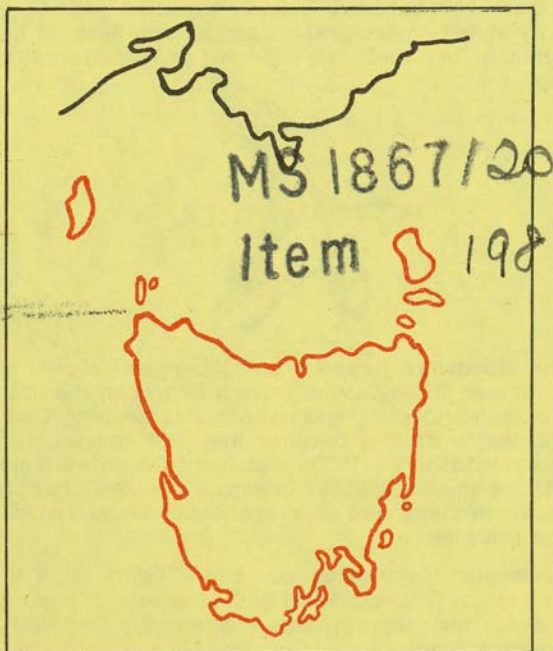


LAND RIGHTS IN TASMANIA



Tasmania is the only State in the Commonwealth, apart from Queensland, which does not have areas of land held in trust for Aborigines.

After the death of Truganini in 1876 it was convenient for successive Tasmanian Governments to assume that no Tasmanian Aborigines were left in Tasmania. This belief was based on the fact that during the 1830s tribal Aborigines were persuaded under pressure to move first to Bruny Island, a refuge off the South East Coast which was soon abandoned, and then to the Furneaux Islands in the Bass Strait. These islands were already inhabited by white seal hunters and their Aboriginal women. The dispossessed Aborigines from the mainland formed settlements on Woody, Gun Carriage and Flinders Islands (see map). Once removed from their traditional lands their numbers dwindled rapidly and in 1847 the remaining few (about 30) were moved again to Oyster Cove, south of Hobart.

An unknown number of part-Aborigines remained scattered throughout the State after the move to the Furneaux Islands. White Tasmanians expected that as these people were only Aborigines of mixed descent, they would be absorbed or assimilated into the general population. However, due to white prejudice and the fact that Aborigines of mixed descent clung to their Aboriginal heritage this did not happen.

The Commonwealth Department of Aboriginal Affairs estimated in 1981 that there were 2,688 Aborigines living in Tasmania. It defines an Aboriginal as "... a person of Aboriginal descent who identifies himself as such and who is recognised by the Aboriginal community as being Aboriginal".

Today, only a small number of Tasmanian Aborigines live on the Furneaux Islands. There are 50 on Cape Barren and 50-100 on Flinders Island. They are exploited and encroached upon by white farmers, graziers and mutton-birders* but they are proud of their traditions and have developed a folk culture of their own.



The Woodward Report** said Aborigines should be able to claim land if they could prove it had been the traditional land of their ancestors. It is not possible for living Tasmanian Aborigines to do this because they lost contact with their ancestral lands in the 1830s. But Justice Woodward also said Aborigines should be able to claim land on the basis of social and economic need and as compensation for land which could not be returned.

Tasmanian Aborigines see Land Rights as a form of recognition of their existence and as ensuring their rights to land which they use on Cape Barren, Big Dog and Babel Islands (see map).

The Tasmanian Government might be expected to see the granting of Land Rights as part of a policy for the betterment of Aboriginal people.

In December 1976 Tasmanian Aborigines wrote to the then Premier of Tasmania, Mr Neilson, asking for recognition of their prior ownership of Tasmania and for the return of land to Aboriginal people. As a result Premier Neilson spoke with a delegation of Aborigines but rejected their claim for Land Rights.

