



Submission - Improve the Model for Returning Lands to Aboriginal people.

Opening Statement

The whole idea of return of lands to Aboriginal people carries with it notions of responsible leadership, morality, forward thinking, establishing societal values, and inclusion.

For too long Tasmania ignores its own history, of how it came to be and the consequences for Aboriginal people. The stark reality is that modern Tasmania was built on stolen lands; and that Aboriginal people have been denied our right to inherit our property. The process of land return seeks to remedy dispossession by confronting the facts of the past and in one fell swoop, building a better Tasmania. Successive parliaments have led the debate and placed their stamp on the type of society they wished Tasmania to be. The importance of this momentum cannot be overly stated.

The effect is of this whole process is reconciliation and inclusion.

Background

Aboriginal people owned the whole of Tasmania, its islands and waters, both inland and offshore. As a result of a violent invasion by land hungry white people, Aboriginal people were dispossessed of their lands and our population reduced from an estimated 10,000 to just 100 people in 30 years. In all history, Tasmania's shocking treatment of Aboriginal people is among the worst ever recorded.

Yet, despite the genocide and the theft of land, Tasmania has rarely showed sympathy towards Aboriginal people. Tribal Aboriginals were deliberately kept away from their descendants of mixed marriages, effectively cutting off access to much cultural knowledge. The descendants were not only denied property rights – having the term half-caste applied to them, they were denied identity as Aboriginals. While Premier Hodgman's attempt to re-define who is an Aboriginal regrettably imitates a feature of the racist past. The failure to return land to Aboriginal people over the last 13 years is a let-down for Aboriginal expectations and hopefully, a temporary setback in the quest for a better and more just society. In our view, action must be taken to avoid continuation of the hard attitudes of the 1800s towards Aborigines and the refusal from the 19th century to acknowledge any Aboriginal inheritance of property.

Against the tide of white dominant attitudes, Aboriginal people have consistently reminded white Tasmania of their tainted claim to Tasmania. On 17th February, 1846, Aborigines Walter George Arthur, Chief of the Ben Lomond tribe, King Alexander, King Tippoo,

Neptune, Washington, John Allen, Davey Bruney and Augustus, petitioned Queen Victoria about the dispossession and the making of an agreement with Robinson and the colonial governor about their lands.

In 1883, the heads of all the leading families of the 'half-castes' in Bass Straits - John Smith,¹ John Maynard² and Tom Mansell³ by their mark, and by George Everett,⁴ Henry Beeton snr.⁵ and Phillip Thomas⁶ by their signatures – wrote:

*'We are under no obligation to the government. Whatever land they have reserved for our use is a token of their honesty, inasmuch as it has been given in lieu of that grand island (Tasmania) which they have taken from our ancestors.'*⁷

On 19th February, 1909 Henry 'Harry' Beeton told Westlake that his mother's tribe is Cape Portland and they roamed from Georges Bay (St Helens Point) and Falmouth to Low Head lighthouse, all the north east.

Had there been any form of British justice available at that time, Harry Armstrong, John Maynard, Francis Maynard, Lucy Beeton, James Beeton, Henry Beeton, Sarah Beeton, Rachael Beeton, Fanny Cochrane-Smith, Dolly Dalrymple, George Everett, Philip Thomas, Jane Everett, Elizabeth Everett, James Everett, John Smith, Ted Mansell, Jane Smith, Thomas Mansell, Nancy Mansell, Tommy Rew, Judy Mansell and David Maynard, to name a few, could successfully have claimed native title to most, if not all, of Tasmania. As judges said in the famous Mabo decision, [it is difficult now] *to ascertain what proportion of the lands of the continent were affected by such common law native titles. Obviously, the proportion was a significant one. Conceivably, it was the whole.*⁸

By claiming to be legitimate owners of so-called Crown lands, successive Tasmanian administrations have taken full advantage of the oppression and powerlessness of Tasmanian Aborigines and denied them any access to justice. Crown lands were taken from Aboriginal people by mass killings, torture, rape and genocide. These lands should be returned to Aboriginal people, if only to make amends for wrongdoing and to cleanse the conscience of Tasmanian society.

