who would say we are because we were defined and kept our - I really don't have an answer to that. All I can say is that I'm not sure that parliaments have an answer to it either, no matter how well intentioned. That is why I keep saying I think it has to be an internal political process with all the ensuing divisions and fights.

If you look at, say, the Aboriginal community on Cape Barren Island. In 1945 or 1946 when the Government proposed to repeal the Cape Barren Island Reserve Act - they held a referendum, a non-binding referendum on Cape Barren Island - people were still divided as to whether you went for repeal or not, people still divided on that issue in the 1970s. There was still animosity as to that mob over there voted for repeal and they shouldn't have done or that mob over there voted for non-repeal when they etc cetera. I didn't know what the fight was about but I tell you what, it lasted with some passion for 30 years. I am clumsy in my answer to you, Mr Fletcher, because I have no answers.

Mr FLETCHER - No, Judge. But it is important to test it in the fire, isn't it as well. From my point of view it is important to draw out what I can and you get the wide variety of opinion and you see that it is a very difficult situation.

Justice SLICER - Oh, yes.

Mr FLETCHER - There is no easy answer to it.

Justice SLICER - I prefer to be down this end of the table than up that end of the table on this one.

Laughter.

Mr BAILEY - Could I just follow on. Do you know if it is an agreed statement that the Aboriginal Land Council, the numbers who can vote for that, are about 2 000?

Justice SLICER - Look, I really can't tell you.

Mr BAILEY - No. Would that be a ballpark figure?

Justice SLICER - Yes. I've seen two sets of figures now, I've seen a figure of 14 000, I've seen a figure of about 7 000. Assuming the 7 000 and then assuming age break-ups and the like, your figure of 2 000 is about right. Assuming 14 000, I would have thought that you're probably looking at 4 000.

Mr BAILEY - And that's with the direct link back to Cape Barren Island, is it?

Justice SLICER - I am really not up to speed on current demography, my understanding is that the figure of 7 000 or thereabouts would represent one end of the spectrum of the hard times and their descendants. 14 000 represents the other side of the spectrum that Mr Fletcher and I have been discussing.

Mr BAILEY - Would you accept evidence that was given yesterday, particularly in the south of the State, that there were many women who weren't rounded up and taken to Flinders Island who continued to live here and from whom descendency has evolved.

Justice SLICER - Well, if you look at, say, Fanny Cochrane-Smith or Dolly Dalrymple; if you look at the Nicholls Rivulet, Heather Sculthorpe has always been accepted as an Aboriginal from day one and she has given much to her community. Well she's from Nicholls Rivulet, she's a Sculthorpe.

Mr BAILEY - But she wasn't a part of the exclusive process, I assume. You talked about Cape Barren Island - it was documented.

Justice SLICER - They certainly don't come from that line. I think that there was an understanding that there were pockets within Tasmania who either were treated as if - the process of exclusion - or had retained some identity over a period of time, but they were pockets on the north-west coast, pockets in the south and so on.

I think one of the problems when this court case was taken - and I have reservations about courts solving problems - and they were lining up the forces as to who was real and who wasn't sort of thing, and they shot a few of their own in the process. There was one family which had always been regarded as Aboriginal but when they went and looked it turned out the person had come from Mauritius and because of colour, wasn't going to be accepted into Tasmanian society in the 1880s because you were coloured so you had nowhere else to go so you ended up marrying within a colour. When they applied the true test, that line had in fact come from Mauritius not from here yet they'd been accepted over a passage of time as being Aboriginal, but for the purpose of the court case they weren't. So when I then look at pockets such as Nicholls Rivulet and so on I suppose I can only answer it in cultural terms, had they survived as an integral unit by a process ... self identification. If yes, then they meet the test; if no, then we are back to the other debate, can you reconnect?

Mr WILKINSON - That is one of the problems, isn't it. We were told yesterday that there was plenty of evidence to suggest that - and you'd have to be naive to suggest that the Robertson line got every Aboriginal and herded them to wherever - therefore obviously some slip through the net. Their argument yesterday was that they had their history in their homes in the Nicholls Rivulet area, Snug area. The fires of 1967 got rid of all those and therefore there was no real documented evidence to suggest that they were Aboriginal.

Justice SLICER - Well in Cygnet, take the Dillons, I'd always understood the Dillons to be Aboriginal from the word go, I'm not quite sure why. In other words it just was and that is the problem I suppose. In the early times when there weren't many putting their hands up you knew the Dillons, you knew the Sculthorpe's, there was no question about that. How did I know? I don't know really. You could go to Mollinson's book, that didn't really help all that much. Mollinson spends half of his time trying to prove that Eric Reece was Aboriginal. How that was going to advance the cause I don't know but Mollinson and I had a few long arguments about that attempt to play politics with birth.