ABORIGINAL LAND CLAIM

In 1977 **The Tasmanian Aboriginal Information Service** (now the TAC)*** presented a petition to the Tasmanian Parliament asking for Land Rights. This is known as the **Aboriginal Land Claim**.

*Mutton-birding for the Short-tailed Shearwater takes place in a five-week season at the end of March through April. At present most of the mutton-bird industry is run by whites who exploit Aborigines' desire to go mutton-birding by providing very low wages and poor living conditions. Too many birds are taken in a season and their numbers are decreasing.

**The Aboriginal Land Rights Commission, 1974.

***The **Tasmanian Aboriginal Centre** replaced the Tasmanian Information Service in 1977. It is funded by the Commonwealth as a legal aid service with Land Rights as a principal concern.

It asked for:

1. **All sacred sites, particularly where rock carvings exist** (but they continue to be protected under the **Aboriginal Relics Act**).
2. **Wybalena Settlement on Flinders Island.** This was the main settlement of the Tasmanian Aborigines who were moved in the 1830s. With its cemetery it has become a "sacred site" in the eyes of contemporary Tasmanian Aborigines.
3. **All Mutton-bird islands around Tasmania.** Mutton-birding is a traditional Aboriginal occupation. Big Dog and Babel Islands are claimed to form the basis for a viable mutton-bird industry. Other islands (most of which are in the Furneaux Group) are claimed on the basis of prior ownership and an uninterrupted tradition of mutton-birding (see map). At present, Aborigines have no tenure on any of the Furneaux Group islands.
4. **Cape Barren Island.**
5. **Cape Grim.** This is an area of spiritual significance for Tasmanian Aborigines and the site of a massacre in 1830.
6. **Compensation for dispossession of land in Tasmania.**
7. **Return of ownership of Crown land not being used by whites, or compensation for Crown land.**

ABORIGINAL AFFAIRS STUDY GROUP

As a result of the Land Claim petition and the publicity given to an "Aboriginal Parliament" tent pitched outside Parliament in Hobart, the Tasmanian Parliament in 1977 set up an **Aboriginal Affairs Study Group** to examine the **Aboriginal Land Claim**. Its terms of reference were:

- The feasibility of a Land Trust
- The mutton-bird industry
- Social development

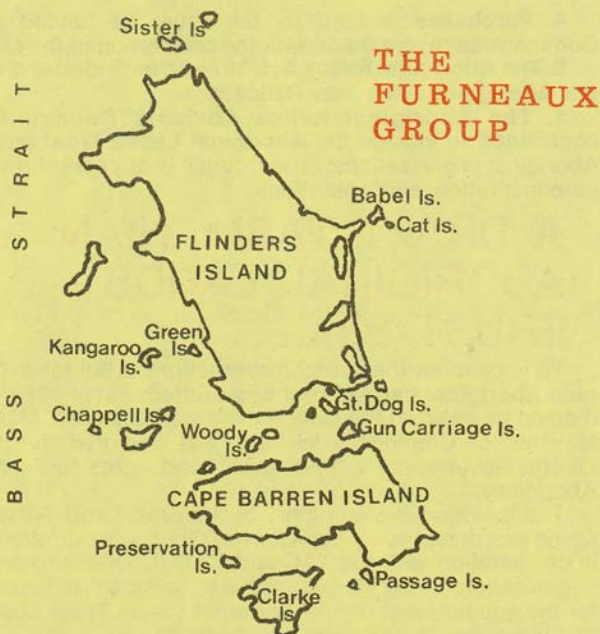
The State Committee of the Tasmanian Aboriginal Centre (TAC) was asked to send delegates to each section and its legal adviser was also invited to discussions on the mutton-bird industry and a Land Trust. Others consulted were members of the **Flinders Island Community Association*** and the **Cape Barren Island Council**** and nominees from National Parks and Wildlife, Land, Education, Social Welfare, and Housing government departments.