From time to time, Tasmanians have shown a compassionate capacity by recognising a deep injustice when they saw it. On 4th March, 1909 Edward Stephens, teacher on Cape Barren Island wrote: The mother of Mr John Maynard [Wyerlooberer] belonged to a tribe that owned

¹ John Tasman Smith died 10 Oct. 1898, age 77 son of Sarah, Tasmanian Aboriginal. John married Jane Maynard.

² Son of Aboriginal woman Wyerlooberer aka Elizabeth 'Betty.' John was born 1833 and died 7th Jan, 1912. He married Frances Everett 1837-1869 and Eva Chappel Stafford born 28th Sept, 1855.

³ also called Sydney, Tom was born in 1837, son of Julia Mansell (also called Black Judy). Tom married Nancy Thomas. He was still living in 1877 when birth of son Edward was recorded at Georgetown. He died at Launceston General Hospital.

⁴ George was eldest son of Watikawitja. He was born on 5th Jan, 1835 and died 21st June, 1883. He married Jane Beeton

⁵ Henry was a son of Watanimarina. He was born 7th March 1835, died 10 December 1913. Henry married Sarah Everett.

⁶ Phillip was son of Woretemoetyenner. Phillip was born 1831 and died 28 Feb. 1915. He married Jane West and Eliza Bligh.

⁷ Tasmanian (Launceston, Tas. : 1881 - 1895), Saturday 2 June 1883, page 593

⁸ Deane and Gaudron JJ. Mabo v Queensland (No 2) ("Mabo case") [1992] HCA 23, 40.

the whole of the land, from Circular Head to Cape Grim. The mothers of Phil Thomas, and Harry Beeton, and Mrs [Nance] Mansell, were children of the tribe which owned the land, say, from Cape Portland to Piper's River, and the white people took all this land from them.⁹

In more recent times there were political leaders who also could recognise a great injustice, and determined that steps should be taken to rectify the problem. In 1995, Premier Ray Groom presented the Aboriginal Lands Bill 1995 to the Parliament. The Premier said: *'This is historic legislation. It transfers twelve areas of land of special cultural and historic significance and is a major advance for the Aboriginal people of Tasmania. [This] is plain evidence of a more tolerant and understanding society than existed in the past.'*

This all too brief account of the history of the land returns process and its rationale stands in stark contrast to the lack of understanding behind land returns expressed in the government review of the land returns process.

If the government was genuinely seeking to engage Aboriginal people on land returns it would have first held talks about which areas of land might be specifically targeted for return. After that step, consideration of how best to return those lands to the Aboriginal people could begin. However, there have not been land returns for 13 years. There is no indication that this government intends to restart the process, despite repeated statements from current Premier Hodgman saying he was open to land returns. It follows that Aboriginal people, and the public, are being invited to comment on a non-existent process. This review has a false premise – that there is a land return arrangement that might be improved. There is no such arrangement and there has not been one for 13 years.

A cynic might conclude that this whole process is prejudged: the Premier has a plan to undermine or abandon land returns and this review is nothing more than an exercise to attract anti-land returns sentiment. The failure of the Review paper to appreciate the rationale between land returns and land purchases encourages dissent. Or worse, the Review is intended to provide government with the views it is after, namely that lands should be transferred to certain friendly corporations.

The review of the dual naming policy is evidence of a government with a predetermined mind-set. For political reasons, the government was opposed to the TAC palawa karni and wanted to give government friendly, but anti-TAC forces, the opportunity to submit arguments supportive of government. The result of that review was *A clear view expressed across submissions was that local and regional Aboriginal groups and organisations should be directly consulted about Aboriginal and dual name proposals, particularly those proposed in their local area and that many Aboriginal community organisations and local groups are seeking opportunities to inform Aboriginal and dual naming in Tasmania.*¹⁰(Our emphasis)

The same might be expected here. With this announced review, in the same Press Release that Jacqui Petrusma, Minister for Aboriginal Affairs announced the review, she also announced funding for the TRACCA group. TRACCA is notoriously hostile towards Tasmanian Aboriginal Centre (TAC) and the Aboriginal Land Council of Tasmania (ALCT). This is an indication of bias.

