

THE LEGISLATIVE COUNCIL SELECT COMMITTEE ON ABORIGINAL LANDS MET IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART ON THURSDAY 3 FEBRUARY 2000.

JUSTICE PIERRE SLICER was re-called and examined.

CHAIRPERSON (Mrs Sue Smith) - I thank you for returning this morning. It was quite evident that the committee thought yesterday that your time was very beneficial and that there were issues they hadn't touched on and that they looked, with interest, to your expertise and your opinion. So as such, we shall go back into the question process.

Justice SLICER - Can I just say something that I thought about overnight which relates to this question of identity and I've been wrestling in my own mind about how to make sense of the debate and I'm not necessarily on one side of the debate, I'm merely trying to put two positions, as I understand them. But I was thinking last night, do we have an equivalent. It's said that whatever happened at ANZAC defined or was part of the process of defining the culture that is Australian. I suspect that as was said by President Lincoln during the Civil War that something mysterious happened and people have tried to make sense of how did it come to define or be part of the definition of Australia. Some said, 'Well, we were at long last on the world stage, our men had done well, there had been a sacrifice despite British blunders' and a range of factors began to creep into myth, into legend, and shape our culture.

Then I thought well, maybe there's something more mysterious. There's no doubt that more people were killed in France than at Gallipoli - 55 000 out of less than half a million - and it occurred to me that why it might have shaped us all was everyone in Australia was touched by a common experience. Every family had either a death within the immediate family or the extended family, every town, every city, every suburb had deaths each day as they'd read them in the papers. Every mother had either a son or a nephew or cousin, brother, killed or wounded and the soldiers themselves had horrific common experiences. It may well be that in a community of three million almost that no one was untouched by a shared common experience and that became the definition of our culture or the defining moment of our culture that we all had something immediate and intense happen to us.

If you look at, say, just the Parliament of Tasmania - the ANZAC Day Observance Act 1929 - a lot of our earlier post-war legislation related to the preservation of the name. You couldn't use ANZAC for the purpose other than 'a sacred purpose' and yet you can't explain how it shaped us, but it did. I would not have expected in the 1960's and the 1970's, given where I had travelled, the response of young people now who want to go to ANZAC or to Flanders or to the Somme to touch something which their grandfather or great-grandfather had been. Where they got that feeling from, I don't know, whether it's because the last are dying or because we're facing our past or coming to love it. It seemed to me that that was one of the nearest examples I could give to what I'll call the Aboriginal debate about hard times and good times, that the identity which survived, say, the 1890's, the identity which survived and the culture that survived arose from shared and common experiences and where you had shared and common experiences were primarily in the pockets or on the islands and that's where the stories were told in the same way, I suppose, that the young people now were told stories by their grandfather or their grandmother about such and such. Their common experiences were exclusion, their common experiences were to look and turn inward.

As I thought of that I then understood a bit more about the exclusionary policies of the RSL. The RSL was always very jealous about unless you had been in a war-zone you couldn't be a member and I think that remained a policy probably, I think, until the 1970's - I stand corrected on that, I don't know, I thought it was the 1970's. But there was an identity from shared or common experiences that excluded

others. So although ANZAC may have shaped the country, only Anzacs could be Anzacs. It is that sort of, I suspect - if it created our culture then I can understand how another culture, a lot older, but which was rebuilding a culture in the 1910's, 1920's, 1930's and 1940's - don't forget that act defined who you were, named you. Whether that was why this debate about where were you in the hard times - it may not be that at all - it may be 'we were the hard times'. That shaped our identity and non-Anzacs can't have what we have. I don't know, I wrestled with that last night. That's as near as I think I can get.

If I can go back to our beloved north-west coast with all these New Zealanders coming in and buying up the dairy farms, they can qualify as Australians but they can't qualify as Redpa people yet or Smithton people yet or Marrawah people yet because their dad didn't go through the fire of 1939, their uncle so and so hadn't been lost on a fishing boat in 1952, they hadn't been to the church fete which caught fire in 1953 when the lamingtons burnt. Redpa defines itself by reference to where we've been together and, all right, the New Zealanders might become Redpa people eventually but they've got to suffer the lamington fete massacre as well or whatever. That's not going to help you at all with your legislation process, quite frankly -

Laughter.

Justice SLICER - but when I was trying to wrestle with it, that's how I tried to -

Mr WILKINSON - I'm still wrestling with this reconciliation, I really am, because it's come through to some degree that the people we've spoken with are saying, 'Look, the hand-back of lands won't really mean a jot to reconciliation. We still want the land back because you took it from us, it's ours and we want it back. If you give it back to us so be it but it won't really help reconciliation.' If we're doing this for reconciliation -

Justice SLICER - I don't accept that that's a valid proposition put to you - 'Give us the land back because it was ours and you took it from us and up you for the rent but it's not going to make any difference'. I don't believe that and I would challenge within the community - I've not heard that view from within the community. If that's put to me from within what I call my family I'll fight that because I don't believe that; I believe that's a false construct.

Let me go to the other thing that was on my mind last night about reconciliation. Let's assume that all the Aborigines had died and there was no ongoing mob after Truganini. This process is also about us and who we are. In other words, I think we still should be having this debate if there were none of them left because it defines who we are in 1990 or 2000. If we can't come to understand where our society has been and make a statement about where our society's at now, then it really demeans us. If you take just the example of stolen children, I can understand social policies which took children from families and so on but I would be horrified if my society now adopted those practices with the knowledge which we have now. I don't want to therefore condemn the 20's and 30's but it was God-awful and there were some terrible people involved in it. The policy might have been right but the implementation was God-awful. When I come now to say, 'Who am I?', I want to define myself by reference to my values and that involves distancing myself from philosophies or policies that occurred then. So I could have this debate even if there were no Aborigines; the reconciliation process is as much about who I am or who we are, collectively, as it is about where they're at.

Now, how does land impinge on them? It is home, it is a little harbour. Go to Cape Barren, it's changed. When I went there in 1973, there were huts and I slept in the old sealer's cottages and so on. It was a place not of despair but it was an inward-looking community. Go there now and there's an alarm in the air of a pride - that's our island. The thing that affected me most when I first went to Cape Barren - and it affected me last month when I went back - I always go to the War Memorial and there are 14 names on the Cape Barren Island War Memorial - I think two dead. You think of a small community that's come out of where it's been, our payback were quarter-acre blocks on Cape Barren Island in the 1905 legislation - I think the biggest was an acre or two acres. The soldier settlers got more than that when we were trying to reward them for the war. I can imagine that small community desperate to get the lads off into the army because it was a statement by them that they were mainstream people.

At the judges' conference I always go to the War Memorial and I went and looked up the 12th Battalion honour roll - Maynards and Mansells. I went and looked up the 2nd 40th - a Maynard. The two

Tasmanian battalions had Maynards and Mansells among the dead. I think they were trying to reach out to us to join the mob and be accepted. I don't think we did terribly well in reaching out to them. The transfer of land back is a reaching-out, saying, 'Okay, here's something of the State which is yours, uniquely yours.'

Mr WILKINSON - But should there be more? Is reconciliation just as much, in fact more, to do with things like funding for education - to make sure they're properly educated, to make sure the health system within the community is the same as it is in the European community, to educate them in relation to the historical significance?

Justice SLICER - I understand that. I remember a young Marxist in 1974 saying, 'What we have, comrades, is a class problem and an economic problem and if we solve those the Aboriginal problem would be solved.' That was beaten out of me within about twelve months. No, social engineering is part of the debate. If you look at, say, President Johnson's thing in the 60's which was where I really grew - I was in America in '66 and that's where I really got touched by race politics. They threw a lot of money at the black problem expecting, as technicians do, that within five years they'd have solved the problem. They didn't, we all know that. We've thrown a lot of money into Aboriginal affairs - some of it's been productive and some of it hasn't, some of it's been wasted, some has done a lot of good but that's only part of the equation. Reconciliation is more than just providing money and in any event we're probably only providing the sort of infrastructure we provide for ourselves with hospitals and so on.

Mr WILKINSON - And more than providing just land?

Justice SLICER - Oh yes, and it's got to be a two-way process. In a way, the land may well be a statement of good faith. Sometimes I get a bit touchy about the fact that there's not much good faith coming across the barricades from the other side, just another heap of abuse or something and you think, 'Oh, come on!' I think you've got to accept incoming fire and cop it for awhile but then you're entitled to expect - okay you people, guys and girls, let's start talking about what you're putting back into Australia. Where do you see yourselves being in Australia in a constructive rather than a negative way?

That's why I said yesterday that I'd thought that we'd come further than we have and we could get to the final stage of cards-on-the-table debate - we haven't got there, there's still incoming fire.

Mr FLETCHER - We're dealing with personal experiences here to some degree or local knowledge, if you like, but undoubtedly the quality of discussion we're having today and yesterday and will have over the next few weeks with members of the Aboriginal community has moved a million miles from the time I first had discussion with them five years ago. The openness and the preparedness to let you know their feelings and talk to you is vastly different to what it was just five years ago. So there has been some building of bridges and there has been some building of trust over that period of time.

I took the opportunity to tell the Land Council representatives this morning and they've got limited capacities because they have to respond to the community will, so they couldn't say too much but it was an open discussion. I took the opportunity to say I thought they had let the predecessors down because we reached an agreement which was enshrined in law which the Land Council hasn't delivered on in one particular area. I said, 'If you want my trust, I give you my trust but when you say you'll do something I want to make sure you do it'. Anyway we had those sorts of discussions which I couldn't have had with any of the members of the community let alone relatively junior members of the community, even though the whole positions with the Land Council just in the overall context are relatively new or younger members of the community.

We have moved a long way undoubtedly, in my opinion we have moved a long way. I am interested in moving further. The logical man in me demands some answers which perhaps I'm not going to get, that's a thing that causes me concern. If I might move from where Jim is to try once again take the judge down a line and just simply - because I accept that your family and you are a professional person who must listen to evidence and make judgments every day of your life, that's your working life. I guess and so I respect exactly what you've got to say.

As Australians - well you referred yesterday to Mabo and Wik and the High Court precedent and the Commonwealth legislation - Aborigines generally have a right to native title but society and our Parliament and our High Court has said that right to native title is only given to you subject to certain conditions, you've got a test to pass. We now have a historical record and we can find that nationally, claims to the national tribunal - some are rejected in the early process of registration, others are considered and approved and others are rejected. They are rejected for the grounds, generally, that there is not an unbroken link.

We have a consensus that Tasmanians won't qualify for native title claims, that the link has been broken. They didn't return at the first opportunity to the tribal grounds, therefore under those circumstances they don't have a claim. The previous government - and I guess this Government is the same way and wanted to say, 'Let's recognise that and let's do something to compensate'.

However, it seems to me that if it's fair for every Aborigine in Australia to have a test to qualify, there ought to be a test to qualify for Tasmanian Aborigines as well so that there is some legitimacy and openness in the process. Some rigour in the process of identification. We've had witnesses come before us and say, 'Oh no, we won't be happy until all the crown land is returned to that Aboriginal community'. Or there will be other claims when this claim is through. If the community instructs us to make a further claim we'll make a further claim.

As a member of Parliament, wanting to keep society together and have society on my team taking this course of action, I want to try and identify: is there a test that can be applied that allows success but doesn't allow everyone to jump the hurdle, or doesn't mean the return of all the crown land of Tasmania. It's a matter of trying to pick what is fair and reasonable and just in all the circumstances without -

Justice SLICER - I think I understand that.

Mr FLETCHER - I'm wrestling with that.

Justice SLICER - Your question has two components: one is who may claim and what may be claimed. Can I answer the second one. I think you can define the second one, in Tasmanian terms, relatively easy and I think you have, and it doesn't include all crown land - I don't know whether I can call him Jim here, but I'll call him Mr Wilkinson -

Mr WILKINSON - You can call me anything.

Laughter.

Justice SLICER - I said, 'Come on, ambit claims'. I drew some of this up. I parked on the lawn of Parliament House being evicted by police officers at a certain time. What did we go for, 'I don't know, such and such' and somebody said, 'And all vacant crown land'.

Mr WILKINSON - Let somebody take you.

Laughter.

Justice SLICER - That wasn't me, but it seemed a good idea at the time. Funnily enough, unalienated crown land is part of the basis of Mabo. I mean, we got it right.

So let me answer your second question: Oyster Cove, Mount Cameron West, Mount Chappell Island - I'm quoting from your legislation. You have identified it, you have a process - Kutikina Cave, Ballawinne Cave, Badger Island, Babel Island - I know all of those and everyone here would say, 'Yes, that's Aboriginal'. Vansittart Island - that's where they were first put but there was no water. Clarke Island, I know about that. In other words the process has already been adopted by government of both persuasions and the Parliament, we identified the land by reference to its historic significance and a nexus which was beyond 1788. So the second answer I think is very simple.

Mr FLETCHER - So it is all land that is important to the Aboriginal community.

Justice SLICER - I think I'm challenging one of your first premises. I don't think that this is a logical debate. In other words, logic plays only a part in it. I think there is more to this debate than reason or logic. Now having said that though, it is a two-way process. Of course Tasmania is not going to give up all unalienated crown land; of course if somebody claims Centrepont or whatever, when people are finished rolling around the ground laughing and someone says 'Let's get back to the debate' - I mean, in theory they could claim anything, I suppose, because you could say there was a midden site almost everywhere.

Mr FLETCHER - But the proof of the -

Justice SLICER - But live in the real world - we're not going to do that and it's a process of exchange. I don't fear the second. The first is a problem, but not my problem. Does that meet your - of course somebody said 'We want it all back'.

Mr FLETCHER - I think my motivation is in reconciliation and I can see broad-based concern in the Tasmanian community at the moment because many, many individuals and groups don't understand the process that we are about. On the one hand, you can say, 'Well, it's time for you stand up and be a leader and tell them what you're about' or -

Justice SLICER - They didn't understand you when you first did it five years ago either.

Mr FLETCHER - No, that's true but clearly in this room, some of the land that was transferred in 1995 wasn't on the list of Aboriginal significance, so they didn't see it as significant and quite clearly at the end of the day, the land we transferred was land that I thought we could get through the Parliament.

Justice SLICER - Right.

Mr FLETCHER - It was a matter of expediency rather than a matter of having any logic or any sense to it and now I am looking for some logic or sense or some testing so it has an honesty, it has a rigour about it. I don't want that to prevent land transfer but I want to carry the rest of Tasmanians with us, that they can see the same test that I can apply and they can say, 'That's fair. We join you in that. Let's do it'.

Justice SLICER - Well, I think I'm going to challenge your first proposition, if I may be disrespectful. In the 1995 legislation I can only see two names in that schedule which I could not have told you about in 1974 and that is Kutikina Cave, because it hadn't been discovered, and Ballawinne Cave. Steep Head - you know Steep Head -

Mr FLETCHER - Yes.