Topics discussed were:

- Whether there should be one Lands Trust for all Tasmania or whether there should be a separate one for Cape Barren Island. (The TAC representative emphasised the need to recognise Tasmanian Aborigines and land ownership for **all** Tasmanian Aborigines whether of the Cape Barren Island community or elsewhere).
- The importance of the mutton-bird industry in the Land Claim.

***Flinders Island Community Association** is a company formed in 1974. It represents 60-100 Aborigines on Flinders Island and is a shareholder in the Furneaux Fish and Processing Co. which also processes mutton-birds. It employs Aboriginal people and is funded by State and Commonwealth Governments in association with private enterprise. The Association was granted a three year lease on Chappel Island and there is also Aboriginal mutton-birding on Big Dog Island.

****Cape Barren Island Council** is incorporated and represents approximately 50 Aboriginal islanders.



- Islands suitable as possible future sites for co-operatives.
- The complicated mutton-bird licence system.
- The need to protect freehold and leasehold land held by Aborigines and non-Aborigines on the islands.
- Increased Aboriginal representation on the Advisory Board of the **Aboriginal Relics Act** (National Parks and Wildlife Service).

BUT in 1978 the TAC at its annual general meeting unanimously voted to instruct its delegates to withdraw from the Study Group because of its lack of understanding or commitment to the philosophy of Land Rights.

The Report of the Study Group* was published in November 1978. It recognised that apart from Queensland, Tasmania was the only State in the Commonwealth which did not have land held in trust by Aboriginal people.

Its recommendations were:

1. A single Aboriginal Lands Trust for all Tasmania.

- to consist of a committee of Aboriginal people drawn from the TAC, Cape Barren Island Council, the Flinders Island Community Association and/or other incorporated Tasmanian Aboriginal organisations
- to have power, with the consent of the Minister, to hold and acquire land, to lease land to, or develop land for Aborigines.
- to alienate land (with the consent of Parliament).
- the composition of the Trust to be finally determined by the Minister on the basis of nominations from incorporated Tasmanian organisations.

2. Unalienated portions of Cape Barren, Babel and Big Dog Islands be transferred to the Trust with freehold title.

3. Aboriginal people be given preference in the future granting of mutton-bird leases on islands not held by the Trust.

*Parliament of Tasmania, Report of the Aboriginal Affairs Study Group of Tasmania, 1978.

4. **Purchases** of land by the Trust be funded by the Commonwealth and made with the permission of the Minister.

5. **The Aboriginal Relics Act, 1975** be amended and retitled the **Aboriginal Sites and Relics Act**.

6. **The Aboriginal Relics Advisory Council** be re-constituted to include the **Aboriginal Lands Trust** and other Aboriginal organisations. (The Council is at present reviewing its constitution and operations).

A DRAFT TASMANIAN ABORIGINAL LANDS TRUST BILL

To implement these recommendations a Bill for a **Tasmanian Aboriginal Lands Trust** was drafted. But in 1982, before it could be enacted the Government was defeated. Mr Cleary, Minister for Community Welfare, has said that the present Liberal Government will not grant land rights to Tasmanian Aborigines.*

The following is a summary of the **draft Land Trust Bill**** which was drawn up by the Attorney General's Department*** in consultation with the TAC and CAO (Council of Aboriginal Organisations).**** Its purpose was to establish procedures for the appointment of an **Aboriginal Lands Trust Board** and to determine its functions and powers.

1. Election of Board Members.

- elections to be held every three years
- five electoral areas to be recognised:
 - Flinders Island and Cape Barren Island to have two elected members each.
 - Three mainland electorates to have three elected members each.
- Aborigines of 18 years and over who normally live in the electoral district to be able to vote.
- an Electoral Tribunal be set up to decide electoral disputes.

