



YOORROOK

for Transformation

Third Interim Report
Volume 2



Cover photo: Scar Tree, Wotjobaluk Country.
Courtesy Uncle Jim Berg, Gunditjmara Elder.

The scarred Trees are a witness to a way of life, and freedom for People to roam at will throughout their own Country. They are a reminder of the past, and they are linked to all Trees. Take the memory of these scarred Trees with you forever. Share their story with your family.

UNCLE JIM BERG, GUNDITJMARA ELDER

From ‘Silent Witness – A window to the past’:
A personal collection of Scar Trees images and poems by Uncle Jim Berg, Gunditjmara Elder.

With tears on
the landscape
and scars on our
heart, our truth
needs to be told.¹

AUNTY JILL GALLAGHER

Published by order, or under the authority, of the
Parliament of Victoria, June 2025.

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Content warning

Please be aware that this report touches on sensitive material that may be distressing. Some chapters contain graphic descriptions and strong language. It touches on topics such as violence and massacres, systemic injustices against First Peoples including assimilation and protectionist policies, and the separation of families and policies of child removal, abuse within institutions, deaths in custody and healthcare settings, devastation of Country, desecration of cultural heritage and theft of Ancestor remains.

The report occasionally draws on historical sources which use antiquated racist language to refer to First Peoples and racist depictions of First Peoples.

The report may contain references to self-harm and suicide.

The report contains stories and mention of First Peoples who have passed away.

We suggest readers consider their wellbeing before, during and after reading. If you are distressed by material in this report, or if you or a loved one require support, there are services to support you.

Services and Supports

In the case of an emergency (000).

Below are a series of support services that may be useful. Further support services, including for specialist services by area, are available on the [Yoorrook website](#).

13 Yarn

The first national crisis support line for mob who are feeling overwhelmed or having difficulty coping. They offer a confidential one-on-one yarning opportunity with a Lifeline-trained Aboriginal & Torres Strait Islander Crisis Supporter.

Hours: 24/7

Phone: 13 92 76

Email: enquiries@13yarn.org.au

www.13yarn.org.au

First Peoples' Health and Wellbeing

First Peoples' Health and Wellbeing is an Aboriginal community controlled health service aiming to improve access to affordable primary health care in urban Melbourne. Clinics are located in Thomastown and Frankston, and online appointments are available.

Hours: Mon-Thurs 9:00am to 5:00pm, Fri 9:00am to 1:00pm

Email: info@fphw.org.au

www.firstpeopleshealthandwellbeing.org.au

Yarning SafeNStrong

The Victorian Aboriginal Health Service (VAHS) have established a free and confidential 24/7 counselling service for Aboriginal and Torres Strait Islander Peoples. Yarning SafeNStrong is available to people and families who need to have a yarn with someone about their wellbeing.

Hours: 24/7

Phone: 1800 959 563

Email: ysns@vahs.org.au

www.vahs.org.au/yarning-safenstrong

Part D

Land injustice

Colonisation decimated First Peoples in Victoria.

A pre-colonisation First Peoples population¹ of **60,000** was reduced to **15,000**² by the time the colony was founded in 1851, as a result of **violence and colonist-introduced diseases**.³

Massacres deeply impacted the population.

50 massacres were reported in Victoria between 1830 and 1859 in which at least **978** Aboriginal people were killed.⁴ **At least seven** recorded massacres involved ‘agents of the State’ (e.g. Police, Government Surveyors).⁵

The state continues to withhold stolen land from First Peoples.

The state of Victoria currently holds approximately **8.8 million hectares of land**.⁶ Of the **1,265,937** hectares committed to be returned in Aboriginal title, only **59,075** have been returned to date.⁷

The State denies First Peoples the wealth generated from water.

As of 2022, Victoria’s First Peoples directly held less than **0.2%** of all water access rights in Victoria.⁸ The State has received a total of **\$83bn** in water-related revenue between 2010 and 2023.⁹ **None of this revenue has been distributed to Traditional Owners**.¹⁰

The State denies First Peoples the wealth generated from natural resources.