Justice SLICER - It was birded for years, that's where the salt birds were. In other words, I'm challenging we got it wrong then, I don't think we did. I can't see any land here that I couldn't identify.

Mr FLETCHER - Well, all I am saying, we asked for a list of significant sites from the community and some of that land was not on the list of their significant sites.

Justice SLICER - Most of these are on the list that we drew up in the 1970s and presented to Parliament. But let me go to your second, what seems to me to be the nub of this - and please if this becomes a vigorous exchange, you know my admiration for you, it's not -

Mr FLETCHER - Yes, I'm not a risk.

Justice SLICER - Because somebody at Marrawah wants a boat ramp and screams, is not the majority of public opinion in Tasmania. Now I do not know the real debate about boat ramps, whether it is a hidden agenda or whether it is a genuine thing about a boat ramp. You're going to have those sort of things crop up for a variety of reasons, you're going to get pressure. I'm sure you're getting stiff armed in your electorate over this. How much land on the west coast? There's a big midden site down Sandy Cape, we all know - the university has been tracking that since the fifties. There is some stuff at Sundown Point.

Mr FLETCHER - The struggle I have is I come from the position of saying they were an ancient people, they were here for a period of time, longer than I can even conceive. They were tribal, they were nomadic, they had different languages, they must have been everywhere in Tasmania, they must have touched every part of Tasmania at times. We now discover middens, or other artefacts, which are proof of their presence. If proof of presence is enough to transfer the land back or to say it has significance, then we should transfer all the land back, that's the logical animal in me. And I am saying but that's unreasonable, we are not going to transfer all the land back so we have to identify some.

If every midden - and there are tens of thousands of them perhaps right around the State - has to be protected - and sometimes they have talked about putting fences around middens - if every midden is of equal significance, then we have to give all that land back if we follow this course of action. I am saying, 'No, Tasmania can't do that, but at the same time we have to do something just to recognise the people and the remnants of the culture and give them a chance to nurture that and develop that'. So where do we find this test, where do we draw the line? Where do we do what is just and reasonable?

Justice SLICER - When I used to get attacked personally by some of the hot heads -Paul Coe and quite a lot of those sorts of people, white racists and all that sort of jazz - I would look them in the eye and say, 'I ain't going nowhere, no country will have me. I'm not going anywhere, I live here and if you want to play games on my account, 98 per cent will always beat 2 per cent'. So the fear or the fear that somehow or other - even if the demand were open ended - we are going to be evicted, doesn't work. That's why I'm saying you might have to cop the abuse a bit -

Mr FLETCHER - I think you misread me there. The external abuse is of no importance to me, what is important to me is what is between my ears here, of how I view myself and my course of action and is what I have done right by the people of Tasmania. I sleep well with regard those things. In moving on and setting the scene for the future, I can't find this next step: if it is fair enough for all the Aborigines of Australia to have to meet a test for the granting of native title rights or rights to land in all of Australia, why shouldn't Tasmanian Aborigines have a test of some nature?

Justice SLICER - They do, they have to meet a harder test, don't they? They have to persuade the Government of the day or the Parliament of the day to make a grant of land ex gratia. You're not giving them right of acquisition in this debate, you're putting in place a mechanism whereby the Parliament may transfer land which it has accepted - it is a two-way process - or it has identified. You tell me in the Schedules anything there that you would quibble with.

Mr FLETCHER - In the way of land?

Justice SLICER - I can't. If I were sitting in court and somebody came to me and said, 'We've found a midden site on Sandy Bay Beach, it's ours'. When I had finished rolling around the ground laughing - your logic might stick in the back of my mind saying, 'Well, in logic of course if they' - but a lot has happened on 200 years. Your fear is not a fear.

Mr FLETCHER - Is it that way because we are in the courts, we are in the magistrates courts with regard the dam on the south-east, or wherever it was, where the walnut farm was where on private property some artefacts were found and were said to be of significance. The owner didn't want to take notice of that and couldn't see the importance of that because he doesn't understand, or whatever, and went about his way, so now they're in the courts. I am told that in all the forests of the nation, of the State, they spend money and get to the stage of ripping up some land to put in a plantation and they turn up some artefacts. The restrictions of the 1975 act means everything stops and nothing goes on and action has to be taken.

If I could see that the concept of significance could be introduced into this debate in some way so that we could apply a test, as we had to apply the test with all our land use - and new planning legislation came through in the 1990s - somehow I think we need to apply a test of significance. If we just take the middens, the 10 000-plus middens around the coast, if they are all of equal significance -

Justice SLICER - But they are not.

Mr FLETCHER - Well, they are under the Aboriginal Relics Act, mate.

Justice SLICER - The sooner that act is fixed, the better. By the way, I had a hand in opposing that when it came in. That site at Richmond was identified by Parks and Wildlife in the same way that if there had been a relic of a church, or something, that could be identified. You can't blame the Aboriginal community for that -

Mr FLETCHER - I don't know much about it.

Justice SLICER - that was an identified site by a statutory scheme. But let me answer your question in a wider way. This man here lives in Launceston. Near the Supreme Court in Launceston there is a most God-awful tin shed that has been up for how long, which somebody tried to pull down, quite properly, fifteen years ago, ten years ago. Our learned Chief Justice made an order on Christmas Eve preserving it, and the damned thing is stuck there ever since. I think you've won, haven't you? Is it going down, isn't it? They want to build a bus station. It would have been a useful bus station too, better than where -

Mr BAILEY - They haven't got any money to complete it, I think that's the problem.

Justice SLICER - Right. There may well be, every now and then, a kafuffle about a particular bit of unfairness, but it sorts itself out. That was Parks and Wildlife that identified that and the farmer, as I understand - it's going on appeal, so I won't know about it anyway because my wife gave some advice on it so I won't be compromised - but as I understand it, the farmer had a number of options and he -

Mr FLETCHER - He thumbed his nose.

Justice SLICER - He thumbed his nose so he was prosecuted. How many other prosecutions in Tasmania since the act? None.

Yes, there are theoretical dilemmas and fears, there are theoretical possibilities but the reality is it just doesn't happen.

Mr WILKINSON - Can you give us a precedent?

Justice SLICER - The tin shed in Launceston.

Laughter.

Mr WILKINSON - Is the precedent then as to the transfer back of lands, you must look for historic significance, one. And two, I think the nexus beyond 1778 was your second suggestion.

Justice SLICER - I was probably even cautious with nexus beyond 1788. If you find another Kutikina cave or you find a cave with hand stencils 18 000 years old, older than the French and Spanish ones, you are going to move on it. I guess that really isn't different - that's like finding Chartres Cathedral or something but I guess that's a bit different. I wouldn't say post 1788 when I go to Kutakina or whatever, but if I put that aside, by and large, yes, it's got to have significance somehow.

Mr WILKINSON - Is there any way of defining historical significance that gives a fair and reasonable definition as to what should be handed back or otherwise or is that something that should be on notice? I'm trying to make it easier for myself.

Justice SLICER - I'm trying to think of an example. There is another cave around, isn't there, the one that nobody knows about in the central highlands.

Mr WILKINSON - I don't know about it.

Laughter.

Justice SLICER - There is a cave, as I understand it, which has some stencils and paintings in it and I think some Parks and Wildlife rangers and a couple of cattlemen know about it.

I do know that in the south west - Roy Nicholls was the first person I know to have found it - there was a cave off South-west Cape somewhere, I don't know where it is but he says when you go in there is a circle of stones and it looks like a Druid's altar. There is obviously something sacred that has happened because the stones aren't accidental, they are like little stools and they are in a half circle - it is not quite an altar but it looks like something up there. The location of that hasn't been revealed. So you would need your historians and your archaeologists or anthropologists on one half of the equation and you would need, I guess, some testing of what it means.

There is a test which all Aboriginals have to apply in Australia to and how do they solve it, they use anthropologists, archaeologists and historians and that is why the land case is so expensive - both sides use it. You don't just turn up in the Federal court and say, 'Oi'. They are month-long battles with lots of expert evidence and I suspect that is precisely what has happened with these things you've identified, some are easy, some aren't and that's going to be an ongoing process. No-one is going to hand over land simply because someone puts their hand up and can hold their breath longer than someone else.

I respect your logic, I don't share your fears.

Mr BAILEY - I have a difficulty with the middens to which Tony referred to. There are middens all over the State and they do identify Aboriginal occupation, quite obviously because that's where they ate. But if they are all over the State and each one of those is the subject to a land grant with land surrounding, what do you say about that? Is that reasonable? Are they significant, if there are examples of them in land that has already been granted in State regions.

Justice SLICER - Michael Mansell came to international fame by presenting some midden diggings to the Queen, if you recall, in a box - which was the only thing we could think of, was my cigar box and my shirt and Ian Aird had given us the invitation to get in. I dug those up, I dug up a lot of middens on the west coast when I was on holidays -

Mr BAILEY - You are on oath.

Laughter.

Justice SLICER - Before the legislation - and we presented them to the Queen.

Now the degree of significance, quite frankly, to the middens that I would ponder was more my curiosity than anything else; to me they had very little significance. There are some midden sites which I presume experts would identify as being significant such as the one at Sandy Cape. Why? Because they are identified as being 12 000 years in the one spot. You can actually dig down and get the layers - and I think that's one of the places where they found they had stopped eating scarfish, about 4 000 years ago. So you can identify them.

If you asked me, every midden site in Tasmania should be protected as a sacred object, I would tell you you're loopy. Why? They were kitchen sites. If there's something in them that advances our knowledge or which is important, like that one, yes, you should, but I expect you'd do that if you found a good fossil site, you'd proclaim it, saying, 'We really don't want people to knock these fossils off because they tell us about Tasmania'. That's really a different test than this sort of test. This is about land. The other is more about the Aboriginal Relics Act. But if you want my answer, when I read some of these statements about midden sites and so on, I think the world's gone mad.

CHAIRPERSON - So the test really is their convincing at the time that the proposal is put up of the particular significance of that particular midden.

Justice SLICER - I think it has to be an established significance, not a claimed significance, and I have no doubt that the Land Council, every time they find something, will put their hands up and say it's extremely significant. It is part of the political process, I guess. It's got to be an established significance either in scientific terms, in the sense that I can date, I can learn things from it. It might be a significant site, such as Cape Grim, with the massacre and the people being thrown over the cliff - you might identify it that way, or you might identify it the way that you have been. I know that there was a town on Babel Island in the 1930s which was an Aboriginal town. It had two shops and a post

office. We all know that, therefore we can identify it by historic knowledge or whatever. There is no easy one process but I would suggest that you separate the Aboriginal relics debate from this debate.

Mr WILKINSON - Are you saying also that the island with secret women's business, that is a good example because there can be a claim put forward but, at the end of the day, after proper investigation, it can be proved that it isn't as significant as what it first may be claimed.

Can you gain some comfort then in the knowledge that this was put forward as an historical site or whatever but, after proper investigation was had, it was found that it wasn't, so therefore the fears that we can have in relation to what is an historical site or not, at the end of the day can be put to rest because you have seen a site put up but after proper investigation they said, 'No, it's not historic'?

Justice SLICER - Yes. It is a good example. It just burnt so many people; it was an expensive burning exercise. I know, when I was on the island with Michael, Michael was horrified with some of these land claims. He said, 'They've spent up to \$30 million on land claims without the return of one acre'. He said, 'The agenda has been taken over by lawyers on these claims'. Not just the people in the Aborigines community who are very concerned about this, 'Hey, I'm a victim. Give me money or land' and then the lawyers appearing out on the flanks and so on. Your concerns aren't just in the wider community, they're concerns within the Aboriginal community itself so you've also got to realise that just because someone puts their hand up saying, 'I'm an Aboriginal activist and I'm important and give me land' doesn't mean that they are genuine or represent anyone.

I really am trying to differentiate from what I call the day-to-day political process, where all things are demanded or criticised, from what I regard as the importance of a long term, deeper debate than the normal day-to-day, 'I'm a victim, give me money'.

Mr BAILEY - On the basis that the Relics Act would continue, then would you suggest that the minister should have control of protected sites and that the relics themselves should vest in the Crown? So beyond this land grant, what -

Justice SLICER - I haven't really turned my mind much to this. I expect in this day and age crown statutory authority, statutory body or responsible body probably mean the same thing. I would probably keep the Relics Act separate from land grants because I think there are -

Mr BAILEY - I wasn't suggesting they be amalgamated. All I was saying is does the Relics Act and the implementation of the Relics Act, if that stays in existence, what would you say about saying, 'Well, the land that has been granted is significant, it's been identified as significant and enough is enough' and leave the Relics Act to deal with the protected areas and the relics themselves.

Justice SLICER - I wouldn't say on this debate enough is enough because there might be other, like Kutikina Cave, for example or something like that may be significant.

But if we just go back to the relics act, if I were designing a relics act I would have a curator of the Tasmanian Museum on it, I would have an anthropologist or a historian or an archaeologist on it. I would want somebody from Parks and Wildlife on it. I would want probably members of the Aboriginal Land Council on it. Would I be giving carte blanche with powers and so on to whichever political movement controls a particular section of society at any particular time, the answer is no. Because although the primary holder of a painting may well be the Aboriginal race, I also have an interest in my collective culture of Tasmania, I'm interested in that painting as well, it means something to me. So, no, I don't want that to go into the political arena, I want that to be kept in the same way that I'd preserve a cathedral or a fossil site or if we were in England, when they dig up an Anglo Saxon warrior or whatever. I would treat that in that way, different from the way I'd treat that. But the Aboriginal Relics Land Act needs some work.

Mr BAILEY - But the land grants that have been given and are proposed all relate to some significant feature.

Justice SLICER - None in 1999. The only one there I wouldn't claim knowledge of would be Trial Harbour - I don't know why Trial Harbour's in, is it -

Mr FLETCHER - Yes, it's a little blow hole that's got very special significance.

Justice SLICER - You could answer each one of those islands, couldn't you, by your own knowledge.

Mr BAILEY - Sorry?

Justice SLICER - You could answer each bit of land - if I said tell me the significance of each bit of land in your schedule, you could answer that as a member of Parliament. You would say 'I know about Clarke, I know about Sundown Point, I know about Wybalenna' or have I misunderstood your question.

Mr BAILEY - No, really I was talking about protected areas and relics. If there's a blow hole and that's a protected area, then another blow hole is discovered - my real question was: do you believe that the land that has already been granted and what is proposed is granted for the Aboriginal community is enough and whatever significant features come forward that they should rest in benefit for the whole of the Tasmanian community without the right of exclusion by a small section because they will manage and control that land and can really do what they like with it under the provisions of the act.