2. Aboriginal Land Council.

- the statutory body to be set up by the **Aboriginal Lands Trust Bill** to be known as the **Aboriginal Land Council**.
- The Governor General by proclamation could vest any Crown Land in the Council*****
- any Crown land granted to be subject to existing leases, licences, easements or other restrictions.
- Council land could not be resumed by the Crown. (If the Crown used its over-riding powers to resume Aboriginal land it would have to pay compensation).
- The Council could acquire land by purchase, gift or exchange and could lease land. (The Bill did not specify or name any areas of land which might be returned to the Land Council).

*The Examiner, 24/2/83.

**The Aboriginal treaty Committee is indebted to Heather Sculthorpe of the TAC for supplying a summary of the 'Land Council Legislation Negotiations' from which this summary of the draft Bill is compiled.

***In the previous Labor Government **Aboriginal Affairs** came under the **Attorney General's Department**. Since 1981 it has become the responsibility of the **Department of Social Welfare**.

****The CAO is a non-funded body which comprises all Aboriginal organisations in Tasmania and co-ordinates action on major issues.

*****Crown land means any land vested in the Crown which has not been granted in fee simple, but excludes any land which has been reserved for any other purposes under the Crown Land Act, 1976. (Land granted in fee simple means that land belongs to its owner and his heirs for ever).

3. Land Council Rights over Land.

Mining: Leases for mining on Council land should not be granted without Council consent and if it would not give consent, the matter should be decided by a **Supreme Court Judge**. Any income from **mining royalties** would be divided between the Land Council, State Consolidated Revenue and welfare programs for Aboriginal people. (This is the same arrangement as operates in the Pitjanjatjara Land Rights legislation in South Australia).

Conservation: The Land Council would be subject to the Act controlling State reserves, forests, wildlife, fisheries and water. Aboriginal people living on the land would have hunting and gathering rights but endangered fauna and flora would be protected.

4. Buying and Selling Rights:

The Land Council to be able to lease land to any member of the Tasmanian Aboriginal Community, or an Aboriginal "corporate body" and also terminate leases without the consent of the Minister. If there was more than one applicant for a lease the Land Council would decide between them. (The Land Council would decide who was a member of the Tasmanian Aboriginal community but there is no record of an Aboriginal "corporate body" being defined).

5. Finance:

- Funds for the Land Council to be provided by State Parliament. No amount or formula for determining an amount was agreed upon but the CAO recommended that the Council be paid a yearly sum equal to five per cent of land tax for 20 years.
- The Council could take part in any business venture to further the interests of Aborigines if three-quarters of the Council approved.
- All Council members to agree before Council could take part in a business partnership with another person or body.
- Council could use money to support Aboriginal business ventures approved by Council to assist Aboriginal housing.
- Council could borrow money but loans over \$5,000 would need the Minister's approval.

If this Bill had been passed it would have given Tasmanian Aborigines lands rights comparable to those of the Pitjanjatjara people of South Australia and with the proposals of the NSW Select Committee on Aboriginal Land Rights.

PURCHASE OF LAND

In the absence of any Land Rights legislation in Tasmania a meeting in 1978 of the Aboriginal Land Fund Commission (ALFC) (which is now the Aboriginal Development Commission (ADC)) gave priority to purchases of land for Tasmanian Aborigines.

The following have since been bought:

- Trefoil Island (off the north-west tip of Tasmania) which is one of the best mutton-bird islands in Tasmania.
- 20 hectares on Cape Barren Island used as a market garden.
- A small block in Launceston.
- Chalmers Hall, Launceston, as a multi-purpose building for the use of the TAC.

Prepared for the Aboriginal Treaty Committee by Mildred Kirk with advice from Dr C.D. Rowley and Dr D.E. Barwick.

For a wider understanding of Aboriginal Land Rights, contact:

Aboriginal Treaty Committee, P.O. Box 1242, Canberra City, ACT, 2601. Telephone (062) 470648.

Aboriginal Treaty Committee Papers

AIATSIS Library, MS 1867 Box 22, Items 193-199

“Land Rights In Tasmania”, pamphlet prepared for the
Aboriginal Treaty Committee by Mildred Kirk.

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