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Models for Land Return in lutruwita/Tasmania

Response to Tasmanian Government Discussion Paper

Objectives of land return

The legislative objectives of returning land to Aboriginal people is of less importance than the amount of land available to be returned. Whether the objective is said to be reconciliation, or land justice, or a rights-based treaty settlement or indeed anything else is of no consequence if the land to be returned is minimal. There is absolutely no reason why a reconciliation objective should exclude the return of land that is of social or economic importance as suggested in the Discussion Paper. If the legislation is to be amended, it might broaden the scope of available land if the current reference to historic or cultural significance is deleted.

Land return processes

The Discussion Paper's reference to Parliament as being "arbitrary" is a strange concession given the range of issues entrusted to Parliament in the Commonwealth and State Constitutions. Any process will have its uncertainties including tribunals whose functions are, after all, regulated by legislation made by Parliament. The reference in the Discussion Paper to the return of land by a Government Business Enterprise belies the difficulties and the work involved in that seemingly simple return process. As indicated however there is nothing to stop the return of more land in that manner and in fact we are continuing to work on that very thing.

The other obvious criteria for return of land (apart from land not being needed by a GBE) is a simple reckoning of Crown land not required by the State for essential public purposes; or indeed, simply any Crown land. Aboriginal people held the land collectively before English Invasion and the assertion of 'Crown Land' status marked a wholesale change to forms of land ownership and use. Reconciliation and atonement would unlie the return of as much Crown Land as could be negotiated.

Other land acquisition models

The option of purchase of land on the open market has no place in a Discussion Paper on Aboriginal land return. It is a matter of justice that private land be purchased and returned to Aboriginal people; and no legislation or other quasi-legal process is required for that to occur.

It is not required that title to ILC purchased land be transferred to individual organisations rather than to the Aboriginal community generally and indeed transfers have been made to ALCT through negotiation with the initiating body, usually TAC.

Rights and fetters

It is ironical in the extreme for the Discussion Paper to cite business anti-competition factors as a possible reason for removing some of the financial advantage that now accrue to land becoming Aboriginal land under the Act. The Tasmanian people including businesses have had use of our lands for over 200 years without payment of any kind so this recent notion of anti-competitiveness can have application only if accompanied by payment of back rent.

The removal of restraints on mortgaging land is likely to result in the diminution of the land holdings of the Aboriginal community and is therefore not supported.

Amending the Act to enable other organisations to have land declared as Aboriginal land would serve no purpose whatsoever given the history of land acquisition in this State. It has been open to any of those organisations to have the land bought on their behalf declared as Aboriginal land. TAC has done exactly that on several occasions. The organisations do not want the land they own to be Aboriginal community owned land; they want ownership to be retained by their own club and their own small membership.

It should be obvious that land owned by individual organisations is not Aboriginal land as we have long known it and hence the Aboriginal land exemptions should not be available. At present, the option is there to be exercised if desired: freedom of choice.

Access and rights

It is not new for sea country to be considered part of a Land Rights model and we sought sea and water rights when the Aboriginal Lands Act was being negotiated. We have continued to seek ownership and control of water and sea, particularly in areas adjoining Aboriginal land. No government in lutruwita/Tasmania has shown any interest in this concept.

Land management

It is a curious suggestion in the Discussion Paper (page 7) that the government should be the entity that decides which group should have local management of land. Why return land to our community only to have 'ownership rights' exercised by government? Given that on the same day the Discussion Paper was released, this government gave a grant of taxpayer's money to the Alliance set up to oppose TAC, it is not surprising that "disagreement" is cited as a reason to nominate local groups. Anyone with knowledge of Aboriginal community affairs knows that TAC has been operating in every region of the State for over 40 years and hence is "local" in all areas.

The reference to New South Wales models of local land governance is misleading and mischievous. While it is correct to note the adverse repercussions of such a model in lutruwita/Tasmania, it would be more honest to note that the different histories of dispossession have resulted in their being one set of Old People from whom all of today's Aboriginal community is descended unlike NSW where many tribal groups still exist. The vastly different numbers of the Aboriginal population makes any comparison of governance structures ridiculous. The 2016 ABS Census for example shows 216,176 Aborigines in NSW and 23,572 in lutruwita/Tasmania.

It is a decision for ALCT as to what reporting it requires from the organisations tasked with management of the land it holds on behalf of the community. The Discussion Paper assumes rather than proves that accountability of managing organisations needs to be improved. That is an easy accusation to make, particularly against Aboriginal organisations.

Aboriginal organisations are amongst the most accountable and highest reporting organisations in the country. Although not all managing organisations do likewise, the TAC regularly reports to the Aboriginal community through its Annual General Meetings, its Annual Reports, its newsletters, its web site and its social media as well as to its funding bodies. Most of those reports are also available to the general public.

There are also several sections of the Aboriginal Lands Act that ensure accountability as detailed in the following section of the Discussion Paper.

Governance: ALCT electors roll

There is an unsubstantiated assertion in the Discussion Paper that requiring a person to establish their Aboriginality has “historically proved difficult” for people with poor or no formal documentation. Documentation is not the only way in which people can establish their Aboriginality in all cases but in a situation involving significant consequences like the formal ownership of the returned land of a totally dispossessed people and the use of public funds, Australian courts have traditionally held that the onus must be on the person asserting the right. For the Aboriginal community to have the onus of disproving Aboriginality of those wishing to claim management of Aboriginal land would be a travesty of justice in our circumstances of thorough dispossession.

In the short term at least there seems no other reasonable option than to have the Tasmanian Electoral Commissioner determine voting eligibility for ALCT elections in accordance with legislative procedures. There can be disagreement that the number of Aboriginal people on the Electors Roll and the number voting are far too few. The answer does not lie in making it easier for people to claim Aboriginality; it lies in removing the ambiguities inherent in this voluntary voting system.

It is important to note also that it should not be a requirement that Aboriginal people must hold themselves to a higher civic standard than the rest of the population. Low voting numbers or even low number of meeting attendees is often used as a failure of Aboriginal governance. Voter turnout in mainstream elections is compulsory. A better comparison would be the number of people who attend the annual conferences of the major political parties, if only that information was generally available.

Governance: ALCT processes and procedures

The so-called perception that ALCT needs improved transparency and accountability bears no relationship to any government ‘hands-off’ approach under the Act as claimed, but not demonstrated, in the Discussion Paper. The legislation already provides several means by which accountability can be ensured, some of which measures have been enforced by the Aboriginal community.

The comparison should not be with Aboriginal Land Councils in other States but with other bodies operating under a legislative mandate in lutruwita/Tasmania. Does the Tasmanian Heritage Council, for example, prescribe training, a code of conduct, governance manuals or grounds of dismissal for its members? Expected standards of good governance can and should be achieved in other ways rather than with suspicion and overbearing government intrusion. Nevertheless, we understand that ALCT does indeed have a governance manual to guide its operations. It has also improved its accountability through attendance for reporting and questioning at Aboriginal community meetings.

Heather Sculthorpe
Chief Executive Officer