Justice SLICER - Well, your legislation says that that's not so, doesn't it. It says there can be no exclusion, existing rights of entry and so on may not be denied.

Mr BAILEY - No, I understand with existing rights but in relation to the management of that land, there could be exclusions.

Justice SLICER - Suppose they find another significant blow hole or somebody uncovers from records of a massacre at somewhere - name a find - I wouldn't have a problem with vesting it under your land legislation but making it subject to your relics legislation. In other words, vesting is simply notional ownership. I'd make it subject to your relics act in the same way that you would do it with other significant sites. That would give access, would give protection - I see the two acts as being inter-dependent in a way.

Mr BAILEY - Yes, I see.

Justice SLICER - Quite frankly I'm not fussed about ownership of a blow hole if it's accepted that it's an Aboriginal cultural site and they have a say in its management. I don't have a problem with that. I can't care if it's vested in the land council. I do care that it's protected in a way that it can't be lost or damaged. I don't know - there's been no claim, has there, for those circles on the bluff in Devonport. There's been no fuss about that - everyone knows where they are, they've all been covered back over. I'd be very fussed if somebody began to play with those - we've all seen them, haven't we, the circles and so on on the bluff - protection.

Mr BAILEY - So your suggestion would be that - I don't whether you've gone this far, but I suggest that you have - the current Aboriginal Land Act 1995 be amended to make the act itself subject to the relics act so that there is a guaranteed protection of those sites of significance.

Justice SLICER - I'm not sure that I'd advocate that at all, I don't think you need to, do you? I really haven't thought this through. I would have thought the Aboriginal Relics Act governs Tasmania.

Mr BAILEY - Yes, I think you're probably right.

Justice SLICER - You can park the ownership here, you don't get around the Aboriginal Relics Act unless I've misunderstood the legislation.

Mr BAILEY - No, you don't.

Justice SLICER - So if you put it in, fine, but I don't think you need to put it in because I think the general act will govern it.

Mr BAILEY - Yes, it would.

Justice SLICER - My worry about the Aboriginal Relics Act is that it just needs bringing up-to-date, it hasn't been touched, I don't think, since 1975.

Mr BAILEY - But would you agree that under the current legislation, the Aboriginal community could deny access to any of these matters of historical cultural significance which are contained on the land which will be controlled by the Aboriginal Land Council, thus denying - practically I can't see that this would be an answer - but denying access of the general community of Tasmania to observe whatever is being protected.

Justice SLICER - Could they stop people landing on Clarke Island? The answer is, I suppose, yes they could. I could never travel on the VDL land west of Smithton, we couldn't even get to a beach to get our birds off Trefoil Island onto a beach which was owned by the VDL company, they just wouldn't let us do it.

Mr FLETCHER - That was only bluff though, they never had the right to do that, their title was to high-water mark not to low-water mark.

Justice SLICER - They let Jimmy Luck do it for 30 years and they let old Mrs Nicholls do it, but as soon as we bought the island, the day we bought the island, they said, 'No'.

Mr FLETCHER - They had no legal right to do it just the same. There was the perception in Circular Head for generations - well, for decades - that the VDL company had title to low-water mark when they never ever did. They put the story around that they did but they didn't.

Justice SLICER - That didn't fuss us but they had it from the high-water mark -

Mr FLETCHER - Yes.

Justice SLICER - We couldn't get the birds - we could land the birds on the beach but we couldn't get them into Smithton.

Mr FLETCHER - Right.

Justice SLICER - My guess is playing dirty pool by saying yes, but doesn't that apply to everyone else.

Mr BAILEY - Yes it does and I'm not really arguing that, but in relation to -

Justice SLICER - The Dunbabins let us go through their property to get to that marvellous beach, they don't have to.

Mr BAILEY - I'm really thinking about, say, a midden. That's the only thing I can think of. Well, let's look at the rock carvings, those rock carvings are there, they are within Aboriginal land. If the Aboriginal community decided that that was just for Aborigines, they could do that and lock the rest of Tasmanians out it. For example, if they didn't have enough money to develop some kind of ecotourism venture, that would be locked away from all Tasmanians whereas if that - I don't know whether that would be a relic under the act or a protected area - were to be a protected area under the control of the department, access could be provided by the department and people could, under control - all of Tasmanians - look at that.

Now if we are going to get into a situation where we are continuing to alienate land or give away land which has significant archaeological significance and thereby deny the ordinary Tasmanians the right to see other relics or protected areas, is enough enough. That is really what I started out to say at the beginning, is enough enough?

Justice SLICER - I can only go into certain sections of Hastings Caves and Mole Creek Caves. Why? Because it is not either safe or I may damage something that's important, so the State restricts my movement. Kutakina Cave would be another example where you may want to restrict. In other words I

suspect you will get the same answer of there will be restriction for safety or preservation no matter which system you adopt.

I understand your concern which says, 'Ah, but what happens if they won't let anyone on at Cape Barren Island or Clarke Island ' and so on, won't the whites go bolshie. My guess is if that happens then you may want to start amending the legislation but I don't think it is happening. In other words I don't know of anyone - well I really don't know about this Marrawah, I really don't know anyone who has been excluded. The shack owners at Nelson Bay were a bit worried about -

Mr FLETCHER - I suppose in relation to this matter the classical case is that - not bringing my personal opinion into it here - we negotiated in the last round the return of Premangana, Mount Cameron West. There was a road access through the middle of the block over which people took their little tin boats down and landed them on the beach and caught a fish occasionally and the surfers drove down and took their boards along to where the waves were breaking on the beach. So we negotiated their right of access over that road and subsequently when TALC took over the day by day management they built a fence and put a gate up and said, 'You can't go over the road'. I got them some money to harden - they said because the road was in a poor state - I got them some money from the State and local government for them to get together and do it. There was a resistance by some in the community to this vehicle access being allowed on the beach for whatever reason. So then they discovered a midden in the middle of the road and invoked the Aboriginal Relics Act and said, 'No, we can't have anyone going over there because of the -

Mr BAILEY - Can't you put a road around it?

Mr FLETCHER - I suppose they could if they want to but they don't want to build the road at the moment so that's a convenient excuse for doing that. It was interesting - and Ray made the point, I think, yesterday - in that the land was transferred in perpetuity with no capacity to alienate any of the land so the Land Acquisition Act wouldn't apply.

Mr BAILEY - That was the evidence that was given by whoever was here.

Mr FLETCHER - They couldn't sell or give away or transfer any of the other land for the building of a road so everyone was locked into a catch-22 situation, unless by mutual agreement, and TALC at that stage didn't want -

Justice SLICER - Just put a road around the midden site.

Mr BAILEY - That's the simple answer but if the Aboriginal community won't agree to it, it won't happen and that's what has happened, it is a stalemate, as I understand it.

Mr FLETCHER - There's a very significant breakdown in trust at Circular Head because of that action.

Justice SLICER - I've never seen anyone not permitted to go onto Cape Barren Island or Clarke Island or Babel Island. School parties regularly go to Big Dog during the birding season to watch. Sure, there will be occasions when the bloody-minded meets the obstinate and there were some people on the Land Council who were bloody-minded, I wouldn't deny that and I wouldn't deny that there were people that wanted to be more bloody-minded than others to show how strong in the faith they are. There were some bloody-minded people in Parks and Wildlife in the sixties and seventies and there still are. Find a wedge-tail eagle nest.

Mr BAILEY - Yes, but of course what were looking for is reconciliation, not conflict. Unless things are negotiated correctly at the beginning, then these conflicts will occur and I think that was some of the evidence we got earlier this morning.

Justice SLICER - I must say I thought you'd put it into your act.

Mr BAILEY - What, to resolve conflict?

CHAIRPERSON - Access.

Justice SLICER - Access and so on.

CHAIRPERSON - But then one act over-ruled that particular act and when inquiries were made about testing it, the Government's solicitors of the day didn't see it important enough, too few people. It wasn't an issue like the bus stop, I suppose.

Justice SLICER - I thought 7(c) and 8(a) were quite -

Mr BAILEY - Yes, but they're only in relation to the land which is subject to this act. We're talking about land which is already under the 1995 act. An access may be okay but the problem there is the midden.

Mrs SILVIA SMITH - Those middens again.

CHAIRPERSON - The midden has overridden the right of access.

Mr BAILEY - I can see that you have concerns with middens.

Mrs SILVIA SMITH - And many of them cropped up in the middle of a road.

Justice SLICER - Most middens are God-awful boring. I would hate this committee to go back to Parliament and block the entire legislation. I thought in the 1995 act you could -

Mr BAILEY - You could what?

Mr FLETCHER - Judge, we're trying to do things here that only time will heal, that's the problem. What we're trying to do is build a trust in the community and trust will only be built in the heat of the kitchen with the passage of time. There's nothing we can do. I think what the committee is trying to say is if we say people have recommended that people have got rights to access of the road, over the road through Premangana, we'd like to believe that everyone on both sides would respect that right and make sure that they had it. Trust will only come with the passage of time and working together, won't it? You can't artificially create that.

Justice SLICER - And those sort of fights - look at the fights over the Gordon River, how fast your boats could go up it or where you may land now there. I know people are hostile by saying they can't take a power boat up beyond Federation Landing. Yes, but they seem to have a way of working through. But I thought section 27 gave you - you've got powers to put in roads by the way.

Mr BAILEY - Or preserve existing access.

Justice SLICER - Well 27(4) would've got you through this damned midden -

Mr BAILEY - That's drains, sewers and waterways for sanitary or other purposes, that's not roads.

Justice SLICER - Call it a drain, dig a drain through it.

Mr BAILEY - Put roads in it. But then you run into the a relic and you've got to go around the relic.

Justice SLICER - Ah, but that's the card they've played. They played that if they didn't play this card, they played the Aboriginal Relics Act.

Mr FLETCHER - Yes.

Justice SLICER - I understand that, but I am saying I don't like that act either.

CHAIRPERSON - I think the realism of it is that even if the Government has a right to put another road in for the sake of one, two, three or four, they are not going to open the Treasury coffers if it's not politically expedient to do so on some occasions and I think that probably was some of the problem in

that particular area. Unfortunately I think the problems that existed there under the 1995 act have resulted in some of the concern and problems that are coming to our attention now because that trust was lost in those particular divisions.

Justice SLICER - There is reserved to the public at all times the right of access over the land referred to in items 1 and 2 of Schedule 3: there is to be reserved to the public, item 13. In other words, Parliament's obviously thought its way through what it is reserving.

Mr BAILEY - That's right, but not with the relic.

Mr FLETCHER - When I signed off on that I believed, quite wrongly, on the advice, I suppose, that this later act and the Parliament having approved this act post-1975, that anyone would reach the conclusion - well, they took into account the 1975 act and still provided that right of access, therefore the right of access would have a priority. But once the midden was discovered in the middle of the road in 1975, that act was invoked and we now - the advice coming to me is, 'No, 1970 would override whatever you did'.

Justice SLICER - Because it's a general act -

Mr FLETCHER - Yes.

Justice SLICER - which will override, which will govern a particular act. You'd better blame the original legal advisers. You weren't on the Legislative Council then, were you?

Mr WILKINSON - No.

CHAIRPERSON - Does the committee have any other questions?

Mr FLETCHER - I suppose there should be just one comment that the judge could be asked to explain in a bit of detail as I go back to my notes. We've had a significant input from people giving evidence and it stems from the aboriginality question and the recognition question, I suppose. Some people claiming their aboriginality state that there is a dominant group in the Aboriginal movement and this is the core of the 25 years - from the 1970s, I guess. You made the statement yesterday that the Aboriginal community does not speak with one voice nor should it. That presumes that there are communities and individuals who will speak out and represent their own individual and community group views. That evidence has been put forward by a number of witnesses earlier on to the effect that there is no one community of Tasmanian Aborigines but many communities and each of those separate communities will speak out at the appropriate time and reach their conclusions. How do you react to that statement?

Justice SLICER - I'd prefer to use the word clans or tribal families, bearing in mind that there are shifting alliances within all tribes and families - anyone who looks at the Labor Party as a tribe will understand that. I'll give you another example: when the Doug Lowe legislation - was it Doug? - the 1980 legislation came round, there was an almighty fight between the Cape Barren Island community council, Flinders Island community council, the TAC, the Aboriginal Legal Service and, I think, the Launceston child care service as to who got more on the council. Sometimes I'd go to Cape Barren Island and no-one would speak to me because there'd been a fight with Ros Langford by their secretary. You'd go there the next time and they were in alliance with FICA, so I was their best mate that time.

Almost every person who's appeared before here probably at some stage did some time working for the TAC. You win your spurs in the Aboriginal community by getting out and putting the boot into the TAC but later you go back as a consultant or State Secretary.

The fights, I said were passionate fights and quite often because they were personal but two years later that alliance is over there. The current fight, I think, is along the term line and that's the ATSIC fight. ATSIC is a fight because the TAC mishandled its approach to ATSIC in the first place, it ignored it. It said, 'This is a flawed model and we won't have a bar of it. We won't put people in to stand for elections and so on', and they lost control and are now paying the price, I think, for a bad political decision. All that's internal fighting.

Mr BAILEY - May I ask is the evidence that is being taken in private or is this -

CHAIRPERSON - No, this is in public.

Mr BAILEY - I think there might be some areas you might well want to look at.

Mr BAILEY - That was what I was a bit worried about and I was just wondering whether we ought to -

Mr FLETCHER - Just getting back to the community of the single or the multiple facets of a community, I guess previous negotiations have taken place with the community as identified by the TAC. At least you seem to be saying to some degree now that the committee ought to be taking considerable note of what ATSIC is saying as the elected representatives of the community of Tasmania, what the TAC are saying.

Justice SLICER - Pass. I think that's a judgement and I wouldn't be presumptuous to tell you who you pick up and follow. The TAC was a structure designed in 1973 which survived and is a remarkably durable organisation and it's more flexible than people think. It has really been the training ground for all the predominant activists. I don't really know enough about ATSIC. Don't forget I haven't been involved as a lawyer with the community since 1985-86 except on brief. I think by and large ATSIC is a body by statute, elected with powers. You cannot ignore that.

CHAIRPERSON - Thank you. Nothing else, Mr Bailey?

Mr BAILEY - No, I am fine.

Mr WILKINSON - Just finally, if I can. In a plea of mitigation a few years ago - I forget who the fellow was - you said, 'You can't use this as a crutch forever and a day, you've got to cast the crutch aside and get on with things'. Do you think that will ever happen here with the reconciliation?

