



**THE SENATE
SENATE FINANCE AND PUBLIC ADMINISTRATION
REFERENCES COMMITTEE**

**Inquiry into the Commonwealth funding of Indigenous Tasmanians
Public Hearing – Wednesday 16 November 2016
Question Taken on Notice – Ms Sculthorpe**

1. HANSARD, Pages 6-7

CHAIR: Senator Lambie, you were interested to understand on how many occasions and for how many people Ms Sculthorpe's organisation had made a communication to the Tasmanian Electoral Commission?

Senator LAMBIE: That is right. This is for the Tasmanian Aboriginal land council, because, obviously, the AEC comes to the TAC and they say whether they are of Aboriginal descent.

Ms Sculthorpe: I just told you that is not right, but I think I know what you mean. That is incorrect—what you said.

Senator LAMBIE: What is the correct way? Obviously the AEC goes to somebody. What body does it go to?

Ms Sculthorpe: For a start, the AEC is not the Tasmanian Electoral Commission.

Senator LAMBIE: Sorry, I mean the TEC—the Tasmanian Electoral Commission.

Ms Sculthorpe: The Tasmanian Electoral Commissioner oversees the elections for the statutory Aboriginal Land Council of Tasmania—the ALCT. The Tasmanian Electoral Commissioner establishes advisory committees. I do not know how he chooses the individuals, but he does not come to us to ask us.

Senator LAMBIE: So none of those people who belong with the TAC that go into those advisory committees are yours?

Ms Sculthorpe: We do not put them there. I cannot remember who was on it. I can remember some names who had nothing to do with the centre, but, if they are members, we do not put them there.

Senator LAMBIE: Are they members of TAC?

Ms Sculthorpe: Everyone is a member of the TAC if they are an Aboriginal person.

Senator LAMBIE: So they are the same ones that decide whether—okay, that is what I wanted to know.

Ms Sculthorpe: That is a misrepresentation.

Answer to Question:

The Tasmanian Electoral Commission has never come to the TAC about membership of their advisory committee nor about eligibility to vote in elections for the statutory Aboriginal Land Council of Tasmania. There is a process by which objections can be made to the enrolment of people listed on a provisional roll.

In the 2005/06 ALCT elections, TAC objected to 226 names. I believe an Advisory Committee then considered the objections made by us and by anyone else and made recommendations to the Electoral Commissioner who rejected the objections made to 41 people. The remaining people were then written to again by the Electoral Commissioner inviting any further reasons why the objections should be rejected. Thereafter, five (5) more objections were rejected. Presumably therefore, at least 180 objections were upheld by the Electoral Commissioner.

Our understanding is that there was a delay in the next elections due to an appeal to the Supreme Court by a person whose enrolment had been rejected by the Electoral Commissioner.

For the 2011 ALCT elections a TAC staff member lodged objections to 24 names on the roll. By letter of 2 December 2011 the Electoral Commissioner advised that his Review Committee had confirmed 23 of those people were not known to be Aboriginal people and that one person was so known. By notice in accordance with section 10 (5) of the Aboriginal Lands Act 1995, the Electoral Commissioner advised on 13 December 2011 that he had accepted the objections to those remaining 23 names.

As far as we can ascertain, there was only one objection in the 2014/15 ALCT election.

All the members of the Electoral Commissioner's advisory committees have been Aboriginal people known to this organisation but it is incorrect to call them "ours".

Tasmanian Aboriginal Centre Inc.
Ms Heather Sculthorpe, Chief Executive Officer

TAC

1. Can you explain why the federal government recognises 26,000 Tasmanians as indigenous – while the Tasmanian state government only recognised about 6,000 Tasmanians as indigenous – how did this discrimination work its way into Tasmania’s indigenous affairs?

The Bureau of Census and Statistics estimates of the Aboriginal and Torres Strait Islander population of Tasmania range from 7,000 in 1986, through 14,000 in 1996, to 16,000 in 2006 with a 48% increase to 24,000 in 2011 as shown in the chart on page 3 of the TAC submission. An Inquiry examining expenditure over a decade might therefore use 16,000 population as its starting point. There is no mechanism by which the federal government could “recognise” those people as the Census is self-identification only. There is no discrimination involved.

2. So under the Tasmanian law’s - as they stood for many years – unless the TAC recognised someone as indigenous – then those people seeking indigenous recognition in Tasmania - had no hope of being recognised as indigenous Tasmanians?

That is factually incorrect.

3. How long has this state of affairs existed in Tasmania – where the state law gave TAC extraordinary power over Tasmanians seeking indigenous recognition- who changed the law to allow TAC to be so powerful?

Factually incorrect. In addition, the TAC has always derived its mandate from the Aboriginal community and not from State law.

4. The indigenous affairs Minister recently told me that - when it came to the \$500M Premier Hodgman said that Tasmania had received from the federal government for indigenous people in his Australia Day speech – ... the federal indigenous affairs minister didn’t know where the Premier got the \$500M figure from – do you think that the Minister was lying to me?

