

The Tasmanian Government has negotiated draft legislation to establish a statutory land council with the promise to also give land. At the moment, Aborigines want Cape Barren Island, mutton bird islands, Rocky Cape and other small sites. For the Government's part, it wants to be more limited in terms of lands returned.

Another sticking point is the rights to go with land returned. Aborigines expect rights to forests and waters, wildlife and minerals to flow with the title, and not to pay rates and taxes on the land. These issues are difficult for governments at the best of times, and are apparently causing some agonising within Liberal circles in Tasmania. It may well be that the process of negotiation, seen by Aborigines and government alike as a good thing, may break down on the question of rights to go with the title. A decision will be known by March, when the Bill is due to be introduced into the Tasmanian Parliament.

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ABORIGINAL HERITAGE

Protecting burial sites

An area of immense cultural significance is under threat at Lake Victoria. ANDREW CHALK examines.

Lake Victoria, in the far south west corner of New South Wales, contains the largest known Aboriginal burial site in Australia. Archaeologists who examined the site in 1994 estimate that the number of burials at the Lake is likely to be between 6000 and 18,000. Most of these are located in a group of islands along the Lake's southern edge. Naturally, the area is of immense cultural significance to its traditional owners, the Barkandji people, and is also recognised as having international archaeological significance, since it dwarfs even the largest pre-industrial burial sites in Europe, Asia and the Americas.

While it was always known that Lake Victoria was an important burial ground, the true extent of the burials only became apparent when the waters of the Lake, which are artificially held at maximum level, were lowered to enable work on the Lake's regulator. An inspection of the area which occurred when the Lake was empty revealed 268 burials exposed to the surface.

Studies commissioned by both the New South Wales Aboriginal Land Council (NSWALC) and the Murray Darling Basin Commission (MDBC) following the discovery of the burials revealed significant damage to the sites from wind and wave erosion associated with the regulation of Lake Victoria. The level of the Lake is controlled by the MDBC and is integral to the supply of water to South Australia. The land on which the burials occur, although within New South Wales, is vested in the State of South Australia.

In the latter half of 1994, Barkandji elders began campaigning for the protection of the area. They were concerned about both the physical damage occurring to the sites from

erosion as well as the desecration of the burials through their artificial inundation. Under the *National Parks and Wildlife Act 1974* (Cth), it is an offence for any person to knowingly permit the destruction, defacement or damage of a relic (which is defined to include Aboriginal remains) without first obtaining the consent of the Director-General of National Parks and Wildlife.

While the MDBC recognised the significance of the site and took prompt interim measures to help address some of the erosion problems, the measures were not regarded as sufficient by any of the parties to prevent further damage to the sites. Nor did the interim measures address the Aboriginal community's underlying concern about desecration to the burials through inundation. As the MDBC regarded the return of the Lake to full supply levels as essential, particularly given the drought conditions affecting much of the Basin, it applied to the Director-General on 19 October 1994 for consent to continue its normal operation of the Lake despite the likelihood that it would result in the further destruction of burials.

In late October 1994, the NSWALC commenced proceedings in the Land and Environment Court against the Director-General as well as the MDBC. NSWALC took this action after the Director-General informed the Land Council that she had received legal advice from the Crown Solicitor that she was obliged to grant any application lodged by the MDBC for consent to destroy the burials in connection with its operations under the Murray Darling Basin Agreement. The Agreement is an inter-government agreement between the Commonwealth, New South Wales, South Australia and Victoria (and now also Queensland) to ensure an equitable allocation of the waters from the rivers of the Murray Darling system.

In the proceedings, NSWALC sought declarations that the Director-General was obliged to exercise her independent discretion in deciding any application from the MDBC for consent to destroy burials and was not duty bound to give her consent to such an application. NSWALC also sought an injunction preventing the MDBC from raising the level of Lake Victoria above a height of 26.5m AHD, which was considered by both the Director-General and NSWALC's geomorphological experts to be the maximum height at which the Lake could be operated without damage to burials in an area known as Snake Island.

NSWALC's application was granted expedition by the Court on 31 October 1994, and the proceedings for the declarations were heard by His Honour, Mr Justice Bignold, on 25 November 1994. The hearing of the remainder of the application seeking an injunction against the MDBC was deferred by consent to a date in March to allow the MDBC sufficient time to prepare its case and on the basis that the normal operation of the Lake would see the levels fall significantly over the summer months.

On 25 November, His Honour granted the amended declarations sought by NSWALC. In particular, he declared 'that it was open at law under section 90 of the *National Parks and Wildlife Act 1974* to refuse an application for consent to destroy or damage Aboriginal relics at Lake Victoria notwithstanding Clause 56 of the Murray-Darling Basin Agreement contained in Schedule 1 to the Murray-Darling Basin Act, 1992'. His Honour also ordered the Director-General to pay NSWALC's costs.