From 2010 to 2023, the State received more than **\$1bn** in royalties for mineral, stone and petroleum resources.¹¹ And more than **\$1.89bn** in revenue from grazing and government land licenses.¹² **None of this revenue has been distributed to Traditional Owners**.¹³

Land injustice timeline

A note on massacres:

This timeline does not seek to cover all recorded massacres. It focuses on events that were directly supported, or led by, colonial officials, or that were reported to authorities. The Colonial Frontier Massacre Map produced by Newcastle University is a more detailed resource about the many frontier massacres that occurred between 1788 and 1930.¹⁴

1770
Lieutenant James Cook claimed the east coast of Australia for Britain and named it New South Wales.¹⁵ He failed to follow the secret instructions given to him by the British Admiralty, as he did not get consent to claim possession, despite recording the land was inhabited.¹⁶

1788
The arrival of the First Fleet at Sydney Cove in 1788 marked the beginning of invasion.¹⁷

1802
Lieutenant John Murray sighted Port Phillip and claimed the district for the British Crown.¹⁸ Captain Matthew Flinders surveyed Port Phillip.¹⁹

1803
Convict settlement established at Sullivan Bay (near present day Sorrento).²⁰ Evacuated in 1804 due to Bunurong / Boon Wurrung resistance and lack of water.²¹

1824
Hamilton Hume and William Hovell explored the ‘Western Port’ in southern Victoria and their positive reports, coupled with concerns about French interest in the area, led to further exploration.²²

1825
NSW Mounted Police established after the resistance by the Wiradjuri (Wiradyuri) people during the Bathurst War, based on the Irish model.²³

1826
Failed Western Port settlement: British Government’s second attempt to establish a convict settlement in Port Phillip Bay. Expedition party including William Hovell mistakenly arrived at Western Port (near present day Corinella) in December 1826. Settlement abandoned in 1828.²⁴

1829
Governor Darling declared the ‘limits of location’ an area roughly 400 kilometres from the centre of Sydney beyond which no-one could graze their herds or stock. This and subsequent ineffective attempts were ignored by colonisers who profited and faced little repercussion from colonial authorities. These colonisers were known as squatters.²⁵

1834
Convincing Ground massacre. An estimated 20 Kilcarer gundidj people were massacred by whalers in reprisal for taking a whale.²⁶ First permanent settlement on First Peoples’ land, waters, and sky in the area now known as Victoria. Henty brothers illegally invaded Gunditjmarra Country in Portland Bay, beyond the areas approved and overseen by colonial authorities.²⁷ This begins the devastation of First People’s Country across present day Victoria. Eumeralla Wars (approximately from 1830s – 1860s), a series of battles for Country between the Gunditjmarra and colonisers between present day Port Fairy and Portland.²⁸

1835
In March 1835 the Aborigines Select Committee was adopted by the House of Commons. It was led by Thomas Fowell Buxton.²⁹

Kulin Country was invaded. John Batman surveyed the future site of Naarm/Melbourne on behalf of the Port Phillip Association. He signed two treaties with Kulin Elders for land around Melbourne and Geelong.³⁰ On 26th August 1835 Governor Richard Bourke dismissed the treaties as invalid and maintained the position of *terra nullius*, reinforcing it was the British Crown that had the sole right to buy and sell land through a formal proclamation.³¹ In October John Pascoe Fawkner invaded Kulin Country, despite Bourke’s proclamation.³²

1836
Port Phillip declared a legal settlement leading to the ‘squattling rush’.³³

An estimated 177 colonisers and 800 First Peoples lived in the area designated the Port Phillip District.³⁴

Recognising the Colonial Government could not stop squatters, Governor Bourke introduced ‘squattling licences’³⁵ (a 10-pound annual licence permitting squatters to reside beyond the limits of location).³⁶