I think in the early days, maybe we made a rod for our own backs. There was very much a need to show the bureaucracy that we had the numbers and it was a lot easier to put your hand up in 1973-74 when we were trying to get the numbers up than there would be now. So maybe the problem started very early with an attempt to show identity and numbers for the purposes of meeting bureaucratic demands and needs and accounts and so on.

Mr WILKINSON - I take it you are suggesting that if you had to come to a definition in relation to who was an Aborigine, the best definition to use at present is the definition used by the Commonwealth.

Justice SLICER - I really don't think you have any other choice. If I could give you a definition that worked, it would be on page 1 of my paper. I am really replying by saying, if you end up with a definition for Tasmania which differs from a definition for Australia, what the hell are you going to do? That's really a white political response to a problem saying, I don't know what the answer is but I can tell you that if you end up with two definitions within the one nation state, you have problems.

Mr BAILEY - On the basis - you touched on this before - that that definition is used in relation to payment of social security benefits and ATSIC money, would you say that those persons, because of that status, should be automatically put on the roll with an ability to elect members of the Aboriginal Land Council as a right, and anyone else who wanted to make that claim may have to substantiate that claim, maybe within the terms of the amending bill?

Justice SLICER - Philosophically my answer would be no, it shouldn't automatically follow, but I don't see any other way around it.

Mr BAILEY - So you would agree with that from a practical point of view.

Justice SLICER - I do implore the committee to take the Supreme Court out of the legislation so we don't end up -

Laughter.

Mr WILKINSON - You will have to disqualify yourself.

Mr BAILEY - ... have an argument with the Commonwealth.

Justice SLICER - I think you just have to put in place a framework which enables the fight to be carried on in-house. If I could think of a better way, I would. My lawyer story, from my point of view she should be readmitted, she should be able to reconnect with her culture. Some people have done that. So this process of registration, if I had to give the answer it would be yes, if you can show you have reconnected with your community, then you should be allowed to vote.

Mr BAILEY - But if we go along the line - I'm not suggesting we would do this, it is exploring all the avenues - if we were to accept the Commonwealth's test for those benefits, then that is not necessarily a self-defining role that the Aboriginal community will play in that process. You have advocated that the Aboriginal community itself should fulfil that role. If there are 7 000 or 13 000 claiming aboriginality in this State - which has been accepted by one body - and there is a 'club' of 2 000, it seems to me that those other 11 000 are being disenfranchised in what ought to be a legitimate right to be on a roll and have the ability to elect a council.

Justice SLICER - I understand that. To that extent the comments of the honourable Mr Fletcher are correct, he has got me because the fallacy or the problem in my position is this: I say, leave it to the Aboriginal community to sort out, and the answer to that is, 'Fine, we can do that, tell me what is the Aboriginal community. Is it the 7 000 or is it the 14 000?' I then say, 'Well, only let the 7 000 decide who is a member or not', and the other argument is, 'You're starting off with a false premise', and it is a circle. That is why I was saying there is no answer.

When I then say, 'Let them sort themselves out', they seem to be having a fair whack at sorting themselves out through the ATSIC elections, and I have reservations about the Federal Court challenge but they claim they had no other option but to take that. I would have preferred that fight to have been a political fight within the community rather than a legal fight, but I understand why they took proceedings and so on. I just think this debate has some time to go, and it has to be conducted in-house. I don't know whether - both sides seem to be fairly effective in their ongoing process of who is and who isn't.

Mr BAILEY - We have not had enough evidence to - or I haven't heard any evidence - to form that opinion. Anecdotally my understanding was that the ATSIC people controlled money and the Aboriginal Land Council may not get sufficient from those sources to be able to look after the land that has already been granted.

Justice SLICER - That has already happened.

Mr BAILEY - That's anecdotal as far as I am concerned. That seems to me to be somewhat of a problem, and perhaps the reason for that is the fact that a lot of those are able to get onto ATSIC but not the Aboriginal Land Council by exclusion.

Justice SLICER - I think the battle is going to be fought out within ATSIC and it really is a question of the political in-fighting. Political in-fighting within the Aboriginal community makes the New South Wales right wing of the Labor Party look like soft pussycats, they don't know what real fighting means. I think it has to be fought out in ATSIC and I think, historically, if you take an organisation like the TAC, it distanced itself from ATSIC very early saying it was a flawed creature and didn't quite know how to handle it and is now trying to pick up pieces. Whatever view you take of who did what wrongly or what political analysis was correct or incorrect then, that is where the battle ground is going to be. Why? - because that's where the resources are.

Mr BAILEY - In the meantime, you would think that we, as legislators, have a responsibility to ensure that there is an appropriate legal framework in which fairness, justice and equity can be delivered in relation to representation and to the manner in which these pieces of lands that have been granted and those that are here for potential granting should be managed.

Justice SLICER - Apart from suggesting that you put the Federal Court in rather than the Supreme Court as that appeal court -

Laughter.