I have no idea if any Minister was lying to you.

5. Do you know how much federal government funding was given to the state of Tasmania over the last 10 years for investment in Tasmanian indigenous affairs – was it \$500m – was it less or more?

TAC does not know. We are accountable for the money received by this organisation and we are aware there has been an ever-increasing amount of federal Aboriginal Affairs funds given to non-Aboriginal organisations and to organisations purporting to be Aboriginal organisations but with minority Aboriginal membership.

6. Did TAC get all that money?

No. Please refer to the TAC submission for the amounts received.

7. Would you expect the TAC to have a say in how that federal money earmarked for indigenous people is spent – given you claim TAC is the only group which represents all legitimate Tasmanian indigenous people?

TAC has no say in how federal money is spent. There has been no direct Aboriginal involvement in decision making of that kind since ATSIC was abolished in 2005.

8. Are you aware of a Tasmanian group called Circular Head Aboriginal Corporation or CHAC?

Yes, by repute.

9. Do you think that the people who run and are members of CHAC – are as they claim legitimately indigenous Tasmanians – and if not why not?

CHAC has a very small minority of members who are Tasmanian Aboriginal people. The reasons for that belief are set out in our submission to the Inquiry. In summary, the vast majority of them are not known to the Aboriginal community in this small State as being Aboriginal, as local histories of the area demonstrate they were not known to the broader community as being Aboriginal for nearly all of the State's history, and the family trees of those we

have seen and those seen by the Archives Office of Tasmania show convict ancestors with no recognisable Aboriginal ancestors since that time.

10. How many people who are members and clients of CHAC are falsely claiming to be indigenous Tasmanians (there's about 40 full time and part time workers servicing the Circular Heads community and surrounds ?)

We understand most, if not all, CHAC services are provided to all residents of Circular Head who seek to use those services and their membership lists show many members who do not reside in Tasmania. As an organisation registered with ORIC there is no obligation on them to have 100% Aboriginal membership, staff, or clients. We are also led to believe that cards certifying to Aboriginality are available to individuals upon payment of a fee.

11. I'd like you to consider the example of a Tasmanian man Lesley Dick who a Commonwealth Administrative Appeals Tribunal in 2002 made a judgment that said he was a person of Aboriginal race
TAC disagreed with that ruling of the Commonwealth Administrative Appeals Tribunal – didn't it?

Yes.

12. Isn't it a fact that because Lesley Dick was not recognised by the TAC as an indigenous Tasmanian – even though a federal tribunal on the 18th October found the opposite - Mr Lesly Dick was prevented by Tasmanian electoral laws from standing for election to an indigenous body?

Factually incorrect.

13. Isn't it a fact that there were hundreds of Tasmanians - who were found by the same federal Tribunal - made up of Justice Garry Downes, President, Deputy President Stephen Estcourt QC and Deputy President Don Muller - to be of Aboriginal race – but the TAC refused to recognise as indigenous – and therefore discriminated against?

No. The AAT decision related to eligibility to vote in ATSIC elections. The decision related to under 130 people rather than the hundreds now claimed.

TAC decisions have no bearing on that question and vice versa. TAC has not refused to recognise hundreds of Tasmanians.

14. Can you explain why TAC thought that Justice Garry Downes and his Tribunal colleagues would try and deliberately mislead Tasmanians and cause so much heartache and racial discrimination?

We have never said we believe the AAT members deliberately tried to mislead Tasmanians. Our objections to the AAT process followed in that case are briefly set out in our submission to the Inquiry at pages 5, 6 and top 7. It was not a full consideration of all the issues as it could not have been in the circumstances in which it was decided. There was no mention in the AAT decision when describing the appearance of ancestors in photos or when considering stories about racial discrimination of the fact that there were around 500 non-Aboriginal people of colour in the colony of Van Diemens Land before 1850 for example: see historian Dr Cassandra Pybus, *Manalargenna's Daughters* 2000.

15. Did TAC ever make any official complaints or appeals against the Tribunal's findings?

No. It is unclear who we would complain to.

16. (if No) Why not – we had a respected federal tribunal of fact in 2002- that at the very least were saying TAC got it horribly wrong – and at the worst were liars and deliberately discriminating
Against 100's of indigenous Tasmanians?

This question misunderstands the nature of AAT proceedings and misrepresents the findings of the AAT.

17. Just so that it's clear for this Senate Committee – yes or no - Do you believe that those hundreds of rulings by the federal tribunal in 2002 making determinations on the Aboriginality of Tasmanians were correct – and should be respected?

No. See our submission and our answers to questions 13 and 14 above.

18. So along with CHAC members - and the hundreds of Tasmanians like Lesley Dick who were recognised as indigenous Tasmanians by a federal tribunal, and myself who you don't recognise as

being indigenous – ... what's the total number of Tasmanians who TAC say are fraudulently claiming to be indigenous – is it a couple of thousand, 5000 or 20,000?