Captain William Lonsdale appointed Police Magistrate of the Port Phillip District and given responsibility for the ‘protection of Aborigines [sic]’ and sale of land.³⁷

Mount Cottrell massacre:

An estimated 10 Wathaurong people were killed by colonisers in reprisal for the death of two shepherds. Captain Lonsdale was instructed to investigate the incident by the Colonial Secretary in Sydney but no charges were laid for the massacre.³⁸

NSW Surveyor-General Major Thomas Mitchell set out to trace the course of the Murray River and travelled south-west, naming the western plains ‘Australia felix’ (happy south land).³⁹ During this expedition Mitchell led the Mount Dispersion massacre.⁴⁰

Massacres along the overland route between Gadigal/Sydney and Naarm/Melbourne (also known as the ‘South Road’ wars) commence until 1840.⁴¹

1837
Robert Hoddle completes the first plan for the town of Melbourne (the Hoddle Grid).⁴²

First sale of Crown land held on 1 June 1837 (allotments on Wurundjeri and Bunurong / Boon Wurrung in Melbourne and Williamstown auctioned).⁴³

Native Police established by Captain Alexander Maconochie to address First Peoples ‘severe suffering and eventual disappearance.’ He considered the routine and structure of the Corps would work to assimilate Aboriginal people ‘a knowledge of and taste for European manners and civilisation might be thus extensively yet silently implanted’.⁴⁴

Report of the Parliamentary Select Committee on Aborigines [sic] (‘Buxton report’) recommends Government assume responsibility for the protection of ‘the natives’ which led to the establishment of the Aboriginal Protectorate in 1839.⁴⁵

6 Taungurung people killed by colonisers in a massacre at Pyalong Station.⁴⁶

1838

On 7 April 1838 ten stockmen overlanding cattle to the Port Phillip District for William and George Faithfull set up camp at the Broken River near present day Benalla after shooting at and possibly killing an unknown number of people at the Ovens River. Broken River was an important ceremonial site and Yorta Yorta meeting place. On 7 April the Faithfull Massacre occurred, in which eight colonial shepherds were killed. This massacre was in direct response to the earlier killing of Yorta Yorta people at the Ovens River.⁴⁷

13 Dja Dja Wurrung people murdered in a massacre by colonisers at Darlington Station.⁴⁸

Governor Bourke establishes armed Mounted Police in Port Phillip.⁴⁹

1839

Port Phillip Aboriginal Protectorate established (abolished in 1849) to ‘protect’ First Peoples and oversee establishment of reserves.⁵⁰ George Augustus Robinson appointed ‘Chief Protector’.⁵¹ By 1841, stations existed at Narre Narre Warren, the Goulburn River, Mount Rouse and Franklindon on the Loddon River.⁵²

1839
Campaspe River massacre:

An estimated 40 Dja Dja Wurrung people massacred by a group of police, squatters and stockmen (allegedly in reprisal for the theft of a sheep and killing of two men).⁵³

35 Djargurd Wurrung or Keeray-Woorroong or Wirngilgnad dhalinanong people murdered by colonisers in the Emu Creek massacre.⁵⁴

Border Police established.⁵⁵ Murray River wars (until about 1848)⁵⁶ Mounted Border Police attempt to control squatters’ expansion into vast tracts of Country.⁵⁷

1840

Angus McMillan invaded what is present day Gippsland (from Monaro to Gunaikurnai Country) paving the way for violent colonisation of this Country.⁵⁸

Superintendent La Trobe instructed Protectors to remove Aboriginal people from Naarm/Melbourne by any means.⁵⁹ NSW divided into three districts and fixed price land sales introduced in Port Philip.⁶⁰

10 Djabwurrung people massacred by colonisers at the Grampians.⁶¹

15 Gunaikurnai (Tatungalung or Braiakaulung) people murdered by colonisers in the Boney Point massacre in Gippsland.⁶²

1842
Caramut Station massacre:⁶³

On 24 February colonisers killed six Aboriginal people (Woiwurrung or Djab Wurrung) by shooting them while they were asleep. No charges were laid.