Justice SLICER - I can do no better, and I am clumsy in this area because I really don't have an easy answer. I think all you can do is put in a broad legislative framework - the broad brush definition - and let them sort themselves out.

Mr BAILEY - Are you advocating then that there is no change needed to the current proposed legislation to the bill in relation to this area, or do you see that being broadened to allow fairness and equity based on those who are entitled to vote and perhaps in relation to regional representation?

Justice SLICER - I had tried to stay away from my understanding of the legislation, for obvious reasons. If you look at, say, your clause 8(10), in a way you are passing the buck - and that's not a criticism, that's a statement of admiration - in the sense that you've set in place a process where this debate or this, either philosophical or ideological difference, can be allowed to work its way through. This in part is social legislation and we often have a view which says once parliament puts in place social legislation, things automatically happen. They don't. The legislation provides another framework within which deeper issues are fought out and ten years down the track they've been resolved.

I gave two pieces of advice which when I was within the Aboriginal community were wrong. They both related to time. I was reasonably bright and articulate and thought I knew the politics and so on, and I got two things - not just two things, but two things I want to tell you I got wrong. One concerned Doug Lowe's proposals in relation to the cremation of Truganina. The original government position was that they wanted to build a vault on Mount Nelson and put the bones in there and lock it and so on so that in future scientists could get a little bit of DNA and do it for scientific purposes - they didn't want to destroy Truganina.

My advice to the then council was, 'That's the best you're going to get'. Given my understanding of where the Parliament is at, the Premier is at and so on, that's the most you're going to get. Roy Nichols, who later became the national leader of what was the precursor to ATSIC said no. Roy wasn't a radical or 'to the barricades' sort of person, his view - and it wasn't just his view - was, 'No, we can wait', and they were correct, there was a better deal if you wait.

Not content with being wrong there, when the Crowther collection debate came and the Crowther bones - there was a fight about them being dug up and being kept in a private collection and there was a demand to have them back. We responded by two processes: one, I initiated criminal proceedings for interference with remains of the dead under the Criminal Code, which forced the then Government to

refuse to file an indictment. So they took the ballpark off us which was an embarrassment to them. At the same time we then took proceedings in the Federal Court for racial discrimination in the sense of 'Why are we the only ones denied?' and the Government had some problems and they came and they were willing to talk. And I went back to the Aboriginal community and said, 'I've got some marvellous negotiating tools on the land legislation. The Government is in trouble in this one, they know it, and the last thing they want is a Federal ruling against them, et cetera. They are willing to talk. Can I deal?' And the response which was overwhelming, and it came from the old people, to say, 'Don't even think about it. Don't even think about trading Crowther for other gains. We want our bones put to rest'. I said, 'No, no, no, I don't care what they do with my granny if it's a deal' but they said, 'No'. I said, 'But it's going to hold us back' and one of the old women said, 'We've been waiting a long time. Our culture has been around for many, many years, let it work its way through. We can wait'. I said, 'But you might have to wait 100 years' and they said, 'Yes, we'll wait 100 years'. Now that wise advice to a 'political activist' who thought if you do things now, things happen now, was met by a wiser response which says 'Let it work its way through'.

Your legislation will not solve the problem whichever way you go. It won't make it go away. What it might do is permit or facilitate a process where they begin to sort themselves out over a period of time - next year, no; five years' time, no. I started by saying one process we have undertaken is ten years, now to us that is a long time. If we think of our own history and so on it isn't all that much time in any event. So I guess my plea is just to say you've got to put in place a legislative framework, don't think it is going to solve of itself the answer and don't think that you can construct an answer by legislation. You can facilitate a process as distinct from providing an answer.

CHAIRPERSON - Thank you. If I might, Justice Slicer, just interpose here. It's quite evident that the committee's decision to invite you to the Table was a very wise one because we have, certainly in the last hour, only touched on many of the issues that we wish to discuss with you. We do have another organisation to give evidence and then the committee is going to look at some Aboriginal sites in the Hobart area. I do make a request that if there is some capacity between the secretary of our committee and yourself to make another time, that you could make yourself available to the committee -

Justice SLICER - It depends, I am going to the Antarctic in about ten days' time.

CHAIRPERSON - Perhaps before you leave.

Laughter.

CHAIRPERSON - There were a couple of suggestions today that may actually be able to suit the purpose. I do thank you for the time you have given us this morning. It has certainly been a very worthwhile hour or so.

Justice SLICER - I thank you, Madam Chair, and may I, in leaving, again thank the committee and may I say two things: I repeat my expression of admiration for Tony Fletcher from the past, and I have done that publicly before but I have not done it to your colleagues before, and leave my colleague, Tony Fletcher, with three words 'Hang in there'. I thank the committee.

CHAIRPERSON - Thank you.

THE WITNESS WITHDREW.