⁹ Daily Telegraph (Launceston, Tas. : 1883 - 1928), Friday 5 February 1909, page 6

¹⁰ Executive Summary, page 4

Land returns compared to property grants

The review fails to distinguish land returns from land grants. Land grants to corporations is not rectifying dispossession in the way Premier Groom or his successors Jim Bacon and Paul Lennon meant. Buildings purchased for the providing of services to Aboriginal people, or farms, or leases for tourist ventures, are instances of government social and economic inclusion policy. They have nothing whatever to do with land rights and dispossession.

As the Indigenous Land Corporation (ILC) explains: ‘The ILC assists Indigenous people with the acquisition and management of land so they can achieve economic, environmental, social and cultural benefits.’ Under this federal government initiative, Thule farm on Flinders, Modder River on Cape Barren and Murrayfield on Bruny Island were purchased for commercial reasons. Other ILC purchases including at Goodwood and Smithton were purchased for the provision of services. There is no mention of remedying dispossession in these purchases.

Moreover, the purchased properties listed in the review were all purchased through the federal government. The State contributed nothing towards the purchases. The State did not participate in the process and had no role to play. Yet the Tasmanian government now includes land purchases by the Commonwealth for Aboriginal groups as somehow part of its ‘land hand-backs.’ In other words, if Aboriginal organisations purchase property with their own resources or non-Tasmanian government resources, the Tasmanian government will claim to include such properties as part of its land hand back process. This smells of overreach and irresponsibility. No doubt the State government is happy to cite property purchases to cover up its failure to return any land over the last 13 years.

Land ‘returns’ is the giving back of land to Aborigines. It is a justice issue. It also a moral issue. Contemporary Tasmanian society acknowledges it has taken the benefits of historic dispossession and wants its political leaders to act honourably on their behalf by returning lands to the descendants of the original owners in a dignified manner. In 2004, Opposition Leader, Rene Hidding said:

“I think how a society or a State handles its indigenous issues or issues relating to the indigenous peoples of a land is an indicator of maturity of a community... There have been some good moves over the last 10 years in this area of public policy. I am particularly proud of the fact that it was our side of politics - Ray Groom in particular - who picked up the phone and rang the TAC and said, 'It's time we did something about returning some land to you in the spirit of reconciliation'. As a result, Risdon Cove was returned. We visited there recently and I would have to say I think it was a land return that was of great significance to the Aboriginal community.”¹¹

How the current land ownership and management operates

Prior to the establishment of the Aboriginal Land Council of Tasmania (ALCT), Aborigines were dislocated from their land. The *Aboriginal Lands Act 1995* is an Act that promotes reconciliation with the Tasmanian Aboriginal community.

¹¹ Second Reading speech, Aboriginal Land Council Elections Bill 2004 (No. 10)

Aboriginal people have a connection to country and sea that is much deeper than contemporary white notions of land ownership. The ALCT promotes, and provides for, Tasmanian Aboriginal people to participate in cultural practises, reconnect with the land and to enjoy the land.

E. Maynard	(recreational)	T. Maynard	(recreational)
S. Maynard	(recreational)	G. Summers	(recreational)
C. Longey	(recreational)	P. Longey	(recreational)
F. Gardner	(recreational)	K. Everett	(recreational)
C. Hughes	(recreational)	B. Maher	(recreational)
A. Peardon	(recreational)	A. Wynwood	(recreational)
L. Maynard	(recreational)	M. Donald	(recreational)
A. Maynard	(muttonbirding)	M. Mansell	(muttonbirding)
G. Thomas	(muttonbirding)	V. Stonehouse	(muttonbirding)
P. Lowery	(muttonbirding)	Newall family	(muttonbirding)
Willis family	(muttonbirding)	T. Maynard	(muttonbirding)
A. Thompson	(muttonbirding)	N. Maynard	(muttonbirding)
Ta. Maynard	(muttonbirding)	FIAAI	(muttonbirding)
Mu. Mansell	(muttonbirding)	F. Gardner	(muttonbirding)
A. Maynard	(muttonbirding)	R. Maynard	(muttonbirding)
B. Condie	(muttonbirding)	J. James	(muttonbirding)
J. Thomas	(muttonbirding)	G. Thomas	(muttonbirding)
D. Mansell	(muttonbirding)	A. Everett	(muttonbirding)
B. Meagher	(firewood)	K. Anderson	(grazing)
C. Dallas	(firewood)	A. Jones	(grazing)
R. Newall	(firewood)	ILC	(grazing)
H. Mansell	(grazing)	A. Stackhouse	(grazing)
S. R. Fuglsang	(grazing)	S. Reid	(grazing)
R. Davis	(grazing)	TAC	(communications)
CBIAAI	(power)	Telstra	(tower)
Flinders Council (refuse site)		AMSA	(lighthouse)
Transport Comm. (aerodrome)		L. Olsen	(garden)