Justice SLICER - If I am right, I would have thought that in about ten to fifteen years - I think we still have about five to ten years to go on the current stage - I would think we will have an Australian society where in some strange way there will be a race of people called Aborigines who are as Australian as Australians; there will be Australians who have absorbed the Aboriginal past into its own and Australia is almost like two or three - I suspect three - streams of pasts in one culture. In other words, yes, but the communality will be cultural. In other words I will be as proud of an Australia which is 40 000 years old - not like those modern Europeans - as I am of my own 200-year stream. In other words, I see a convergence of culture. I don't see eventual assimilation and I don't think that's the way the world is going.

If I look in Europe I can see a political unity - it is one of the few pluses, I think, in our time - I see a political unity, but I'm watching a lot more cultural diversity. Those Scots are a bit more Scottish than they were; the Welsh, the Basks. France now has probably three or four cultures within it. I think that is the strength of Europe. There's political unity between nation states but there's now becoming greater cultural pride and cultural diversity and I think that's our strength, I think that's what we've been. We've been the best country on earth for assimilating new cultures and new people; I think we got it right in every area except Aborigines. It's the one thing we've never quite got a handle on. We play with it and we muck it up and put it back and so on. But if you think about every other group that has come into Australia, two generations and they're playing cricket or married or -

Mr WILKINSON - Maybe footy.

Justice SLICER - We've got a handle on all of that, but it's the one area we've just never got a handle on. I think we are getting there. So will there be an end to it? No. Will there be a mutual acceptance and a one distinct Australia culture which includes that? Yes.

CHAIRPERSON - Thank you, Justice Slicer, for the extra time you gave us this morning.

Justice SLICER - I thank you for your patience and I have enjoyed the intellectual exchanges. Thank you for your courtesy.

THE WITNESS WITHDREW

THE LEGISLATIVE COUNCIL SELECT COMMITTEE ON ABORIGINAL LANDS MET ON THURSDAY 3 FEBRUARY 2000 IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART.

Mr ANTONY JOHN COPE, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIRPERSON (Mrs Sue Smith) - Thank you, Mr Cope, for your submission to the select committee. What we will do is give you the opportunity to speak to your submission and after that the committee will ask any questions they so wish.

Mr COPE - This first came to my notice when I saw the article in the paper on 21 January called 'Call for feedback on reconciliation'. I sent off a fax to Sue Smith and quoted some letters to the Editor of the *Mercury*, which you may have copies. Have you got copies of those?

CHAIRPERSON - We have.

Mr COPE - The summary of my views is that I'm a resident of Tasmania; I went to Canada towards the end of the war for air gunnery training and I saw the deprived state of north Indians there. Then I did flying training in the air force in southern Rhodesia and went on leave in South Africa and saw the effect of apartheid there also. I can assure you it's not a very nice sight.

I just see that the way things are going here, that we are setting up another apartheid system. We're discriminating in favour of a certain minority group, which in this particular island probably they haven't followed their normal life for five generations, six generations. I personally can't think back further than two generations in my lifetime.

So what I'm really saying is that land really doesn't belong to anyone, it belongs to the people. Although each of us may own a bit of land right now, we really don't own anything; it belongs to the people. So once you start giving it away to certain groups then you're going to create problems. We've seen the hatred that comes out in letters and I don't like the way the *Mercury* keeps talking about blacks and whites and the way that the Aboriginal Centre also talks about whites. To you and I, as we look at them, they look just the same as you or I because it is six generations probably since their tribal life finished.

I came out to Australia in early 1953 so I've spent about 47 years as an Australian. As I've said, I've seen apartheid in South Africa, I've seen it here and I see how the system of help based on race but not on need works very imperfectly. An example of this is Tasmania where the term 'blacks and whites' is used without meaning - if it every had any.

So if we go back to that letter that Tony Le Fevre put in the *Mercury* in 1996 headed 'Discrimination', that really sums it up, I think. I remember the horror I had when I first came in 1953 in Sydney seeing adverts saying, 'Only Catholics need apply for jobs', 'Only masons need apply for jobs'. This is something I had never ever seen in Britain. I think Mark Foyes was the Catholic one and I can't remember offhand who the name of the masons was.

Fortunately those things are gone but now we're bringing it back again in this discrimination on race. If it was based on race such as you have on the mainland where people are still living in their tribal areas I could understand that. But here in Tasmania we are setting up another culture and it's going to be to the detriment of this State I feel.

I've made a lot of notes but I don't want to bore you with them. I could go with the ones that the Government put out. I went on the Internet and got the legislative package which includes 'The transfer of eight areas of crown land'. I've made the note there that land doesn't belong to any one group, it belongs to all of us.

Mr FLETCHER - Mr Cope you're putting forward the principle of custodianship there rather than ownership, aren't you? You're saying that 'despite my having a fee simple title to my residential block of land I really am only the custodian of that land for a period of time'?

Mr COPE - We're only here for a short period.

Mr FLETCHER - All right, well then why isn't it fair for the Aboriginal community to be custodians of some land for a period of time?

Mr COPE - If you take an Aborigine, as we call them today - I think it's beautifully summed up in a letter we had in the *Mercury* on twenty-sixth of last month, on Wednesday. We had a statement there saying, 'Cultural Rights', and we have this man in charge of ATSIC here and underneath was 'Gillespie opens Aussie innings for Aborigines'. If I can just quote that to you: 'I accept I have Aboriginal blood in me, though I don't go around preaching the word. I'm proud of my heritage but it wasn't a big part of my life when I was growing up. I only found in high school that I had some Aboriginal blood in me and that's only a little bit. I have lots of things in me, including Greek and Irish blood'. I also had colleagues when I was teaching who had Aboriginal blood in them, but they never shouted about it. They were proud that they had it, the same that people are now proud that they have convict ancestry.

I can quote another case, too. We had a friend of ours come over from England in 1996 and she wanted to see the Risdon Historical Site, as it was then called. She wanted to see where Bowen first landed to set up the State of Van Diemen's Land. We could not gain access to that site, it was locked up, padlocked, and a big sign saying it was Aboriginal land. I wrote a letter to the then Minister of Aboriginal Affairs - which I have here - and Mr Rundle thanked me for my letter and referred it to his colleague, the Hon. Denise Swan, and her reply to me was merely, 'Thank you for your letter to the Hon. Denise Swan. Your letter has been drawn to the minister's attention. For your information all access provisions for land covered by the Aboriginal Lands Act 1995 are detailed in the act', and tells me where I can buy one. It did not answer my question about not getting access to the Risdon historical cove. Now there is. In last month's *Mercury* there was an article in the paper, as you may see, about the Risdon Historical Site in which somebody was aiming to set up a monument outside because of the desecration of the one inside. I don't know if you've seen the desecration of the one inside where it was sprayed with paint. So here we have a site which is on the walking plans for people who want to walk around the city here, which talks completely about the historical importance of the Risdon Historical Site, and the Government then give it away to a group who do not have the same interest in it that we have.

Mr FLETCHER - I find that a very subjective judgment. The part of transferring the land access was provided to the barbecue area and a significant part of the site vis-a-vis the landing. That access was to be provided during daylight hours, that is part of the statutory obligations of the transfer.

Mr COPE - As long as there was no function going on for the Aboriginal community.

Mr FLETCHER - The act doesn't say that - to the barbecue area, not to the site generally. Certainly there was an outburst of radical, almost aggression, with regard this site and the monument in the very early days after the transfer of the land. I have tried to take some advice in more recent times and am informed that people do use the barbecue area freely during daylight hours, as the law permits them to do. People do have access to the site. There may be personalities coming into that clash, there may be people who have been aggressive towards the Aboriginal community in the past who have not built up good relationships and good trust one way or the other and there is still some resentment there. That might be reflected in access now, but at law they cannot deny access to the barbecue area. If you feel aggrieved by that and you lay a complaint, you have the law on your side in regard that.

Mr COPE - But that wouldn't have needed to have arisen if it had been kept as it was.

Mr FLETCHER - No. So you don't accept the proposition that the people are descendants of the original ancient people -

Mr COPE - I do accept that.

Mr FLETCHER - You do accept that. Do you accept the proposition that we dispossessed the original settlers, the ancient people of their land?

Mr COPE - Yes, I do.

Mr FLETCHER - Well, isn't it reasonable that after the passage of a considerable period of time we give some of that land back?

Mr COPE - It would be if these were the original people, but they're not. They're not, in any shape or form. Six generations makes a hell of an impact on the blood line of a people, doesn't it? I just read out to you this statement from Gillespie who said that the blood line in his is very small. It doesn't matter how small it is, you believe those people should have rights in all those different blood lines then, do you? I come from England and I probably have Viking and Saxon and Norman and all sorts of things in me.

Mr FLETCHER - We Australians come from all different ethnic backgrounds. Suppose the Japanese had won the war and dispossessed us of all our land. Do you think 200 years on our descendants would be trying to get some of that land back again?

Mr COPE - Yes, if we were the original race.

Mr FLETCHER - We are mixture of a whole lot of races, our blood line is not pure, is it. I am putting the proposition to you -

Mr COPE - I hear what you are saying, I just think what we are doing here is going to extremes. We are actually discriminating on the basis of some distant racial descent, and people are getting advantages from that when it should be based on need and not on race.

Mr FLETCHER - So you deny the group of people who are descendants of Aborigines and want to claim their aboriginality, for whatever reason? You are denying them their aboriginality being used.

Mr COPE - I do not quite understand what you mean by 'claim their aboriginality'.

Mr FLETCHER - They live in an Aboriginal community, they want to nurture and develop the remnants of their culture. They want to restore a language.

Mr COPE - But their culture is gone, hasn't it, the same as our culture of 160 years ago?

Mr FLETCHER - Is that not a subjective judgment you are making? How can you make that judgment when you are not of the community?

Mr COPE - But it is a fact. I am of a community that is aboriginal where I come from, and we certainly do not go around doing things that were done 100, 200 or 300 years ago.

Mr FLETCHER - Okay.

Mr COPE - I once lived in a town has great Roman remains. They passed an act of parliament in Britain to stop a builder putting up an estate because they uncovered a mosaic pavement. They gave the universities of Nottingham and Birmingham a year to do the research and dig the area up. But we certainly don't go back to making Celtic jewellery or anything like that, although it is beautiful and we have the right to go and see it. If you go to Britain you can visit all these sites and they are protected, but we don't seem to protect our history in Australia.

Mr FLETCHER - My concern with what you seem to be saying is that all people should be like me.

Mr COPE - No, I'm saying all people -

Mr FLETCHER - There is no room for other people to think differently or to react differently or to associate with other backgrounds.

Mr COPE - No, I'm really coming back to the statement that things should be based on need and not on race. This really comes back to my point, and you're saying it should be based on race.

Mr FLETCHER - No, I'm not saying that at all. I am saying that there was ancient people, that we dispossessed those people of their land, that there are descendants of those ancient people here who want to identify with that culture. We have land in abundance and it seems to me - this is the Crown on behalf of the people of Tasmania has land in abundance that we cannot possibly hope to manage properly because the State hasn't got the funds to do it, we have people wanting to identify with their aboriginality and, as you recognise the concept of custodianship, I think it is entirely reasonable to give these people custodianship of a parcel of land to help them carry on the memories and the traditions and the remnants of the culture that was here before European settlers arrived.

Mr COPE - But the members they have would be very, very faint, wouldn't they? This is, what, five or six generations, isn't it, and the blood has got so thin since then and yet you say they should pick one particular part because it belongs to this race that was originally here. I live at the moment on a convict station and from 1840 to 1847 the convicts brought the road from Lower Sandy Bay through to Kingston, which was then Browns River, but I'm afraid the history of that is rapidly disappearing and we're not protecting the heritage there.

Mr FLETCHER - Well, we need to do something about that as well.

Mr COPE - And that's even a short period of 150 years.

Mr FLETCHER - Yes.

Mr BAILEY - But you would support that being preserved?

Mr COPE - I think all heritage is important - yes, very important.

Mr BAILEY - Well, if we look at the Aboriginals, their heritage and what they think or what they believe and understand to be of significance - it might be middens, it might be rock carvings, it might be other -

Mr COPE - But doesn't that apply to all of us?

Mr BAILEY - I guess it applies more directly to the original race than to all of us. They are the direct descendants of those who created those middens, those who did the artwork in relation to -

Mr COPE - But the descendancy is very small, isn't it? It is probably greater in the Caucasian side, isn't it?

Mr BAILEY - But surely they have an ownership, a greater ownership in those and a greater interest and they are of a greater significance to that race to ensure that they are preserved than they would be to those who have come here, as Johnny-come-latelies, 200 years ago. Do you agree with that?

Mr COPE - Yes, I do. But I don't think they should get things done for them that wouldn't be done to anybody else. We had Justice Slicer here yesterday, I read in the paper this morning, claiming that you should also look at giving them the infrastructure and the support to run these areas as tourist areas. It is a fantastic idea but why does it have to be done through - it only happens because this one group want to do it.

Mr FLETCHER - Yes.

Mr COPE - That is what annoys me.

Mr FLETCHER - Well, I agree, the same opportunities -

Mr COPE - I mean, the money is suddenly going to come there which it wouldn't have come before because it's going to come from the taxpayer again.

Mr WILKINSON - When you say 'all heritage is important' - and that is my area, Sandy Bay leading down to Kingston -

Mr COPE - Oh, good.

Mr WILKINSON - so I am of the same opinion, I think it is important as well and it should be upheld. But do you think it is important also therefore to uphold the Aboriginal heritage in a way so people in years to come can look back and say, 'Yes, these were the initial inhabitants of Tasmania and Australia' and if the answer to that is yes, well how do we do it?

Mr COPE - I think on the mainland of Australia it is quite a different story in most cases but in Tasmania it is totally different. In Tasmania we have got the people with a bit of Aboriginal blood here then climbing on the bandwagon and getting all the money from the taxpayers under this aboriginality thing. You have only got to look up the paper and I could just read out to you, they have their own special legal system, their own child centre, their own community school, their own health services. They have a Risdon Cove residence, they have a community benefit fund, they have land councils, councils of reconciliation and ATSIC. Now why should one group have special free legal aid, special health services? Why isn't it based on need and not on race?

Mr WILKINSON - I hear what you say, that everybody should be equal and everybody should be treated equally but, in relation to your comment 'all heritage is important', if I could ask you what you think about that. How do you believe that we should safeguard the heritage of the Aboriginal people, if at all?

Mr COPE - Well, first of all, there should be a group of people formed and if we take the First Settlers Association, here we have a group of people trying to perpetuate the first settlement of this island.

Mr FLETCHER - The first European settlement.

Mr COPE - They're not climbing on any bandwagons, are they, or claiming any special privileges from anybody but they are now a motive force that can talk to Government and perhaps get something done about the heritage of the First Fleet.