On 20 January two Palawa people, Tunnerminnerwait and Maulboyheenner, were executed by hanging in Naarm/Melbourne. They were convicted of murdering two whale hunters. Thousands of settlers attended the hanging.⁶⁴

The Native Police Corps are re-established under the command of Sir Henry Dana (Captain Dana).⁶⁵

Wurundjeri people, other Kulin Nation people and the Native Police defy the Protectors and move to Merri Creek, resulting in a protectorate being developed there.⁶⁶

1843
Grazing licenses introduced to regulate the rush of land squatting and to preserve the rights of the Crown to the lands.⁶⁷

125 Brataualung people killed in the Warrigal Creek group of massacres perpetrated by colonisers in the month of July.⁶⁸

On 6 August 1843, 20 Aboriginal people (Djab Wurrung or Nundadjali) were killed by colonisers at Victoria, led by Captain Dana of the Native Police.⁶⁹

Between 1-6 September 1843, nine Aboriginal people (Dhauwurd-Wurrung) were killed by the Native police while searching for lost sheep at Fitzroy River.⁷⁰

In September 1843, nine Aboriginal people (Dhauwurd-Wurrung or Wullunwurrung) were killed by colonisers and the Native police at Crawford River in retaliation for stolen sheep.⁷¹

In November 1843, six Aboriginal people (Nundadjali or Mardidjali) were killed by Native police on the Glenelg River.⁷²

1844
The Melbourne Town Council directed Town Police to enforce the 1839 Dog Act (NSW) to kill First Peoples’ dogs. They also ordered the Chief Protector to tell First Peoples their dogs would be killed when found within ‘the limits of the Town’. This practice continued for the next few years.⁷³

1845
By 1845 less than 240 male Europeans colonists held all of the pastoral leases then issued.⁷⁴

1846

Orbost River massacre:

20 December 1846, approximately 50 Aboriginal people (Tatungalung or Krauatungulung people) were killed by a group of settlers and Native police in a dawn raid in response to a rumor that a white woman had survived a shipwreck and was being held by the Gunaikurnai.⁷⁵

1847

City of Melbourne proclaimed.⁷⁶

Superintendent La Trobe authorised to reserve land for public purposes including towns, gardens, reserves, water and minerals.⁷⁷

The Supreme Court of NSW asserts sovereign possession and declared that ‘the waste lands of this colony are, and ever have been from the time of its settlement in 1788, in the Crown; that they are and ever have been, from that date ... in the Sovereign’s possession; and that, as his or her property, they have been and may now be effectually granted, to subjects of the Crown’.⁷⁸

1848

British Secretary of State Earl Grey writes to the NSW Governor Fitzroy arguing that leases granted for pastoral occupation were not intended to deprive Aboriginal people of their right to hunt or wander over these districts.⁷⁹

1849

Victoria formally mapped and surveyed, divided into counties and parishes. The Colonial Government starts to record the sale and transfer of land.⁸⁰

Port Phillip Protectorate dissolved as recommended by the 1849 Select Committee on the Aborigines which complained of the cost of the protectorate found the protectorate had failed ‘achieve any of its objectives’.⁸¹

1850

Establishment of the ‘Guardian of Aborigines’ following dismantling of Protectorate system covering Wurundjeri and Bunurong / Boon Wurrung Country.⁸²

1850

The *Australian Colonies Government Act 1850* (UK) established Victoria as a separate colony (officially took effect 1 July 1851).⁸³ Great Britain retained control of Crown lands until introduction of the *Victoria Constitution Act 1855* (UK).