The hearing of NSWALC's application for an injunction against the MDBC has been deferred to May 1995 following

an undertaking to the Court by the MDBC not to raise the level of the lake above 26.5 metres before 30 June 1995. In the interim, the MDBC has lodged a report on the environmental effects of refilling the lake with the Director-General in support of its application for a consent to destroy burials. Outside the litigation, the parties have been involved in discussions aimed at achieving a long-term resolution of this very important and complex matter.

Andrew Chalk is a Sydney lawyer.

ABORIGINAL CHILDREN

'They took the children away'

TONY BUTI discusses a project to redress some of the harm caused by removal of Aboriginal children from their families.

Until late 1960 in Western Australia it was common practice for Aboriginal children to be removed from their families by police and welfare officers. Statutes such as the *Aborigines Act 1895* (WA) and the *Native Welfare Act 1954* (WA) gave State authorities control over all Aborigines. The removal of Aboriginal children from their parents was an attempt to assimilate children of 'mixed Aboriginal blood' into the 'white' community. In 1937, *The Telegraph* (Brisbane, 5.5.37) reported:

Mr Neville [Chief Protector of Aborigines in Western Australia] holds the view that within one hundred years the pure black will be extinct. But the half-caste problem was increasing every year. Therefore their idea was to keep the pure blacks segregated and absorb the half-castes into the white population. Sixty years ago, he said, there were over 60,000 full-blooded natives in Western Australia. Today there are only 20,000. In time there would be none. Perhaps it would take one hundred years, perhaps longer, but the race was dying. The pure-blooded Aboriginal was not a quick breeder. On the other hand the half-caste was. In Western Australia there were half-caste families of twenty and upwards. That showed the magnitude of the problem.

In order to secure this complete segregation of the children of pure blacks, and preventing them ever getting a taste of camp life, the children were left with their mothers until they were but two years old. After that they were taken from their mother and reared in accordance with white ideas.

In Western Australia Aboriginal children were readily removed from their families and placed in missions, which were usually controlled by various 'Christian' churches. Some children were also fostered out to 'white' families. Some were adopted out without the consent of their parents.

The Aboriginal Legal Service of WA (Inc.) is currently involved in collecting information from Aborigines who were removed from their families. The information gathered will form the basis of a submission to be made to the State Government and possibly the Federal Government urging remedies for people who suffered as a result of successive governments policies of removing Aboriginal children from their families. The data collected may also lead to legal proceedings being commenced.

Stories

Well over 100 stories have been collected over a very short period of time. It is perfectly clear that past government policy in regard to Aboriginal people has had a long lasting effect. Most people interviewed still carry deep psychological and emotional scars from the trauma of being removed from their families, being brought up in an uncaring missionary or foster family environment, and being denied experience of their Aboriginal culture. The following three stories are illustrative of the consequences of the removal policies. The persons referred to gave the Aboriginal Legal Service permission to publish their stories but asked that their identity be kept confidential.

'X'

'X' was removed from her mother at the age of two. For the next 16 years she lived in a number of foster homes. At only one of these homes was there even the slightest affection shown by the foster parents, but she stayed there for less than a year. From the day she was taken away at the age of two she never again saw her mother alive. She was not informed of her mother's death until six or seven months after it occurred. When she reached adulthood she obtained her Native Welfare file. It contained a number of letters written by her mother to the Department of Native Welfare requesting that her mother be able to visit her and also that her mother be allowed to take her back. The Department of Native Welfare had refused her mother's pleas. 'X' has been undergoing comprehensive psychiatric treatment for a number of years. She has attempted suicide numerous times. X relayed to the author that she feels that she has never been loved by anyone and doesn't know where to turn. To make things worse she has also lost custody of her three children.

'Y'

'Y' was two years of age when she and her seven siblings were removed from their parents and sent to a mission. She stayed at the mission until she was 15 years of age. Whilst at the mission she was subjected to severe sexual abuse by a teenage son of a staff member. This sexual abuse occurred from the age of five until the age of eight. 'Y' has been unable to tell anyone about this sexual abuse. Even now she feels confused about what happened and feels that she hates herself. She has been unable to reform a close relationship with her parents and it is only recently that she has been able to feel comfortable with her Aboriginal culture.

'Z'

'Z's mother was only 13 years of age when she had 'Z'. She was placed under great pressure to give him up to the 'authorities'. She succumbed to the pressure and at the age of two 'Z' was adopted by a 'white family'. Shortly after, the family returned to their overseas home land. Whilst growing up overseas 'Z' was subjected to racial abuse and taunts and was called names like 'nigger', and 'coon'. He had no idea he was different from the other children he was growing up with and it was not until he was ten years of age that his adoptive parents told him that he was Aboriginal. He reacted very negatively to this information as he was unsure what it meant and further he thought that he should be back in Australia. By the age of 13 he was drinking regularly and was getting into constant trouble at school. About a year after his return to Perth he travelled up north to visit his mother and family. He felt alienated from his mother's way of life and culture and became very depressed. Since his return to