Accountability

It may well be the government understands that land returns have a distinct rationale from property purchases and genuinely wants to improve the land return process by speeding it up. However, based on expressed government sentiment and implications expressed in the review paper, it would be prudent to consider the costs of local organisations owning returned lands.

First, the land was not taken from corporations. It would be strange to return lands to local corporations instead of the people denied their property inheritance. Second, local organisations are effectively private clubs, answerable to their members. They are not answerable to 20,000 or so Aborigines dispossessed of their lands. There would be no accountability to the owners of the lands. Third, as lands returned so far are in remote areas and the bulk of Aborigines live in urban settings, local ownership would make it so much harder for the Aboriginal population to have a say over their lands. Fourth, with localised ownership, management of Aboriginal land would no longer be coordinated. Management would be entirely at the whim of local influences. Fifth, there is not sufficient funds made available by the State to properly allow for direct local management of lands. The Land

Council does its best with inadequate funds to help manage costs for each piece of land. Further breaking up collective ownership would mean the limited funds spread across a range of organisations would further diminish the capacity to manage and employ Aborigines on the lands. It would be inefficient.

The Roll

The Electoral Roll is administered under the State Electoral Commission and is preceded by the establishment of a Preliminary Roll. The procedure for adding names to the Preliminary Roll is via the enrolment forms, once the names have been added to the Preliminary Roll, the Preliminary Roll is then placed on public display in the State Libraries in all three regions. This process allows the public to place an objection to the transfer of the name of a person from the Preliminary Roll to the Roll on the basis that the person is not an Aboriginal person. This process takes away the right of self-determination from the Aboriginal community and allows for racist views and responses to be made against people being placed on the Roll. It is the only process of its type in any jurisdiction across Australia. A process which allows non-Aboriginal people to object against Aboriginal people being admitted to the ALCT Roll.

Upon receipt of an objection, the Tasmanian Electoral Commissioner must accept the objection or reject the objection. The Commissioner appoints a Review Panel, which is made up of up to 8 Aboriginal people drawn from the Aboriginal Land Council of Tasmania Electors Roll. These persons are knowledgeable and widely accepted as being of high-standing within the Aboriginal community. The Commissioner may also seek advice from the State Archivist to provide relevant advice and material from State archives. A representative of the Office of Aboriginal Affairs, which is responsible for the administration of the *Aboriginal Lands Act 1995*, may also be requested to provide advice to the Commissioner.

The Review Panel advises the Commissioner that the person is an Aboriginal person within the meaning of the Act; or is not satisfied that the person is an Aboriginal person within the meaning of the Act; or whether there is not enough information to allow the Review Panel to make a decision. The Commissioner may request further information from the applicant.

A person who lodged an objection or a person to whom an objection related, who is aggrieved by the decision of the Commissioner may, in accordance with the Rules of the Supreme Court, appeal to the Supreme Court.

The ALCT Roll has increased in recent years. In 2005, there were 184 voters on the Roll. In 2018, there are 588. The Review paper emphasises a low voter turnout, citing a by-election in Hobart where 52 of the 272 enrolled, 20%, actually voted. Elections for ALCT are not compulsory. Non-compulsory elections always result in lower voter participation than in compulsory voting elections. It is noted that the 1903 federal election that had extraordinary powers to affect people's lives only drew only 46.9% participation. ALCT has no equivalent power to affect people's lives. A number of explanations are possible for 20% of voters sending in their ballots. One is that people know that elected ALCT Council members only administer and coordinate lands as the real activity is with local management. That reality is hardly an incentive to vote. Another explanation is that the Aboriginal voters are content with the way things are so there is no great incentive to vote. Yet another is that people reserve their right to use processes other than voting such as demanding ALCT review a decision under section 19 of the Act.

What should governments be doing?