Mr WILKINSON - But that is what I'm saying: the first settlers here, the Aboriginal people, would argue the Europeans weren't the first settlers here. The first settlers here were the Aboriginal people, like for instance the Maoris have done in New Zealand, like for instance the North American Indians have done in Canada. So if heritage is importance certainly one would argue and could argue quite strongly that if heritage is important for the first settlers, the European race, so too is it as important for the Aboriginal race, therefore how do we give them the ability to preserve that heritage?

Mr COPE - I am really saying that we don't have an Aboriginal race - that's really what I'm saying. Yes, sure we have them on the mainland but it's this business of what you define as an Aborigine and I think it even goes so vaguely as to say if they are accepted by the Aboriginal community.

Mr WILKINSON - We've been struggling with that for the last couple of years as well, I can add.

Mr COPE - The whole thing comes back to whatever government was into power at the time that made that definition; they didn't base it on need, they based it on race.

Mr WILKINSON - So you're saying that there can't really be any argument now that there should be any Aborigines arguing that they should try and preserve their heritage within Tasmania, you're saying

'That's gone, that's passed. Aborigines should be forgotten as far as their heritage is concerned within Tasmania', do you take it that far?

Mr COPE - No I don't.

Mr WILKINSON - ... Tasmanian because you're saying there's no Tasmanian Aborigines now.

Mr COPE - Not true Aborigines, no, but if you go back to - there's a picture here taken in your room - of community representative Max Lesage and Charles Wolf. I wasn't here, I wasn't privy to what they said but one man is listed as being leader of the Tasmanian Aborigines, hang on - Tasmanians of Aboriginal Descent Association. I see nothing wrong with that, that's a fact and they have rights and they can be looking at the heritage that belongs to their bloodline that they are looking at.

Mr WILKINSON - Like at Risdon Cove with the initial plaque, that you wanted to go and see and couldn't get to, like in other parts in Tasmania where there are monuments to applaud the works of Bass and Flinders et cetera and all those people, should there be monuments and plaques and places kept within Tasmania which refer back to Aboriginal settlement such as certain middens in areas of the State, caves with paintings et cetera?

Mr COPE - Yes, I think so, but of course we are relying now on the colonial history for that evidence, aren't we? There's no actual evidence, any history from natural Aborigines of this island. We have only got the rock carvings and some of the basketry and necklaces, one of which I saw in a museum in Exeter in England - which I believe is now back here.

Mr WILKINSON - So should they be preserved?

Mr COPE - Their monuments? But they haven't got any monuments, have they?

Mr WILKINSON - No, should the ancient rock carvings and the ancient -

Mr COPE - Oh yes, that's heritage, that's extremely valuable.

Mr BAILEY - Could I just follow on there. Having said that they are of significance - and I think we all agree they are of significance - the question is, who is best to preserve those: a government department, where people come and go from year to year or from decade to decade and there is no continuity of the belief in their worth and the ability of government to make sure that they are preserved than a group of people who are the descendants of those - and they may only have a little bit of descendancy in them - but who have a passion for the preservation of those artefacts? Who is best to look after them?

Mr COPE - They'd obviously have a bit more interest in what's going on.

Mr BAILEY - I agree with you there, then doesn't it follow that the way they look after them is to control the land on which they are so that they can make sure that they are preserved. I am thinking of your response to what I'm putting to you.

Mr COPE - We're not going that with the heritage of the colonial times in this island, are we?

Mr BAILEY - Well, give me an example.

Mr COPE - I live on a convict station which is just falling apart because nobody cares a damn about it.

Mr BAILEY - I think that is up to those who hear and who are descendants to do something about it and I think as money is available they will do it. What has happened in 1995 is that land has been granted to the Aboriginal people to pursue their cultural rights and for preservation of relics that have been found and they would be the best to look after it.

Having established a principle in 1995 that land should be granted to the Aboriginal community, are you advocating that all of that land should be given back to the State again and taken away from the

Aborigines? Is that what your position is?

Mr COPE - I just think that we have gone along the wrong track. I am not saying we should take it back, that's really a matter for the people of this island, isn't it, to decide through their parliament.

CHAIRPERSON - If I could just interrupt for a moment, Mr Cope, the ABC would like to come and take some visual footage, no sound, do you have any particular worry -

Mr COPE - None at all.

CHAIRPERSON - Thank you.

Mr COPE - I have been living on this site I am on for twenty years and I have got it registered with the Heritage Council. I conduct the walks around what is left of the convict station; I have all the sites along the road that the convicts built that are still there registered. I haven't found any Aboriginal remains and if I had I would bring those to the attention as well because I think they are just as important. I don't hold particular importance on middens because they are rubbish dumps, aren't they? I haven't managed to find a rubbish dump at the convict station yet but undoubtedly there is one there somewhere. But, as far as I'm aware, a midden's just a rubbish dump, isn't it? Just shells and stuff.

Mr WILKINSON - No, they'd say that's wrong, that it's an important meeting place where the Aborigines congregated after whatever it might be and spoke about -

Mr COPE - It's a very difficult position. When you think about when the First Fleet came here, they virtually descended on 4 000-5 000 people on this island who were living in the Stone Age. That's a horrendous impact, it really is. I know some terrible things were done, but just think about it. They were Stone Age people; they didn't evolve upwards like we did in Europe and they had these people coming in with a totally different way of life and something had to go and I guess it went, didn't it?

Mr BAILEY - Going back to the middens as rubbish dumps, whatever they are it's evidence of occupation of land, isn't it, and that's what we're talking about.

Mr COPE - You're back to this 'occupation of land'.

Mr BAILEY - I'm just saying that that is evidence.

Mr COPE - I'm not denying people were here. They were here, weren't they?

Mr BAILEY - Yes, they were here, but it's evidence of what area they occupied and fished and ate food. They may have been there only for the summer and then moved somewhere else for the winter. If they were in caves, there are rock carvings. It is evidence again of land they actually occupied, of areas of land they occupied. Do you think that has some significance to those who are descendants of these people?

Mr COPE - For people who want to trace the history of the people, yes, I think it's very important. They can find out where they generally tended to move around. Whether they can actually time-date those to see when they stopped using them or when they started using them, I wouldn't know.

Mr BAILEY - I think the difficulty is though that a global look is required because they were rounded up and taken to Flinders Island so, as I understand it from a genealogical point of view, it's very difficult to trace back the roots of where their forebears came from. It can be done but a lot were rounded up to Flinders Island, Cape Barren Island -

Mr COPE - As an act of mercy, yes.

Mr BAILEY - Well, they wouldn't have said that when they were being slaughtered and killed.

Mr COPE - Well, they weren't slaughtered, they were just put in a situation where they couldn't survive.

Mr BAILEY - No, others were - those who weren't rounded up.

Mr COPE - Yes, they were pretty ruthless if they attacked their stock. It worked both ways and you can understand they felt. Yes, I can understand that they would have been rather upset but they didn't stand a chance, did they, because they were Stone Age people and these people had much superior weapons. It's a pity they couldn't have got together and talked like the North American Indians did. Of course some terrible things went on there too, I know.

I hope I haven't come in and distracted you from your main purpose here which is looking at Aboriginal land -

Laughter.

Mr COPE - I just got excited because I thought, 'Here we are, we're doing it based on race and not on need again'.

Mrs SILVIA SMITH - I just wonder if I could intercede there where you mentioned land. I'm just trying to come to grips with the way you're thinking. Would it be fair of me to surmise that one of your concerns in this whole issue of the transfer of land back the Aboriginals of Tasmania, or the descendants of Aboriginal Tasmanians, is that there's one group of people - and you talked about apartheid - getting land, whereas yourself as part of the other group of people are purchasing land and you see an unfairness in that. And therefore you're saying that your ability to preserve the culture of the piece of land you're on is going to be different to the ability of somebody who is given land who hasn't had an outlay to begin with and then would possibly get some assistance? Is that part of your concern?

Mr COPE - No, it's not. I think these people have just as much opportunity to purchase as I have. I only came here in 1953. I paid my £10 and I landed with about £19 in my pocket.

Mr FLETCHER - I think the difficulty I have is with you denying that there are Aborigines, that the race survived. That seems to be your basic proposition.

Mr COPE - Yes, I am.

Mr FLETCHER - You hold the view that Truganini was the last of the Tasmanian Aborigines.

Mr COPE - Otherwise I could claim I'm a Saxon, a Norman, a Viking - you know.

Mr FLETCHER - From my perspective I don't hold that view. I believe there are descendants of the Aboriginal people, even though the genetic links may be very weak at this stage, they are there and the people choose to identify as Aborigines and want to identify with their ancient backgrounds and conserve and preserve the remnants of the culture, both for their own wellbeing and that of the next generation and I think for the betterment of society generally. I still have a problem and part of the reason for this committee is that we've tended to talk about the dispossession and the proof of a presence and the need to transfer some land. Now, if proof of presence was sufficient to warrant the transfer of land, there could be proof that there was a presence over all the island State of Tasmania therefore all the island State of Tasmania ought to be transferred back to this group that I recognise, the descendants of the ancient people who are now calling themselves Tasmanian Aborigines. So obviously proof of presence is not good enough. There has to be some criteria to establish.

Mr COPE - But they were here, you can't deny they were here.

Mr FLETCHER - No, that's true.

Mr COPE - All you can deny now, all you can say now is that they aren't here any more.

Mr FLETCHER - We disagree on that.

Mr COPE - Well, I could claim I'm a Saxon.

Mr FLETCHER - Yes. If you went and lived in Saxony and immersed yourself in the culture of Saxony after a period of time you would be a Saxon, in my opinion. You've got a genetic link back to the Saxons, if you lived in Saxony and immersed yourself in the culture and called yourself a Saxon for long enough, you would be a Saxon.

Mr COPE - They haven't come, there're now here -

Mr FLETCHER - No, we came.

Mr COPE - and they're descended from the original inhabitants and they're now in our culture, aren't they? So how can they claim a culture that doesn't exist any more.

Mr FLETCHER - We can have an interesting intellectual joust without reaching a conclusion.

Laughter.

Mr COPE - I think heritage is very important. I just think we have a group of people who always seem very bitter. You see the quotes in there about 'We've been disinherited 100 per cent. We're only owning .006 per cent of our land'. They talk about whites, 'The whites have done us in' and all that. I mean, it's fairly racial; gee, it's so racial it's unbelievable and we don't do anything about it. We've got antidiscrimination laws and yet they can say things like that and they're legally empowered to say it. I find that offensive, I really do.

Mr FLETCHER - Yes. It will be my hope and I am sure the hope of the committee that we can move past that. There is a need in society to move on from that type of -

Mr COPE - I think if the referendum showed that the people would approve of what's going on and that money be made available and they ran it well. I mean there's instances up in Uluru near Alice Springs where the Government there has handed over - I forget the name of the gorge - some gorge. They've handed over to the Aborigines and they're running it extremely well. They're smartly dressed, the toilets are better than they've ever been and they've kept the place spic and span, so it can be done, yes.

CHAIRPERSON - Do you think, Mr Cope, perhaps then as a Tasmanian community we should give the local Aboriginal community here an opportunity perhaps to attempt to do the same type of tourism venture on one of our areas?

Mr COPE - Yes, but they won't be Aborigine, will they, like they are in Alice Springs? It'll be like you and I - you see them, you can't tell the difference.

Mr WILKINSON - That all comes down to a matter of definition ,doesn't it, as to who was an Aborigine and who was not?

Mr COPE - If you can associate with them you might be one too, it's only a definition, isn't it?

Mr WILKINSON - No definition would accept that. No definition that the Aborigines are saying would accept that.

Mr COPE - A similar definition from the Federal Government, isn't it? They would have to accept it, yes I agree.

Mr WILKINSON - They wouldn't accept that.

Mr COPE - So I hope I haven't bored you with my - it's just that I got stirred by that message in the -

Laughter.

Mr WILKINSON - You say here also 'Consultation of the people' instead of the correct -

Mr COPE - Yes, we don't get it. I mean Jim Bacon's been going around saying you can consult with everybody but I haven't seen him around our area at all.

Mr WILKINSON - That's part of the reason for this committee. We have got 103 submissions already, a couple drifted in yesterday.

Mr COPE - So you still take them even if they come in late?

Mr WILKINSON - Well, depending, because we just want that consultation of the people and people, if there wasn't that consultation, could come back and say, what you might be saying, 'Look there's no consultation'. This is what we're doing without chatting with the people. That's the reason of this committee, so there's proper consultation.

Mr COPE - I can say the same thing about the local government too, but I won't.

Laughter.

Mr BAILEY - I'd be careful.

Laughter.

Mr BAILEY - You understand that the land is owned by a cooperate body run by the Aboriginal community. It's not individually owned, it can't be sold or alienated in any way. It's held in perpetuity and it can't be mortgaged or assigned for by way of charge. There is a protection on the land that it's always got to remain for the purpose for which it's been granted and that's in relation to those pieces that have already been granted and those which will be.

Mr COPE - Yes, I understand that.

CHAIRPERSON - Thank you, Mr Cope, for your submission and the time you've taken this morning to come and make your position.

Mr COPE - I hope there's something useful there for you anyway.

THE WITNESS WITHDREW.

THE LEGISLATIVE COUNCIL SELECT COMMITTEE ON ABORIGINAL LANDS MET ON THURSDAY 3 FEBRUARY 2000 IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART.

Mr JOHN DICKSON AND Mr COLIN HUGHES, TASMANIAN ABORIGINAL LAND COUNCIL, ABORIGINAL CORPORATION WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.

CHAIRPERSON (Mrs Sue Smith) - Thank you, gentlemen, for your appearance this morning. We acknowledge that you are here representing the Tasmanian Aboriginal Land Council, Aboriginal Corporation. We thank you for your submission to the committee. I will give you an opportunity to speak to your submission and then the committee will ask questions if they have a need to.

Mr DICKSON - Before getting into the breakdown of the submission that the Tasmanian Aboriginal Land Council have prepared, I would like to state that this organisation is totally community based with a committee of eight representatives from all areas of Tasmania, including Cape Barren.

The Tasmanian Aboriginal Land Council for the past ten years have represented the Tasmanian Aboriginal community on heritage and cultural issues. The views that are spoken about in this submission are community-based views as well as this organisation's political view. The Land Council are concerned about the number of compromises that the Aboriginal community have been and are being required to make. It is the pressure of these compromises that make the community on edge; the fear within the community is if these conditions are not met the possibilities for the current areas of land being returned will be in jeopardy.

The organisation believes that more thorough care and consideration is being provided to the wider Tasmanian community about their concerns and that the Aboriginal community is being presented with a fait accompli. My community believes that all the land in Tasmania has been touched and cared for and respected by our ancestors. The Land Council continues to uphold these important cultural and heritage values within our community today.

