Tasmanian National Parks Association

An independent Voice for Tasmania's Parks

Comments on Aboriginal Lands Amendment Bill consultation draft

Introduction

In our earlier submission on proposed changes to the *Aboriginal Lands Act 1995*, the Tasmanian National Parks Association Inc. (the ***TNPA***) stated that:

> "The TNPA accepts the view in the pathway report [*Pathway to Truth-Telling and Treaty: Report to Premier Peter Gutwein* by Professors Warner and McCormack and Ms Fauve Kurnadi] that legislation is needed for Aboriginal protected areas …
>
> "Reserved lands cannot sensibly be identified for transfer under the *Aboriginal Lands Act 1995* until the essential features of legislation for Aboriginal protected areas are settled (including its relationship with existing provisions of the *Nature Conservation Act 2002* and the *National Parks and Reserves Management Act 2002* for reserved land and its management).

The TNPA believes that the return of reserved land[i] to Aboriginal people for management under appropriate legislation for Aboriginal protected areas affords an opportunity to achieve a dual benefit:

a) improving the wellbeing of Aboriginal people by involving them meaningfully in the management of the land; and

b) improving the management of the land for conservation purposes.[ii]

The consultation draft misses this opportunity (see below), even though it proposes to enable reserved land to be declared Aboriginal land under the *Aboriginal Lands Act 1995*.

Terms used in these comments that have a particular meaning in the *National Parks and Reserves Management Act 2002* have the same meaning in these comments, unless indicated otherwise (either in the body of these comments or the endnotes).

Missing the opportunity to achieve the dual benefit

The TNPA believes that the consultation draft misses the opportunity to achieve the dual benefit mentioned above. This is because the TNPA believes that, under the *Aboriginal Lands Act 1995* (with amendments proposed in the consultation draft), the *Nature Conservation Act 2002* and the *National Parks and Reserves Management Act 2002*, either:

a) Aboriginal people will not be meaningfully involved in management of reserved land declared to be Aboriginal land; or

b) the land will not be managed for conservation purposes.

Postal address: GPO Box 2188, Hobart Tasmania 7001
Email: info@tnpa.org.au • Web: www.tnpa.org.au

The TNPA acknowledges the First Nation peoples of lutruwita (Tasmania) and their enduring connection to country. We pay our respects to their elders past and present. We also acknowledge that their land was taken, and sovereignty was not ceded.

Lack of meaningful involvement of Aboriginal people

If Crown land[iii] that is reserved land is declared to be Aboriginal land, it will continue to be reserved land, unless it ceases to be reserved land under section 21 of the *Nature Conservation Act 2002*.[iv]

Under subsection 29(1) of the *National Parks and Reserves Management Act 2002*, the Director of National Parks and Wildlife is, by default, the managing authority for reserved land.[v] The option for orders under section 29 of that Act to declare other bodies to be managing authorities for reserved land seems unlikely to ensure meaningful involvement of Aboriginal people (especially through the Aboriginal Land Council of Tasmania, which would be the land owner) in managing the land.[vi]

Under subsection 20(2) of the *National Parks and Reserves Management Act 2002*, the Director of National Parks and Wildlife has the duty of drafting management plans for reserved land. Section 25 of the Act allows the Minister to affect the content of draft management plans submitted for approval.

The consultation draft proposes that management plans prepared under the *National Parks and Reserves Management Act 2002* override management plans under section 32 of the *Aboriginal Lands Act 1995*.

Land not managed for conservation purposes

The TNPA notes the similarities between the parliamentary processes proposed for the declaration of land to be Aboriginal land and those processes required under section 21 of the *Nature Conservation Act 2002* for land to cease to be reserved land. It is therefore conceivable that the Government will act administratively to link the processes, or at least run them in parallel, so that land ceases to be reserved land around the time it is declared to be Aboriginal land.

If this happens, there is nothing in the *Aboriginal Lands Act 1995* to provide for the land to be managed for conservation purposes. Although there may be overlap between the function of the Aboriginal Land Council of Tasmania "to use and sustainably manage Aboriginal land and its natural resources for the benefit of all Aboriginal persons" and management of the land for conservation purposes, that function is narrower than managing the land for those purposes. Therefore the legislation provides no basis for confidence that the values of the land that were recognised by it having been made reserved land will continue to be protected.

Even if land does not cease to be reserved land around the time it becomes Aboriginal land, it will cease to be Crown land when it becomes Aboriginal land, so some of the provisions protecting reserved land and its values from commercial activities will cease to apply.[vii]

Leased reserves will not achieve the dual benefit

The TNPA does not believe that the option of leased reserves[viii] of Aboriginal land that was reserved land before being declared Aboriginal land will achieve the dual benefit described above. The TNPA notes that, because of subsection 15(2) of the *Nature Conservation Act 2002*, leased reserves are national parks, State reserves, nature reserves, game reserves or historic sites for the purposes of that Act and the *National Parks and Reserves Management Act 2002* (while the lease is in force). Therefore all the limitations described above on meaningful involvement of Aboriginal people in management of the reserves will apply, subject only to whatever provision for that involvement could be made in the lease and have effect despite the rest of Part 3 of the *National Parks and Reserves Management Act 2002* because of paragraph 58(a) of that Act. The TNPA believes that it is not at all clear what such provision could achieve (especially given that that paragraph seems aimed at disposition and

creation of interests in land, rather than matters such as management and planning), and that it is desirable (for reasons of transparency) for legislation to deal clearly with this matter, given the interactions with extensive and complex provisions in that Part.

