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Policy Division
Department of Premier and Cabinet
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By email: policy.admin@dpac.tas.gov.au

Dear Madam / Sir,

Amending Tasmania's Constitution to recognise Aboriginal traditional ownership

EDO Tasmania is a non-profit, community based legal service specialising in environmental law. We are committed to supporting Aboriginal communities to protect and manage their cultural heritage, and welcome the opportunity to respond to this proposal.

Importance of recognition

As part of the Parliamentary Committee Inquiry into Constitution Recognition, representatives of the Weetapoonna Aboriginal Corporation, the Aboriginal Provisional Government and the Tasmanian Aboriginal Centre spoke of both the importance of symbolic recognition, and the need for further policy, legislative and "friendship building" work to give meaning to that recognition. For example, Michael Mansell noted:

The recognition of Aboriginal People will also be a significant step to redress the injustice and neglect of Aboriginal needs. These needs include the recognition of the spiritual, social, cultural and economic significance of land to the Aboriginal people of Tasmania.¹

Mr Mansell acknowledged that amending the Constitution would not alter historic or contemporary injustice, but considered that "[t]he Tasmanian Constitution could nevertheless be one vehicle for meaningfully addressing the historical imbalance of white/Aboriginal relations in Tasmania."

Mr Lee Prouse further noted that Constitutional recognition provides "a great opportunity to start to remove the unconscious bias within government and I do not mean that disrespectfully, because it is an unconscious thing."

Similar sentiments have recently been expressed by Emma Lee (melythina tiakana warrana Aboriginal Corporation) and Fiona Hamilton (Cultural Business Innovation Tasmania).²

In that context, we support amendment of the *Constitution Act 1934 (the Act)* to formally recognise Tasmanian Aborigines as the traditional landowners, to acknowledge the ongoing spiritual, social, cultural and economic relationship Tasmania's Aboriginal communities have with their traditional lands and waters, and the unique and lasting contribution they make to Tasmania. This is a necessary first step in re-setting relationships and committing to practical improvements.

While we defer to submissions from the Tasmanian Aboriginal community regarding the exact wording of the proposed preamble, and commend the government for the consultation period provided to enable those views to be expressed, we note that the wording currently proposed by the Government is consistent with the recognition provided in other Australian States.

¹ Submission 7 to the Parliamentary Inquiry, Michael Mansell, pp 3-4 (quoted in the Inquiry Report, pp 25 – 26)

² Talking Point, *The Mercury*, 10 June 2016. "Draft Reform of Constitution is a Step Toward Keeping Historic Promise."

Preamble vs substantive clause

We are also supportive of the amendment being included as part of the preamble at the outset of the Act, to provide overarching recognition and to avoid questions regarding justiciability.³ As Rodney Dillon said when presenting at the Inquiry:

*[Recognition] needs to be right at the front of the Constitution so people recognise that Aboriginal people were the first nation of people of this state.*⁴

More to be done

As noted, it is critical that Constitutional recognition is seen as only a first step towards genuine acknowledgement of the ongoing role of Tasmanian Aborigines and effective protection of Aboriginal cultural heritage. We commend the government for its recent acknowledgement that the *Aboriginal Relics Act 1975* is “woefully outdated” and “shamefully disrespectful”, and its commitment to addressing inadequacies in the current legislation. We urge the government to move quickly towards developing a comprehensive, contemporary and community-based statutory framework for the management and maintenance of Aboriginal cultural heritage.

Thank you for the opportunity to make these brief comments.

Kind regards,

EDO Tasmania



Jess Feehely
Principal Lawyer

³ See, for example, the submission of Professor George Williams to the Parliamentary Inquiry.

⁴ Transcript of evidence to Parliamentary Inquiry given on 14 August 2015 – see Parliamentary Committee Report, p 25