In an inclusive society, governments have a chief role in making policy and taking action to create a society based on values of fairness and justice. It has been recognised throughout commonwealth countries that Treaties and reparations comprise essential values in modern societies where the original people have suffered severely under European invasion.

Aboriginal people and our representatives have pressed successive Tasmanian and Federal governments to address these fundamental remedies without success. That is no reason to walk away from the opportunity now before us.

The Tasmanian government could establish a Treaty Commission. The Commission should be armed with a draft Treaty to be used for broad community consultations about how the draft treaty might work in practice. The Treaty could be based on sharing sovereignty with Aboriginal people, establishing a reparations fund and making a land settlement.

A land settlement as an element of a Treaty could cover Wilderness areas, National Parks and other Conservation areas with the areas retaining their conservation status. Applying the principle that government must be unhindered in governing for all on a non-discriminatory basis, many of these lands could be subject to covenants that provide for the needs of non-Aboriginal Tasmanians for environmental, economic, social and recreational use. Normal government policy on a non-discriminatory basis in the context means if government activity or policy was not valid for non-Aboriginal owned lands, it should not be valid for Aboriginal lands.

Putting Aborigines to proof for the return of stolen lands does not dignify the land returns process. Even if there is no Treaty settlement, any process for a land settlement must accept the historical fact of wrongful dispossession without compensation. Therefore, the onus of proof should not sit with Aborigines but with the state to argue why particular lands are vital to the ongoing existence of the state and are therefore not available for return to Aborigines in ownership. In such cases, compensation should be provided.

Setting priorities

The government should take responsibility to resolve the long-standing dispossession issue. Ideally, it should put in place the necessary processes to return ownership of all Crown lands to Aboriginal people. The government should establish a working group whose task is to examine whether there are any practical impediments to returning all Crown lands to Aboriginal people. There is no known impediment to returning ownership of the world heritage areas, the west coast Aboriginal landscape zone or the Arthur-Pieman Wilderness area. These are examples.

The least it could do is initiate steps to further that goal. It could state its intention to return those lands over time. It could establish a panel of people, including Aborigines, to recommend how and when it should happen.

Instead, the Hodgman government has antagonised the Aboriginal community, taken legal action to open up sensitive cultural areas in the Takayna for destruction, sued the TAC and manipulated division within the Aboriginal community with its funding and political support

for groups aligned with government strategy. It was party to the removal of its funding of the Youth Diversion program.

All the work of Premiers and governments, local governments (the Flinders Island Mayor received a national reconciliation award), public servants, reconciliation bodies, politicians and Aboriginal people, have been summarily ignored by the Hodgman government. Instead of building on the work done this particular government is undermining those efforts.

Criteria for land claims to go before a non-political entity

If there were greater trust between Aboriginal people and the Hodgman government, the idea of an independent tribunal to deal with Aboriginal land rights could be more intensely explored. Establishing a criteria depends primarily on the intention behind the whole exercise. It would be absurd, for example, to ask Aboriginals to prove that their lands were stolen when this is an historical fact. It would be equally silly to ask Aborigines to justify why lands taken from them by force should be handed back. Either the state accepts that Aborigines owned the lands or it does not. The state accepts the lands were taken illegally or it does not. If it accepts historic facts then a criteria could be established to determine whether there are impediments to return in ownership and occupation, or ownership without occupation, of lands to Aboriginal people.

There should be a presumption of return of Crown lands to be rebutted by Crown arguments that certain lands are vital to the ongoing governance for all people of Tasmania. In such cases, depending on the circumstances, full ownership by Aboriginal people might be burdened by government retaining certain rights such as guaranteed access for particular purposes (providing water treatment, generating electricity, public recreation areas, public roads). It is hard to foresee that in such cases Aborigines would be denied ownership.

Conclusion

The Tasmanian Government has a responsibility to promote a society based on justice and fairness. Dispossession, and providing a remedy for dispossession, is central to those values; Government should educate the broad community about Aboriginal dispossession, justice and inclusion.

Government must separate land returns from social and commercial property purchases. As the land was stolen from Aboriginal people and not corporations, the lands should be returned to Aboriginal people not corporations. Government is free to purchase properties for corporations on the basis of economic, environmental, social and cultural benefits.