1851

Gold discovered in Ballarat leading to a gold rush,⁸⁴ population growth and increased demand for and destruction of land, and the rapid accumulation of colonial wealth. Christians started establishing missions: Moravians (German Protestant Church) established a mission at Lake Boga (south-east of Swan Hill) in 1851 and the Anglicans began a mission at Yelta in 1855.⁸⁵

1853

Increased demand for land leads to re-division of 640 acre lots into smaller sizes.⁸⁶

Native Police Corps disbanded.⁸⁷

Victoria Police Force established.⁸⁸

1855

Victoria Constitution Act 1855 (UK) established a colonial government in Victoria.

The new Colonial Government started exploring methods to reclaim land from squatters so it could be allocated to settlers who had moved to Victoria to find gold.⁸⁹

1856

Between 1856 and 1860, approximately 850,000 acres of land in Victoria was surveyed annually. This included surveys for settlements, roads, goldfields, telegraph, railway and tramway surveys.⁹⁰

1858

Traditional Owners lobby the Colonial Government for land on their Country.

e.g. Acheron Station (1859/60), Coranderrk (1863-1950), Lake Tyers (1863-1971), Framlingham (1861-1971).⁹¹

1858

Concern over declining numbers of First Peoples resulted in the appointment of a Select Committee of Victorian members of Parliament. The Committee recommended that the best solution was to move First Peoples to reserves where they were supposed to receive Colonial Government and missionary support.⁹² This led to the establishment of the Board for the Protection of Aborigines (‘the Central Board’) in 1860.⁹³

1859

Acheron Station established. Wurundjeri man Simon Wonga approached William Thomas with some Taungurung men asking for land on the upper Goulburn to ‘be set aside’ so they could ‘sit down, plant corn, potatoes’, resulting in the establishment of Acheron station. Considerable work was put into cultivating the land but after a year the Colonial Government ordered residents to relocate to Mohican station, an area unsuitable for farming.⁹⁴

Ebenezer Mission established on Wotjobaluk Country (also known as Lake Hindmarsh). It was closed in 1904.⁹⁵

An Act for the Protection of the Fisheries of Victoria is passed which regulated colonisers’ fishing rights. There was no recognition of First Peoples fishing rights.

1860

By 1860, approximately 4.5 million acres or about 8 per cent of the total area of the colony had been sold.⁹⁶ Between 1860 and 1862 nearly six million acres were made available for sale and around two million acres alienated to private landowners.⁹⁷

The Board for the Protection of Aborigines (‘the Central Board’) established. The Board established reserves and a rationing scheme to supply First Peoples outside of reserves (operated until 1904).⁹⁸ By 1863 there were seven reserves and 23 camping places and ration depots. The Colonial Government did not trust First Peoples to manage and control their own Country – these sites were instead held in trust.⁹⁹

By 1860 the settler population had grown from 76,000 in 1850 to 538,000.¹⁰⁰

1860

The Sale of Crown Lands Act 1860 (Vic) was passed which divided three million acres of rural land into allotments for farmers to purchase. This was the first Colonial Government legislation for the purpose of regulating the sale and occupation of Crown lands in Victoria. The Act provided for the reservation of land.¹⁰¹

1861

Site for Framlingham Aboriginal Station gazette by the Colonial Government. In 1865 the Church of England Mission Committee seek to occupy Framlingham, but quickly cede it to the Central Board. In 1867, the Board attempted to relocate residents to Lake Condah and close Framlingham. Residents resisted the move, returning to Framlingham. In 1869 deputation of Framlingham residents visit the Board to ask for Framlingham to be reopened which the Board did.¹⁰²

Lake Tyers mission established at a site called Bung-Yarnda by Gunaikurnai people.¹⁰³

1862

Land Act 1862 (Vic) (Duffy Act) was passed which made 10 million acres available to selectors.¹⁰⁴

Ramahyuck Mission established through a collaboration of German Moravian missionaries and Presbyterians in Gunaikurnai Country at a known massacre site named ‘Boney point’.¹⁰⁵

On 2 October 1862 the Torrens title system of recording and registering land ownership was introduced in Victoria by the *Real Property Act 1862* (Vic).¹⁰⁶