The need for protecting Aboriginal lands, culture and heritage is a must. The importance of Aboriginal community having empowerment and appropriate management authority to make our own decisions on our own land must be an integral part of any land hand backs and must be written into any legislation so it is cut and dried.

In order to achieve this, Aboriginal issues regarding the land that is to be returned would have to be addressed in the appropriate way such as community consultation. Environmental impact assessments need to be undertaken to ensure that our community are not left with serious management problems as they have been at Premangana such as public rights of way which are destroying our heritage basis.

The bottom line is that our community will expect the protection of land and heritage benefits to the Aboriginal community and have to have control and a voice in these decisions that are made. The Tasmanian Aboriginal community are between a rock and a hard place on access issues. The communities seem to be a puppet with the Government pulling the strings tighter so as to maintain control. The greater majority of compromise that the Government and wider community force ON us means that the Aboriginal community have to give up all real self-determination just to gain small wins. This is a lose-lose situation for our community and this is why the Land Council and the community are concerned with these issues.

Some major decisions are made by government departments without community consultation being made. This is a disadvantage for the community as we do not have a choice of what happens on our own land. In hindsight the Government are thinking that they might be doing the right thing but without consultation of the Aboriginal community, how would it be possible for them to know? Aboriginal community consultation is not just talking to government Aboriginal departments but talking to community-based organisations and must include those individuals who do not use the services the bigger Aboriginal organisations provide.

The Land Council believes that instead of Aboriginal concerns being overridden that due consideration of those concerns must be undertaken and proper cultural, heritage and environment impact assessments must be carried out for determining public access roads, to do otherwise is extremely dangerous.

CHAIRPERSON - Thank you. You introduced your organisation as having eight representatives from all areas of the Aboriginal community. Can you give us some information as to how you gather information from your communities in the way of consultation for those representatives?

Mr DICKSON - As I've already said in the statement, the representatives are statewide, including Cape Barren Island. At the moment there is a vacancy on our committee with Flinders Island. All organisations are sent faxes et cetera; we have our own mailing list which actually goes out to all community members and members of the Aboriginal Land Council to respond and come in to tell our committee members over the State, then of course we have our committee meetings and respond back to our community.

CHAIRPERSON - So you use a consultation process that allows anyone in an Aboriginal community to have some input into the final processes that you move forward?

Mr DICKSON - Yes, for sure.

CHAIRPERSON - The other question I have is, I believe that your group was represented on the working party that was set up by the Premier and that you withdrew in May. Can you give us some indication as to why you withdrew?

Mr DICKSON - Colin might be able to answer this, I only started in May.

Mr HUGHES - I am not too sure myself, that was when we had a new manager and some people changed their views in that we thought that if we have stayed on the committee it would have been a waste of time because our views wouldn't have been heard anyway because there other groups that maybe didn't have the same opinion as us. That is why, I think, we did withdraw from the working party.

CHAIRPERSON - You felt that you were wasting your time on the working party because your views weren't being heard?

Mr HUGHES - They were being heard but we didn't think they would be respected by other members on that party. I'm not too sure really, but that is my view.

CHAIRPERSON - You made a comment, John, in your presentation about environmental impacts and the problems. Do you believe that before any handovers there should be assessments of environmental impacts and decisions made and settled so that those issues don't arise after?

Mr DICKSON - That is right. There is one issue at Sundown Point that the lagoon there is contaminated in some aspects and it would be hard for the Aboriginal community to try to manage that if the lands were handed back. As I have said, it is hard for us to try to do that without the funding and the people couldn't go up there and try to decontaminate it, so to speak. It would be a lot better if we could have these issues sorted out before the land is actually handed back.

Mr HUGHES - Just in regard to that, that was mainly about having new access roads too, to make sure that they did not destroy Aboriginal heritage, fauna or flora, before it is agreed to where the access

roads will go.

CHAIRPERSON - You also made another comment that perhaps you could expand on. You said we should be able to make our own choices on our own land. I preempt my question by if you have private freehold, we are still all in Tasmania restricted on our own land under certain government acts - the Land Use Planning Act, the Environmental Act, Threatened Species, Weed Management Act, and so on. Are you talking about something different or are you talking about you should have total control outside of statutory acts that other people have to manage under?

Mr DICKSON - I don't think it would be possible to have total control, unfortunately, but I think what I am trying to say is the control that we want is that at some point there are decisions made on the land that are not actually put out into our community to make those decisions. If our community makes a decision on the land then, because of some acts and other implications, we cannot actually go forward with these plans that the community wishes to do. So I suppose in that aspect what I am saying is that communities, if they make a choice and say, 'This is what we want', then we want to try and put that forward on our land. If it has been given back to be Aboriginal land in Tasmania and then we say, 'Our community have made a decision so we can have this on our land', but we can't because of some implication

CHAIRPERSON - So are you advocating that if your community is managing the land, it is your land, and there is some particular issue that the community believes is contrary to State law but the community prefers to take a different direction, that they should be allowed to do that?

Mr DICKSON - I think so; I am a bit in between now. I know it is not possible, unfortunately, to have total control, that is the reality.

CHAIRPERSON - For anybody.

Mr DICKSON - For anybody, yes, that is right. I suppose in a way what I am saying is, it would be nice to have more control of that land than we would have if it got handed back; that we could have more control, whether it is changing the legislation, or something like that, I don't know. Possibly that is what I'm trying to say, I think.

Mr BAILEY - Could you give us an example of where you have been frustrated by not being able to do things on land that has already been granted that you might have wanted to do?

Mr HUGHES - I think that is mainly to do with public access rights. At Premangana there are public access rights there, but we believe the way they were drawn in was the wrong way to do it. I am of the understanding that the public access road to Premangana were drawn in by aerial photographs without actually going out and having a look at the land itself.

Mr BAILEY - These are things, I think, you are saying should be sorted out before land grants are given, which is different to what I thought you were coming at and what the Chairperson thought you were coming at and that was that you wanted your land not to be subject to the normal planning and other laws that other citizens would have to do to make developments on their own land.

Mr DICKSON - I think maybe I have worded it wrong. We just want our cultural rights and heritage rights on the land, of course, but - how can I put it -

Mr FLETCHER - Are you saying that all land transferred should be subject to freedom for hunting and gathering, be beyond the restrictions that other private land owners might have for taking wildlife or following those sorts of pursuits? Or are you saying that land, if we take Premangana - and I was involved in that process and part of the reason for the transfer was that the government and Aboriginal community group agreed that there would be access over that road, public vehicle access was discussed. It was written into the law to enshrine that and now the Land Council, as managers of that site, have placed restrictions on that, for whatever reasons. So are you saying that if access was to be a condition of the transfer, the land should not have been transferred in the first place? We should not have transferred the land until it was free and unencumbered and no such restrictions on it?

Mr DICKSON - I think these issues need to be sorted out before the land gets handed back. Because that was not sorted out - maybe it was blind, I am not sure - it should have been sorted out before the land was handed back so we could not have this big issue of access at Premangana. The way I have read the legislation, it just says 'access', it does not actually define vehicle access or foot access, or whatever. It just says 'access', as far as my own opinion. We have never actually stopped access at Premangana, just vehicle access- we have allowed people to walk around on foot all the time - because of the great impact a vehicle has down that track and on the sites that are on that track. That is the reason why we don't have vehicles down there. The only reason we do use vehicles down there is for management purposes and State emergencies, and so on.

Mr WILKINSON - Can I ask you, John, you mentioned at the opening that there were compromises made and you did not believe there should be compromises made. What compromises have been made between governments and the Aboriginal community?

Mr DICKSON - We will go back to the Premangana access issue again. There have been, I think, three State cycles of community consultation with the Aboriginal community. As far as I know, in the first two community consultations, the community had said not to harden the access road at Premangana. In the third round of consultations the community accepted that there has to be some sort of compromise. So compromises were put forward to the Circular Head Council and to OAA and ALC (?). We're still in negotiations about these compromises, so I suppose what I'm saying is if we have to give a compromise to them and then this compromise that we thought was a quite good, equal compromise to what the Government want, but it's still not being recognised as not being a good enough compromise. In some stages I think people are saying 'it's either harden the road or nothing at all' and the community at the moment are thinking 'if the road isn't hardened, is that jeopardising their actual other lands that could possibly be handed back?'

Mr WILKINSON - You also talk about the Tasmanian Aboriginal Land Council is committed to achieving the return of land to Aboriginal people in Tasmania, it would seem to me that it is a process with the Aboriginal community. There was the hand back of Risdon Cove, the hand back of Oyster Cove, now there's the hand back of this parcel of land, if accepted by Parliament, and it would seem, in the near future, the Aboriginal community will continue to make claim for certain land. What's the aim of TALC in relation to the hand back of land?

Mr DICKSON - Further hand back?

Mr WILKINSON - Yes, is it a case where you want all crown land or all Tasmania?

Mr DICKSON - At the moment, this is it, as far as I know, but I mean as I've said before, we're a community-based organisation. If the community say - as Pierre Slicer said yesterday we should be asking for lands in the west coast, south-west - if the community wishes for us to push for a claim on land in that area, we'll follow the community's wishes.

Mr WILKINSON - What criteria do you then believe should be necessary for land to be handed back or is it a case where the Aboriginal people and community just say 'yes, this is important to us, we should get it back' but then do you expect Government to give it back or do you believe that there should be a criteria put forward to say 'this has some real historical significance because of x , y and z therefore the Government should look at handing it back'? What criteria does TALC have?

Mr DICKSON - I think every Aboriginal site in Tasmania has its own special significant thing about it - its own valleys and whatever. At the moment the lands that have been handed back - or could possibly be handed back - have great significance. Areas in the south-west and south Tasmania - I haven't been down there myself but Colin has - as far as I know, there are great midden sites down in that area. The Government has already handed back the three caves in that area. I'm not sure what the criteria would be unless -

Mr HUGHES - I suppose it would be whatever their community wishes and we would try and provide advice to the community about the areas of land that they are thinking about.

Mr WILKINSON - There'd be numerous middens around Tasmania.

Mr HUGHES - Yes, there's thousands.

Mr WILKINSON - You'd just go for a walk in the bush and you come across middens down the south coast, up the east coast. There's plenty that I can see, as an uneducated person in relation to middens. You must have some special significance in relation to middens other than by saying, 'Yes, that's a midden, we want that land back'. There must be something more than that. What I am trying to investigate is what more are you looking for to say that that's special.

Mr DICKSON - All the values come into place, I think from a personal view. There might be an Aboriginal midden in some area but also the midden is there because of the great seafood that was in this place, the great surroundings of the bush and the tucker that was in that area. There might have been significant places of trade through the tribes of Tasmania where this midden was. There's all sorts of actual personal values to people where sites are. Some people value a site more than other people because it has more of a feeling and more of a 'oomph', so to speak, in themselves but then other people say, 'Well, this has a value to me but I prefer this place because of the mountain that shines down, you can see our fellows walking up the mountain'. I suppose when it comes down to it, if the community wished us to go and have a look at a site the community would have all their input into saying, 'This is why we'd like this site and to have a claim on it' and then once that is done - as Colin said - we would put out to them why we should do it and why we shouldn't do it and all this sort of stuff.

Mr WILKINSON - You get in the community then a real entrepreneur - a person with Aboriginal heritage who is a real entrepreneur - who goes around all the water frontage blocks of Tasmania with magnificent scenery and he is a real mover and a shaker within the community and can see that there is real economic value in certain parts of Tasmania - Freycinet Peninsula, places like that. Do you believe it should be a case where - I am wrongly asking this question or badly asking this question but what I'm trying to get at is it is very easy for a real entrepreneur to come in and just pick the eyes out of the best spots and say they have special significance. What I'm looking for is - and I know Mr Fletcher as well was mentioning it earlier - there has to be some criteria to say 'yes, that has historical relevance, therefore it should be handed back'. I'm looking for some easy way, I suppose, to try to find out what land should be handed back and what land shouldn't be handed back because it could be for the case of greed at the end.

Mr FLETCHER - If I could just complement that because I have got a real interest in this question. In the rest of Australia there is a test applied and the test is called the 'Native Title Legislation' based the High Court findings - Mabo and Wick - and there seems now to be a consensus right across the board that if Tasmanian Aborigines were to be treated the same as every other Aborigine in the nation then they wouldn't qualify for any native title rights or land rights at all because of the particular circumstances. That's not unlike lots of other - only about 50 per cent of a small number of claims that go into the Native Title Tribunal are successful so there's a lot of other unfortunate Aborigines in Australia who don't qualify or can't justify a native title claim. So if Tasmanian Aborigines can't pass the test that's applied nationally and a test nationally is deemed to be a fair way of assessing the project, what sort of a test should we apply in Tasmania as a substitute for that native title test?

Mr DICKSON - I'm unsure how to answer to at the moment but I can get back to you.

Mr FLETCHER - Yes, sure.

CHAIRPERSON - Perhaps if I might get you to give us some education on your role in the entire process. The land under the 1995 legislation that was handed back was handed back under the ALCT process and then they have the opportunity to allow communities or organisations to manage on their behalf and on behalf of the Aboriginal community and the parcels of land. Do you have specific areas that you manage for ALCT or are you a general body that has input everywhere, can you give us an education on that?

Mr HUGHES - It's a bit of both. We do manage lands that are under the control of ALC - which is Premangana, Kutikina, Wargata Mina and Ballawinne - but we do have our hands in other areas too, with the Parks and Wildlife people. We go around and consult with them and talk about their sites, fix

up their sites, so we are broad-ranging in that we do have a bit to do with all aspects of Aboriginal land with government departments, the councils and others too.

CHAIRPERSON - There has in the past been some suggestion that whilst ALCT holds the title - and that is quite appropriate so you have a recognised body that holds the title - that there perhaps should be some capacity for local communities that are recognised to manage the area on the day-to-day basis and have input to the management plans et cetera. It's an option at the moment where ALCT 'may', there are some in local communities who have made the comment that perhaps it should be ALCT 'must' - do you have an opinion on that or -

Mr HUGHES - ALCT must, what, sorry?

CHAIRPERSON - ALCT 'must' include the local Aboriginal community in the management process.

Mr HUGHES - If they want to be a part of the process, yes, I think that is important to always involve the local community but they've got to want to be a part of it, too.

CHAIRPERSON - So you would believe if the local community says in a transfer, 'We want to manage this locally in our area using the expertise of your organisation for advice et cetera' that that is something that they should be allowed to do?

Mr HUGHES - Yes, that's my opinion.