We have no way of knowing how many people are misled into falsely finding an Aboriginal ancestor whose name and cultural affiliations they are unable to read correctly and who hence expose our whole community to public ridicule; nor how many others are deliberately and hence fraudently claiming an ancestry they do not have; nor how many might be relying on distant ancestry without any cultural affiliation to the Aboriginal community today. We'd be surprised if it were to be as high as 20,000 given that under 20,000 nominated themselves as Indigenous in the last available Census figures. In summary, some are simply mistaken about their ancestry and unfortunately have fervently come to believe they have Aboriginal ancestors when they do not whereas others have opportunistically concocted false 'family stories' which are incapable of independent verification.

19. I guess what I'm asking you – is now that we've got up to date figures – are you saying that 20,000 Tasmanian are fraudulently claiming to be indigenous – because they fail TAC's test of Aboriginality?

No.

20. If that's the case – it's the largest case of attempted fraud in Australia's history – what are you going to do about it? Are you going to lay charges with the federal police?

The question misunderstands the nature of Australia's criminal law system.

21. Are you going to take civil action – bearing in mind you will have to overturn at least a couple of hundred cases that the federal tribunal in 2002 had oversight of?

No; and factually incorrect.

22. Who will pay for that legal action – will it be your organisation – which is funded by the Tax payers?

No legal action is currently contemplated.

23. I'd like to turn to the government funding TAC receives from the Government – I know you've submitted financial statements – but can you just give a brief overview of the government funds you receive broken down into state and federal funds?

Already answered in our submission to the Inquiry on page 8.

24. Approximately - How much money – has TAC received from the tax payers in the last decade?

As above at page 8.

25. Were TAC ever the subject of independent financial audits – to verify those audits ?

TAC is subject to independent audits annually as are all government funded organisations; as well as extra audits by other auditors as required from time to time, most recently by the Attorney General George Brandis.

26. Were TAC ever the subject of any police or other law enforcement investigations ?

No.

27. I'll just go back to your answer – so over the last ten years you've received (insert figure \$X) – and you spent \$X on about 6,000 for the last ten years?

Factually incorrect (as well as lacking detail). Our submission shows we have provided services to well over that number of individuals directly as well as providing services which benefit the whole community. We have not had an electronic client management system such as 'Penelope' used by some large counselling organisations for example as our much wider range of services and programs including cultural groups and land management activities do not easily lend themselves to the counting of individual beneficiaries.

28. That means that (if \$100M) those 6000 people have received over 10 years on average \$16, 666 -... has that money closed the gap between indigenous and non-indigenous mortality?

False premise to the question. The gap is smaller in Tasmania than in most other Australian jurisdictions. TAC is one small player in a much larger group of service providers including both federal and state governments.

29. What is the gap for your 6000 TAC indigenous people?

False premise to the question. Additionally, we are not funded to undertake that level of detailed and sophisticated analysis. Nor could any one specific organisation accurately estimate that outcome given that closing the gap requires a whole of community approach.

30. Is it greater or less than Mainland average? Is it closing or getting bigger?

Tasmanian figures are towards the lower end of the scale.

31. I understand that the Mansell Family, including Michael play an important role in TAC – can you explain that role?

The question seems quite irrelevant to the subject matter of the Inquiry. Michael Mansell has no role in the TAC at present other than as a member. As a large Aboriginal family in Tasmania, many would be active TAC members as are many other Aboriginal families.

32. I also understand from media reports that members of the Mansell Family made a controversial trip in the late 1980's to visit terrorist leader Libyan president Colonel Gaddafi – what did the terrorist leader teach TAC about the management of Tasmanian indigenous affairs?

False premise to the question as well as irrelevant to the Inquiry. The trip is a matter of public record.

33. Who paid for the trip – was it tax payer funds?

No.

34. Its reported at the time that Michael Mansell called for “revolutionary help” for Australian aboriginals – was that true?

Unknown but little ‘revolutionary help’ was forthcoming although the delegation was threatened by the then Prime Minister with a charge of treason at a time when Australia was openly getting money from its sale of live sheep to Libya.

35. Can you give a guarantee that no Australian taxpayers money given to TAC ever found its way to funding terrorists?

Yes. A ‘forensic audit’ ordered by then Aboriginal Affairs Minister Clyde Holding carried out at that time found no wrongful use of grant funding.

36. There have been serious allegations by whistle blowers that I have referred to the PM and federal police that TAC had close associations with outlaw motor cycle gangs – is that true?

We have had no such enquiries from the PM nor from the federal police. It is true we are aware that you have made such allegations on numerous occasions but those allegations have not been “serious” nor from genuine “whistle blowers”. The evidence relied on for the accusation seems to be a photo of the writer at an Invasion Day rally at Parliament House in Hobart from the front page of The Mercury newspaper where bikers appeared also in the photo.

37. Are TAC members and or their families associated with known outlaw motor cycle gangs?

Not that we know of. If there are 26,000 Aborigines in Tasmania, we cannot be expected to know the private affiliations of all of them. The question was addressed in my explanation to the Senate when defamatory allegations were first made under parliamentary privilege.