1863

Coranderrk Mission established.¹⁰⁷ Having been removed from Acheron Station, Taungurung people joined Wurundjeri people at Coranderrk (Badger Creek). On 30 June 1863, the Colonial Government set aside 931 hectares of land at Coranderrk.¹⁰⁸

1865

The *Amending Land Act 1865* (Vic) (known as the First Grant Act) was passed. This made changes to the purchase of land allowing land to be leased for three to seven years in return for the lessee making improvements to the value of the land. After three years the land could be purchased.¹⁰⁹

1867

Lake Condah Mission established on Gunditjmara Country by the Board for Protection of the Aborigines [sic] (BPA) to be supervised by the Church of England mission committee.¹¹⁰

1869

The Colonial Government passed the *Aboriginal Protection Act 1869* (Vic) introducing comprehensive regulations to control the lives of Aboriginal people including where they live.¹¹¹

The Colonial Government passed the *Land Act 1869* (Vic) which made land across the whole colony available for selection and purchase.¹¹² It resulted in the settlement of the Gippsland and Wimmera regions and the establishment of Victoria’s agricultural industry.

1877

Royal Commission on the Aborigines [sic] appointed to consider the conditions of First Peoples and ‘the best means of caring for and dealing with them in the future’. The report recommended the reserve system be retained.¹¹³

The 1877 census estimated there were approximately 1067 Aboriginal people in the colony, 486 living on a mission or reserve.¹¹⁴

1881

The Colonial Government reserved approximately 280 water courses for public purposes.¹¹⁵

Maloga Petition:

Residents (including William Cooper) petitioned NSW Governor for grants of land to support themselves and families. This was ignored but after the move to Cummeragunja some families were granted blocks to farm. The NSW Aborigines Protection Board revoked these blocks by 1907, lying about block mismanagement to then lease them to white farmers to increase its own ailing funds.¹¹⁶

William Barak a Woi Wurrung ngurungaeta (leader) marched a delegation of men from Coranderrk over 60 kilometers to Melbourne to protest the closure of Coranderrk, call for the abolition of the Board and autonomy in running Coranderrk.¹¹⁷

1883

The Mallee Pastoral Leases Act 1883 (Vic) divided Mallee Country into large blocks ranging from 50 to 500 square miles, with each block being divided into two sections. Under this Act a lease could be granted on one section, with an obligation to occupy the other section for five years subject to the requirement that the tenant clear rabbits from the land within three years. The Act also provided for the division of land on the Mallee Border ranging from 500 acres to 2000 acres, to be made available for lease for a term of 20 years.¹¹⁸

1884

The Colonial Government passed the *Land Act 1884* (Vic) dividing the remaining unalienated land in Victoria into eight different categories and for each category established whether the land could be leased, licensed or sold.¹¹⁹

Coranderrk Station made a permanent reserve.¹²⁰

1885

The Victorian Royal Commission on Land Titles and Surveys was appointed to investigate complaints relating to difficulties and delays in procuring and passing titles through the Titles office, and discrepancies between surveys and titles.¹²¹

1886

The *Aborigines Protection Act 1886* (Vic) changed the definition of Aboriginality and created two legal categories ‘full bloods’ and ‘half castes’. Aboriginal people of ‘mixed descent’ forced off reserves.¹²²

1889

Cooper v Stuart (1889) held New South Wales was effectively unoccupied at the time of British settlement (maintaining ‘terra nullius’).¹²³

1890

The Colonial Government passed the *Aborigines Act 1890* (Vic).