CHAIRPERSON - The other question I might ask, bearing in mind some frustrations I felt when you spoke earlier about the land being handed back and yet there being restrictions on it, have you an opinion, particularly in the process of reconciliation - and this is part of the reconciliation process and I think we all would admit that out in the wider world it is perhaps creating the opposite in some areas at the moment - do you believe that governments may have been better placed to perhaps look at areas of land and hand them back in total without specific restrictions that there must be access et cetera, where they maybe handing back less land but you as an Aboriginal people may have more control, total control, because there isn't these restrictions of access across land et cetera?

Mr HUGHES - I'm unsure what TALC would think of that question but, personally, I think the situation now is that the land that is coming back would be the way to go and even though we mightn't have total control and total management of these areas it is a great area that we would have back that we could feel a lot more free than to have just one small place where you might feel free. But that's it that's just like one small space, whereas in other areas, from a personal view, I can go and walk and feel as free as I like in this great big area. Whereas, because I am in Hobart, there is only a place that I can go to now which is an hour away but if that was it and I lived in Burnie I would have to come all the way down here so I could feel a free Aboriginal person in Tasmania.

CHAIRPERSON - I suppose what I'm looking at is some of the areas are a combination. There have been Europeans who traditionally have had access to fishing, hunting et cetera in some of these areas and there have been some conflicts in the last transfer which we believe and hope are being sorted out as it works along. No legislation is ever perfect and therefore you have to work through those processes with good spirit on all sides. I was just trying to clarify, when you look at an area that has substantial hectares, whether or not, because of those conflicting interests, you may have had an opinion whether a lot of it should have been excised off and perhaps you gather up 4 000 hectares instead of 5 000 hectares with less conflict potential et cetera.

Mr HUGHES - I might have to get back to you on that as well; I am not sure of that.

Mr FLETCHER - John you're the manager of -

Mr DICKSON - Acting Manager, don't give me the full range just yet.

Laughter.

Mr FLETCHER - You've got ambitions though, haven't you?

Mr WILKINSON - Are you waiting for the nod?

Mr DICKSON - I don't know yet.

Laughter.

Mr FLETCHER - I just want to develop from under this matter of moving forward and see what your understanding of the situation is because quite clearly there have been efforts to transfer land back in the past and in 1995 it was successful. You've raised Premangana and you know that I have a real interest in Premangana and I have argued that over a period of time. You know that I was part of the negotiations and there is no doubt that there was a considerable working together to transfer Mount Cameron West over on the understanding that the recreational users of that site who went across the road and put their dinghies in off the beach to catch a few fish or the surfers who went across the road and carted their surfboards up the beach to catch the waves and that sort of thing would be granted access.

It was debated in detail and we did agree - both the community and the government representatives - and, as I pointed out, that was enshrined in legislation. There was a huge amount of trust built into that operation we transferred the land and we trusted, they trusted us to deliver and I think we have delivered; we trusted them to deliver and in some instances they have been able to, and the access is one, so I think that is a really important issue. All the crown law advice at the time - and there is plenty of it on record - said that there was an area of 5 metres each side of the centre line of the road that was on the map and that if vehicle access was possible it was permitted, so I don't think there is an argument about that. However, I just wanted to raise the matter of trust and in negotiating we all agreed and subsequently it hasn't been able to be delivered, for whatever reason. Post that time it came back to Wybalenna. Are you managing Wybalenna, by the way?

Mr DICKSON - No.

Mr FLETCHER - As part of that transfer it was a commitment by ALCT at the time that there would be a committee established involving the local community with some representatives from Flinders Island and ALCT as well to manage that in perpetuity. Now, that hasn't been delivered either, as I understand it. We're going to Flinders Island to determine that in the next few weeks. But a very important part of this development, I think, and creating opportunities for the future is the matter of trust and working together; if we give a commitment we deliver on the commitment so that we each have trust in the other. That will require some give and take along the way so I just wanted to make that observation. How many areas of land are TALC managing? You've got Premangana; the TAC has got Risdon Cove and Oyster Cove.

Mr HUGHES - We've got four areas - Premangana, Wargata Mina Cave, Ballawinne Cave and Kutakina Cave.

Mr FLETCHER - What about Big Dog and Babel and Chappell?

Mr HUGHES - No, as far as I know they're with ALC still and they're in negotiation with ..., I think, because they are their closest community organisation.

Mrs SILVIA SMITH - I just wanted to get your views on two of the questions that keep coming up about definition: the definition of aboriginality and the definition of reconciliation. I just wondered if you'd give us your premise on what those two things mean to you as a community, because there's been differing opinions coming through on what they really mean. I don't really understand what they mean either.

Mr DICKSON - Yeah - I wasn't expecting these questions; I've just come to talk about the land. I've got opinions on aboriginality, but -

Mrs SILVIA SMITH - This concerns a definition of aboriginality by ATSIC nationally and there's another definition here and it specifically comes down to the rights of voting et cetera, and then the reconciliation - how far are we going, are we going in the right direction, what does it mean, where is it

all going to end? If we know the definitions I guess we can sort of see where we're heading with them all.

Mr DICKSON - I'm unsure how I should answer that at the moment. I haven't really been into that part of politics, so to speak. With the aboriginality of myself and people in Tasmania, a very personal view is - I know I'm being recorded here -

Mr WILKINSON - It's your personal view. You're not speaking on behalf of TALC.

Mr DICKSON - Right. The people that my grandmother doesn't know and the elders don't know, I find that those people mightn't be Aboriginal but, on the other hand, if those people were part of the stolen generation and were adopted out as a young child and if something can actually be done to say that this was right and proven, well fine, bring them in and welcome them to the Aboriginal community. On the other hand, there are some people who say that they are of Tasmanian Aboriginal descent because they've got one-third and one bit but, as far as I'm concerned, I was born Aboriginal without one-third or one bit in me; I've been black all my life from dot till now. That's the way I look at it, but some people I've met say, 'Yes, I'm Aboriginal; I've been Aboriginal since 1984', but they were born in 1967 or something like that, so for fifteen or sixteen years they've been an unknown white person who didn't know much about Aboriginal people but then say they are now although they've got no links whatsoever, bar saying, 'I've got a photo of my grandfather and he looks like an Aboriginal person' and that's it.

So that's my personal view. There are a lot of different views that go round the community but, as I said before, if my grandmother and that don't actually know these people - and they know a lot of people; they ask, 'Where are you from? What's your family?' and they say, 'I'm such-and-such's daughter', they'll say, 'Oh, that's right, I remember your uncle that married Auntie Blow on Cape Barren who was married to such-and-such on Flinders'. So in that aspect, I suppose, that's the way I see aboriginality at the moment, but I haven't been into the political side of it that's actually been in front of the select committee at the moment.

Mrs SILVIA SMITH - What about the word that's being used of 'reconciliation'? How do you see what that means?

Mr DICKSON - Personally, I hope that reconciliation could be done and finished and everyone lives happily ever after, but I don't see that it's possible.

Mr WILKINSON - You don't?

Mr DICKSON - No.

Mr WILKINSON - That's what troubles me.

Mr DICKSON - Not ever, unfortunately. I wish it could be done but I don't see it ever happening. I hope that we make great steps into getting as much of it as we can but unfortunately there will still be those one or two or whatever will not believe in reconciliation.

Mr FLETCHER - Could I just qualify that before John moves on? Are you saying, John, that you personally could be reconciled but you believe that there are others in the movement, in the brotherhood, who never will be; who are so radical in their position that they never would accept a reconciliation? Or do you believe that you could never accept a reconciliation?

Mr DICKSON - Oh, I could personally but, as nasty as it may sound, personally I also think that there are people in our community who couldn't be.

Mr WILKINSON - Can I go on from there? You're saying personally you could, what would have to be done for you to accept that, yes, that's reconciliation, let's now move on?

Mr DICKSON - I don't know until I get there.

Mr WILKINSON - Well, that's a fair answer.

Mr DICKSON - I wouldn't know. How fast does a pushbike go, you don't really know because no-one has actually put it through its test. So you wouldn't know until you got to as far as you could go, I suppose.

Mr WILKINSON - But as far as you could go is, what's that? Is that more land transferred back, is that health issues, educational issues, understanding heritage?

Mr DICKSON - Personally, I wouldn't know. How long is a piece of string, really. I wouldn't know what it would take.

Mr WILKINSON - So therefore are you ever going to know whether you've been reconciled or not if you don't know what it takes to be reconciled?

Mr DICKSON - That's right, that's the same in your position, in anyone's position, I think.

Mr WILKINSON - Then the hand back of lands then - if I can get back to this - is that reconciliation, as far as the Aboriginal people are concerned, or are the Aboriginal people really saying, 'Look, this was our land Europeans took it from us a couple of hundred years ago, we want it back'?

Mr HUGHES - I think it's a bit of both really.

Mr DICKSON - A bit of both really. Yes, I think they'd be saying 'Yes, this is reconciliation, the Government. The wider community are saying, 'It was taken away from them hundreds of years ago' and now that time has passed and people's heads have cooled and we've handed back a bit of land saying, 'Oh yes we've done it, reconciliation done there'. But there's also a part of 'Yes, we've got some of our land back they're allowed to roam on freely'.

Mr WILKINSON - Is reconciliation more though assisting Aboriginal people with health problems - this is more, I suppose, in line with the mainland, but it happens here as well - assisting with educational problems; assisting with understanding their heritage and other issues such as that? Is that more of what reconciliation is all about, other than the handing back of land? In other words, not material things but things which can really assist the Aboriginal community in moving on?

Mr HUGHES - To me, reconciliation is a good process. They're good steps towards self-determination, which is what I suppose we are about, with all these lands and health issues and legal issues. It is having self-determination for Aboriginal people so we don't have to answer to everybody all the time on what our views are. Once we get to self-determination, well, everybody will know what everybody's views are because we will be self-determining ourselves. Whereas now we are doing things for other people. Does that sound right?

Mr WILKINSON - I understand what you're saying.

Mr BAILEY - I have a little bit of trouble understanding self-determination. You don't mean as a political force, you mean as a group coming together? I don't really follow what you're saying.

Mr HUGHES - I suppose it's about being about to do what the community wishes us to do. It's hard. This is only my personal opinion, of course: self-determination is being able to possibly have a business somewhere, an Aboriginal business, with tourism, where we can take people out to these sites and show them and get a bit of our money back to be able to go and fix up these land issues, to be able to take elders places where they haven't been or to be able to take our kids to a piece of land and to teach them the cultural history, I guess.

Mr BAILEY - You're really talking about self-sufficiency, are you?

Mr HUGHES - Yes, and self-determination too.

Mr BAILEY - In other words, you can create an environment on your land that will bring in money and let you continue -

Mr HUGHES - A part of it, yes. Of course we are not about making thousands and thousands of dollars, just so we don't have to ask Government for money, so we don't have to apply for these funds to be able to go and fix up our lands, so we can get the money back ourselves to be able to go and fix them up.

Mrs SILVIA SMITH - Just following that along a little bit, I can see where you're heading with it. How do you actually envisage that that can come about without, as you say, trying to get funds to set up businesses and things like that? How do you envisage self-determination being able to let you do those sorts of things with the land? I know it's a difficult one.

Mr HUGHES - I'm not too sure, I'd probably have to think about it a bit more.

Mrs SILVIA SMITH - I'm just trying to see what the hurdles are that are stopping you doing it now, as much as anything.

Mr HUGHES - By having to apply for fund, by having to go to the Government and ask for money -

Mrs SILVIA SMITH - Or banks.

Mr HUGHES - Yes, or banks, business loans or anything really. It's a hard question to answer, sorry.

Mrs SILVIA SMITH - Are there any hurdles stopping you from doing those or you don't wish to do them? And if you don't wish to do them, how's it ever going to happen? From my understanding, that's how we all operate.

Mr HUGHES - I do wish to do them and I suppose it's a process of going back again to the Aboriginal community to see which area they want us to go in. I'm sorry, I can't answer it properly.

CHAIRPERSON - If I could put a scenario to you -and I will take it as a personal opinion; I don't expect you to commit your organisation. If the Parliament of Tasmania at the end of the process of looking at this transfer of land agreed, 'Yes, this should happen as part of the reconciliation that this land would be transferred' and then, as an acknowledgment that it was Crown land, it was funded by the Tasmanian people to manage it before it was transferred so the next step in reconciliation would be no more land transfer but a financial transfer each year in recognition of the fact that you have taken responsibility for an area that was previously the responsibility of National Parks and Wildlife. In other words, you have the land and there is some financial funding there to allow you to self-determine how you will manage that land, be it tourism, farming, a cultural significant area that is managed in your way. What do you think would be the reaction of the Aboriginal community if they knew this is the end of land transfer, that the Relics Act et cetera will protect anything found into the future thus, regardless of where it is, it still has a protection process but the land transfer has finished and we now say that our assistance in reconciliation will be financial to allow some of these dreams you are aspiring to to happen. Have you an opinion as individuals?

Mr DICKSON - I think the community would, not be split, but there would be differing views of course. A lot of the communities would say, 'Great, I've had this idea in my head since I was fourteen years old, I want to go and start my own little cultural business and show my heritage off in this area, so now I can do it with the funds that have been given'. But then there would be other communities saying, 'We've got this land back but I grew up on a little island and I was there until I was sixteen until they shipped me off to Cape Barren and then further on to Launceston or wherever. I want that little bit of land back. My family and everything I remember about my heritage and culture are on that little island'. So there would be those sort of split decisions made. Personally, I'm not quite sure, having that scenario put to me, I would need further time to think on it because when thinking quick you think, 'Oh, this sounds all right.' Then you think, 'Oh gee, I don't know.'

CHAIRPERSON - Everything has pluses and minuses.

Mr DICKSON -Yes.

Mr HUGHES - I think if that was to be the case there would be community members out there who would say that we are selling off our heritage, that is what some people would say, the people who don't believe in the reconciliation process, and we would have to try and listen to their views of course because we are a community-based organisation.

Mr WILKINSON - Can I cut in. They are going to say that unless all the land is given back though, aren't they?

Mr HUGHES - Until all the lands in Tassie?

Mr WILKINSON - Yes.

Mr HUGHES - I don't think so. Of course that may be other Aboriginal people's personal views. A few years ago, I think, when there was a big meeting up at the Westside Hotel that is when we applied for all the crown lands in Tassie - that was the start of it all - but there were some people who didn't agree with that because that thought that it was just too broad, it was too hard to strive for. It's just other people's personal opinions that would come into account too, I guess.

Mr DICKSON - You would probably also find that there'd be a lot more Tasmanian Aboriginal people in Tasmania, if these funds come through, to start up a business.

Mr HUGHES - Yes, that would be a problem too, I guess.

Mr WILKINSON - Why do you say that?

Mr DICKSON - Money is a wonderful thing. From a personal view, a lot of people would be coming in saying, 'Look, I'm Aboriginal, I want to make my own company that does this, that and the other.'