It appears to the TNPA that the generally understood concept of leased reserves (outside the *National Parks and Reserves Management Act 2002*) is based on examples such as the Uluru – Kata Tjuta National Park in the Northern Territory where the traditional owners have leased their land to the Commonwealth Director of National Parks to be jointly managed as a national park. In this case the joint management arrangements are defined in legislation to achieve both Aboriginal land management objectives and conservation outcomes. As explained above, this will not be replicated in Tasmania without far more extensive legislative changes than those currently proposed, such as the legislation for Aboriginal protected areas recommended in the *Pathway to Truth-Telling and Treaty* report.

Other matters

It is not clear what the point of proposed new section 27A of the *Aboriginal Lands Act 1995* is, given that it provides for the making of guidelines to be optional and the consultation draft does not contain any provisions that attach any legal significance to guidelines under that section. This suggests that the inclusion of the section is a mere public relations exercise to try to make people believe that their views, expressed in consultation, on general policy (embodied in the guidelines) relating to the declaration of Crown land as Aboriginal land will be taken into account, although there is no legal requirement for doing so.

The TNPA believes that the requirement in proposed new section 27B of the *Aboriginal Lands Act 1995* for consultation on draft declarations of particular Crown land as Aboriginal land should be retained in the Aboriginal Lands Amendment Bill introduced into Parliament. Paragraph (6)(a) of that section does at least allow the Minister to "amend the draft … to respond to matters raised as part of the consultation".

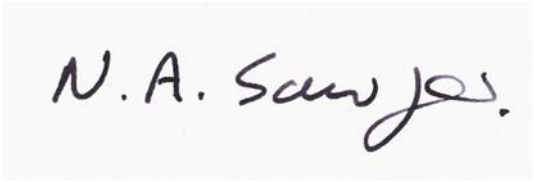
Conclusion

The consultation draft misses the opportunity to achieve the dual benefit mentioned above.

Appropriate legislation for Aboriginal protected areas needs to be developed (as recommended in the *Pathway to Truth-Telling and Treaty* report) before reserved lands are declared to be Aboriginal lands, so that reserved land can be returned to Aboriginal people in a way that both:

a) improves the wellbeing of Aboriginal people by involving them meaningfully in the management of the land; and

b) improves the management of the land for conservation purposes.



Nicholas Sawyer, President, TNPA

18 September 2023

Endnotes

[i] The term "reserved land" is defined in subsection 3(1) of the *National Parks and Reserves Management Act 2002* and subsection 3(1) of the *Nature Conservation Act 2002*.

[ii] The term "conservation purpose" is defined in subsection 3(1) of the *National Parks and Reserves Management Act 2002*. In these comments, the term is used only with the meaning given by paragraph (a) of that definition, i.e. a purpose specified in column 3 of Schedule 1 to the *Nature Conservation Act 2002* as a purpose for which land may be reserved.

[iii] The term "Crown land" is defined in subsection 3(1) of the *National Parks and Reserves Management Act 2002*.

[iv] See subsection 11(5) of the *Nature Conservation Act 2002*.

[v] The TNPA believes that the exceptions in subsection 29(1) of the *National Parks and Reserves Management Act 2002* are unlikely to apply, for various reasons. First, the TNPA believes that the Aboriginal Land Council of Tasmania is not a public authority, even though it is a body corporate established by an enactment. Secondly, the TNPA believes that it is unlikely that the Council will agree to Aboriginal land becoming a private sanctuary or private nature reserve, given that the Director of National Parks and Wildlife is responsible for drafting management plans for private sanctuaries and private nature reserves. Further, for private nature reserves, the conservation purpose does not cover cultural values of the reserves and subsections 19(9), (10) and (11) of that Act undermine the effect of subsection 19(8) making the land owner's agreement a condition for approval of a management plan.

[vi] The TNPA believes that the Aboriginal Land Council of Tasmania is not a prescribed body that could be declared the managing authority under subsection 29(2) of the *National Parks and Reserves Management Act 2002* (because the Council is not a public authority and has limited purposes that could not properly be regarded as "primarily conservation purposes"). Also, the TNPA notes that that subsection is not relevant to national parks or nature reserves. The TNPA believes that declaration of a Conservation Management Trust as managing authority for reserved land under subsection 29(3) of that Act does not ensure meaningful Aboriginal involvement in management of that reserved land, as the composition of the Trust is uncertain and dependent on the Minister's views and the Trust can be abolished by the Minister at any time (under section 34 of that Act). Further, a Conservation Management Trust may only be the managing authority for limited classes of reserved land (see subsection 31(2) of that Act).

[vii] For example, subsection 38(1) of the *National Parks and Reserves Management Act 2002*.

[viii] The term "leased reserve" is defined in subsection 3(1) of the *National Parks and Reserves Management Act 2002* and subsection 3(1) of the *Nature Conservation Act 2002*.