Mrs SILVIA SMITH - Some of those remarks are already there though, that is happening.

Mr DICKSON - Yes, but I'm saying, personally, more of that would come out.

Mrs SILVIA SMITH - You'd say that there would be more.

Mr DICKSON - For sure.

Mr FLETCHER - It could be the answer to our low population problem.

Laughter.

Mr DICKSON - Could be.

Mr BAILEY - How long have you managed those four pieces of land, the management of which has been assigned to you by the Land Council?

Mr HUGHES - Since 1995.

Mr BAILEY - Five years.

Mr HUGHES - Yes.

Mr BAILEY - What have you been able to do with the land in that five-year period?

Mr HUGHES - We are very slowly doing land management. I don't know if everybody has been to Premangana, I know some people have. We inherited a problem from National Parks and Wildlife, which was the gorse problem there.

Before we got those outlands back we worked with the National Parks and Wildlife Service in 1983. There were five of us at Premangana for four months and we actually got rid of all the gorse and that was supposed to be a three-year project but then in 1995 the Aboriginal Lands Act came into place. We managed the land for the community through the Aboriginal Land Council of Tasmania and one of our biggest problems still is funding to be able to go out and do these lands.

We are doing land management practices at the moment to try to get it back to a better state and, because the lands were given back without any funds, we have had to apply for Coastcare funds, NHT funds, to try to make a start on the weed problems which are at Premangana. Basically we have been doing land management and taking our community there every year for a camp in January. Members of the Aboriginal community come down to enjoy the place, so we take people there, we do land management practices.

Mr BAILEY - Do you get many of your community who would volunteer their services, to eradicate the gorse?

Mr HUGHES - Yes. We have got some members of our community who have done the land management course that is offered by TAFE. They went through the TAC. They do volunteer sometimes but we can't always ask them to come and work for nothing, so we do try to find funds to try and employ them up there, to give them some money to come up and work on the land.

Mr BAILEY - Is your vision for the land at the moment simply to eradicate the weeds that wouldn't have been there prior to settlement and return it to its natural state?

Mr HUGHES - Yes. Because we manage Premangana, under the Aboriginal Lands Act, we had to do a management plan - which is in the hands of ALCT - but because we have had differences of opinion over the public access issues that management plan hasn't been signed and sealed yet, so we are still in negotiations with the management plan so we can go and start it.

Mr BAILEY - I see, that hasn't started -

Mr HUGHES - No, because it has got to be signed and sealed by the Aboriginal Land Council of Tasmania first and because there are these public access issues we keep on having to go back and forwards between each other all the time. We started it off our own backs anyway to start on the gorse, but it is up to ALCT to sign off on that management plan so we can actually go and implement it properly.

Mr BAILEY - If this additional land is to be granted or is proposed to be granted in the bill that will ultimately come to the Legislative Council, what resources will there be available to manage those lands in addition to the lands that are already under the control of the ALC?

Mr HUGHES - Our resources or your resources?

Mr BAILEY - Well, I don't suppose you can speak on behalf of the ALC, but would you have other resources that you could then manage other areas of land on the basis that some of those will be in the north-west?

Mr HUGHES - Yes, possibly. We are not a big Aboriginal organisation but we do do projects sometimes. That comes with funds to go and fix up land, so we would probably apply for funds again to go and manage other land at West Point and Trial Harbour and Sundown Point, if they are the areas that you are talking about.

Mr BAILEY - Where would you get that money, from ATSIC or -

Mr HUGHES - No, its through NHT - the Natural Heritage Trust - Coastcare have funds there to go and fix up these sections of coast if there's erosion; Bushcare provide funds for weed eradication - and places like that.

Mr BAILEY - Yes.

CHAIRPERSON - So if I might extend on that, those particular projects that you have talked about, the funding elements have come out of sales of Commonwealth assets which, one presumes, in a few years is going to disappear and therefore a lot of those funding avenues that many people have actually had access to are going to disappear. Do you believe that you, by the time that happens, are going to be at a situation where, if the funding stream does dry up, there is still the capacity to manage these areas? Even if you get them totally within your management plan framework year after year, there are always some costs to land management, aren't there?

Mr HUGHES - Yes, always. I guess then we would go back to the Aboriginal community once again to get volunteers to come and work up there, if they wanted to come and work up there. But it is hoped, I guess, that other funding avenues would be open to us. For instance, one of our biggest problems was when we got back Premangana, it used to be a protected Aboriginal site and of course there must be money there for the Parks and Wildlife Service to put in to go and fix that up but that didn't come across to us. They are the kind of things it is hoped would happen. If you can give Parks money to fix up, why can't you give it to the Aboriginal community?

CHAIRPERSON - The Premier, when he briefed the committee earlier in the week, spoke of some aspirations he has, that perhaps like Kakadu which is a tourism venture, there may be some possibility there of assistance from government circles, et cetera, to look at tourism entrepreneurial programs in some of these areas whereby the Government could assist setting up tourist ventures so that you have the opportunity to explain your Aboriginal culture, not only to your own people but to others who are interested and who would want to come and see the areas, who would want to have an understanding of your culture and that again is helpful to the reconciliation because we all educate one another. Do you see that as a possibility in some of the areas or do you believe your Aboriginal communities may see that as an intrusion on their land and their spiritual areas and, as such, have a problem with a proposal like that?

Mr HUGHES - There would possibly be areas that we wouldn't take tourists to but I think that the north-west coast of Tasmania has got a huge potential for tourism because there is the richest spread of middens in the world. There are beautiful sites up there. There is beautiful scenery. I, myself, believe that these days now tourism is one of the in things and there is talk now in the Aboriginal community - and we have to organise a meeting for the Aboriginal community to talk about tourism proposals. So I would say yes, there is huge potential up there and we would be in agreement with it, I guess, but we would not take people to all areas.

Mr BAILEY - John, in your submission you have said that the transfer of title to Aboriginal lands is intended to occur in the interests of over 10 000 Aboriginal people in this State. On the basis that it is in the interests of those 10 000, my understanding is that there are only about 2 000, or a little more than 2 000, on the roll who are able to vote for those who wish to be members of the Aboriginal Land Council. Do you see that as a problem, or are you claiming that it is in the interests of 10 000 people that those interests are not being democratically represented in their right to be on a roll to vote on the use of land?

Mr DICKSON - Some Aboriginal community members don't wish to express their right to vote.

Mr BAILEY - Yes, they don't have to be on the roll.

Mr DICKSON - Every individual is different. Some of the Aboriginal community will say, 'I believe in this, that and the other, I want to do this, that and the other', but never actually get up and do what they want to do. But on the other hand, there are others in the community who are not heard as much as more prominent people who get up and have a say but aren't listened to. I think that is what you are after, is it?

Mr BAILEY - What you are saying is then, there are 8 000 out there who would not want to be on the roll who could be on the roll.

Mr DICKSON - Quite possibly, yes.

Mr WILKINSON - Four-fifths of the community are out there but don't want a say.

Mr HUGHES - They want a say, but they don't want to go on any government register to say that they have a right to vote. I myself don't vote and never have done and never plan to, at this stage, yet. I just don't see the point of going on a roll that only benefits the government really. That is my personal opinion, once again. I think you will find that would be the case for a lot of people who aren't on a roll, that is why they don't go on a roll - basically that is what it was made for, to go and have a vote to talk about our land. We don't need to be on a roll to be able to get up and talk about things or to be able to talk to government people. We shouldn't have to be on a roll.

Mr DICKSON - Then, on the other hand, I know a prominent Aboriginal person in Tasmania who doesn't vote at all but is very well listened to in Tasmania.

CHAIRPERSON - So where does your estimate of 10 000 come from?

Mr HUGHES - Census.

CHAIRPERSON - Census figures. And those census figures are Commonwealth Government census figures, so that really would relate to the ATSIC process of recognising aboriginality, would it?

Mr HUGHES - I think it is, yes.

Mr WILKINSON - I speak with a couple of Aboriginal people I have known for years, and what they say in relation to the aboriginality question is he classes a lot of those 10 000 people as 'Commonwealth -created Aborigines'.

Mr HUGHES - Exactly right.

Mr WILKINSON - Is your view the same, that there are lot of those people to amount to 10 000 - and this is your personal view - who are Commonwealth-created Aboriginals rather than people you would call Aboriginals?

Mr HUGHES - Yes. That is my own personal opinion because when I first left school and applied for unemployment benefits, there was a box there 'Are you Aboriginal or a Torres Strait Islander? Yes or No, tick a box. 'Tick-a-box black', is what some people say, or 'paper blacks' like where they are only Aboriginal people because they want something. But that is neither here nor there, that is just the way they want to be, I guess.

Mr WILKINSON - How much funding does TALC get?

Mr HUGHES - Per year, we have only five full-time staff. I couldn't say, sorry. I would have to get back to you on that.

Mr WILKINSON - What I was going to say was how much of the funding goes to management - that is, people like yourselves - as opposed to other work, whatever it might be?

Mr HUGHES - Our wages are funded by ATSIC in Canberra, and the only other land management funds we get are what we apply for through other groups.

CHAIRPERSON - So your funding outside of special grants through national heritage is ATSIC Commonwealth funded. You do not get any Tasmanian State Government funding of any description -

Mr HUGHES - No.

CHAIRPERSON - that generally happens year after year.

Mr HUGHES - No. We have to apply for funds each year, the same as any other group.

CHAIRPERSON - So your ATSIC funding would fund the administration of your organisation?

Mr HUGHES - Yes.

CHAIRPERSON - Is that a continual ongoing, or each year you have to put in your submission?

Mr HUGHES - Each year we have to put in a new submission.

CHAIRPERSON - And you have had no problem each year in getting that funding?

Mr HUGHES - It has been cut back a bit year by year, so we do make do with what we get from the Commonwealth.

CHAIRPERSON - That tends to be a habit of all things where money has been cut but the expectations are higher.

Mr BAILEY - What is the membership number of your organisation? How many members would you have?

Mr DICKSON - I don't know, because the secretary just mails them all out. I personally wouldn't know.

Mr HUGHES - I don't personally know either, but I can always find out for you. It has to be there somewhere. We have a membership list, but I just don't know personally, sorry.

CHAIRPERSON - How do people become a member of your organisation?

Mr HUGHES - We have a criteria, the same as everybody else, I guess, which is that you have to supply your family tree, you have to be known by the Aboriginal community and you have to be accepted by the Aboriginal community. I think that is it.

Mr DICKSON - It has just been put through our committee.

Mr HUGHES - That is the case for everybody, like me, John, Karen - everybody has to go through the same criteria.

CHAIRPERSON - And these eight representatives would be the ones who decide the acceptance or otherwise?

Mr HUGHES - Yes. They do ask for more information sometimes if there are people they don't know personally. What that person has to do is get a signature from three Aboriginal elders who know that person to be an Aboriginal person.

Mrs SILVIA SMITH - Could I just explore that a little bit further - and this is from a personal knowledge of somebody who had not claimed to be Aboriginal her total life, and never ever spoke up in the community as being Aboriginal - and there have to be a lot of people out there like that because of the discrimination that has gone on in our society for years and years. How do they get recognised by the community if they have never identified, other than producing a family tree and in many instances that is very, very difficult with lack of paper work et cetera along the line, how do they do it?

Mr HUGHES - It is a very hard question.

Mrs SILVIA SMITH - But it is out there, I know it's there.

Mr HUGHES - It would be at the discretion of our committee, I guess. There have been cases like when a person has come in that no-one has known but they have provided the family tree, they've provided a thing from elders saying that they are Aboriginal and it's always a great debate amongst our committee. So it would be up to the discretion of our committee, I think it is. They would have the final say or they would ask for more information.

Mrs SILVIA SMITH - Sometimes information is very difficult to get, I would imagine.

Mr HUGHES - Yes, sometimes it is.

Mrs SILVIA SMITH - And especially, I would say, in the Aboriginal community, it would be very hard.

Mr DICKSON - Sometimes that's a sad thing because there are actual people that I know that didn't identify while I was at school and then realise now that their mother and father have been saying, 'Oh you're a Filipino person or you're from New Zealand' or something like that because of that and they say, 'But now I've got no recognition' and I say, 'Sorry mate, but there's not much I can do for you, you've tried everything, your family tree and gone back as far as you can' but because of the paper work and whatever that's there he can't actually prove whether he is or is not Aboriginal. It is a sad fact that that does happen to some people unfortunately.

Mrs SILVIA SMITH - Discrimination exists in all areas, doesn't it? I think that is basically what it is.

Mr HUGHES - There have been times, because that wasn't the process all the time. That has been about the last six years, I would say, and when we decided to get a bit tougher on aboriginality - like there was even Aboriginal heritage officers that used to work for us that we had to say, 'Sorry, you can't work for us no more' because they couldn't provide that information. I had worked with them fellows for five years, I was doing the same job -

Mrs SILVIA SMITH - And you identified with them as Aboriginal?

Mr HUGHES - Yes, to me personally they are Aboriginal people still, they always have been. It is just the organisations that say no to them.

CHAIRPERSON - So can I take it that your organisation is restricted to employing Aboriginals only?

Mr HUGHES - No, we have a white archaeologist who is our project manager. We employ non-Aboriginal people too.

Mr BAILEY - So the qualifications for aboriginality in your association or council is exactly the same as the ALC?

Mr HUGHES - I'm not too sure what the ALC's is.

Mr BAILEY - Does your council represent the whole of Tasmania or just the north-west coast?

Mr HUGHES - No, the whole of Tasmania. When we first started -

Mr BAILEY - Yes, I think you said the eight is regional.

Mr HUGHES - Yes, we got people from the old phone areas like 002, 003, 004 and Cape Barren and Flinders Island. Of course that has gone now so there's 2, 2, 2 and one from Cape Barren and one from Flinders Island.

Mr BAILEY - And are they elected or appointed?

Mr HUGHES - They are elected every two years.

Mr WILKINSON - John, you were talking about mainly Flinders Island and Cape Barren Island in relation to descendants to see whether you were Aboriginal or not, do you accept that there were a number of Aboriginals who weren't caught up in the Robinson line and have remained in the State and never were sent to the islands?

Mr DICKSON - Oh yes, for sure.

Mr HUGHES - There are a lot of people down Cygnet way, we've all heard of the Fanny Cochrane-Smith line, the Dolly Dalrymple line. I acknowledge those people. No-one can take everybody from one spot and put them on one island; there's always going to be a few runabouts.

Mrs SILVIA SMITH - The thing is you can't all be descendant from just a couple of lines, there's got to be other lines.

CHAIRPERSON - Thank you, John and Colin, for your time this morning and for your submission. It has been very enlightening and we appreciate the time you've taken to educate the committee on your organisation.

THE WITNESSES WITHDREW.