The BPA unanimously voted to close Framlingham Reserve as part of its policy to amalgamate reserves and missions. Because of resistance and campaigning by the residents, they were permitted to continue to live at the Framlingham site, after land was exclusively reserved for their use.¹²⁴

1893

The *Settlement of Lands Act 1893* (Vic) provided for the allocation of Crown lands for village communities, homestead associations and labour colonies and was intended to alleviate unemployment due to the 1890s Depression.¹²⁵

The Colonial Government cancelled 2400 acres of the Coranderrk reserve through the *Crown Lands Reserve Act 1893* (Vic) at the request of the Minister of Lands and Agriculture and in response to the *Settlement of Lands Act 1893* (Vic). Residents protested the decision despite BPA attempts to keep the land revocation quiet, but were unsuccessful.¹²⁶

1896

Surveying Board of Victoria established.¹²⁷

The *Mallee Act 1896* (Vic) amended the *Mallee Pastoral Leases Act 1883* (Vic) by allowing lessees of Mallee allotments to select not more than 640 acres each for purchase.¹²⁸

1898

The Colonial Government passed the *Land Act 1898* (Vic) which extended the number of Crown land classifications introduced by the *Land Act 1884* (Vic) and established the requirements for the sale, lease or licence of these categories of land.¹²⁹

1901

Commonwealth of Australia Constitution Act (Cth) came into effect on 1st January 1901.¹³⁰

Introduction of *Land Act 1901* (Vic) allowed the Governor to reserve land required for public purposes. Public purpose included ‘the use or benefit of [A]boriginal residents’.¹³¹

Victorian census recorded 653 First Peoples.

This low number reflected the Board’s ‘absorption policy’ and expulsion of many First Peoples of mixed parentage from reserves. The 1901 census count was a 39 per cent drop from the 1877 total of 1,067, tallied prior to the introduction of the *Aborigines Protection Act 1886*.¹³²

1902

Director of the National Museum of Victoria, Walter Baldwin Spencer, asked the Chief Commissioner of Police, Thomas O’Callaghan to request police to send ancestral remains found or reported to the police to the museum for ‘curation’. O’Callaghan agreed with the request. Whilst the museum had received remains of deceased First Peoples, since its beginning, it was under Spencer’s directorship collecting remains was actively pursued by Museum staff.¹³³

1904

Ebenezer mission closed and the land, except the cemetery, returned to the Victorians Lands Department to make available for selection.¹³⁴

The Victorian Government passed the *Closer Settlement Act 1904* (Vic) which provided for compulsory acquisition of land from freehold owners for subdivision into smaller blocks for sale (known as ‘closer settlement’). This scheme was intended to address the limited supply of land in Victoria.¹³⁵

1905

The Victorian Government passed the *Water Act 1905* (Vic) which established the State River and Water Supply Commission to coordinate and manage the State’s water. The Act vested all natural waters in the Crown.¹³⁶

1907

The Victorian Government passed the *Forests Act 1907* (Vic) establishing the State Forests Department.¹³⁷

1908

The BPA closed Ramahyuck Mission and the Lands Department took control of the site, subdividing it under the Closer Settlement Board. The cemetery was reserved. This was part of a long-term plan of the BPA to amalgamate residents of reserves and missions into one reserve.¹³⁸

Lake Tyers Mission, established in 1861 by the Church of England, was transferred to BPA control after the Board forced missionary John Bulmer’s retirement as manager.¹³⁹

1910

The Victorian Government passed the *Aborigines Act 1910* (Vic) which brought First Peoples of mixed parentage under BPA control again.¹⁴⁰

1911

The *Land Act 1911* (Vic) introduced provisions for tenants to select and purchase land after it had been leased for a 20-year term.¹⁴¹

1915

The Victorian Government passed the *Aborigines Act 1915* (Vic). This Act repealed the *Aborigines Protection Act 1890* and *Aborigines Act 1910* and codified biological definitions of Aboriginal identity by restoring the distinction between ‘half caste’ and ‘full blood’. Additional harsh controls were added through Regulations issued in 1916.¹⁴²

1917

Board discovered to have illegally sold part of the permanent reserve at Coranderrk (2,450 acres that had been permanently reserved had illegally been reduced to 1,780 acres).¹⁴³

The BPA committed to concentrate and compel all First Peoples to live at Lake Tyers. Residents at places such as Coranderrk and Lake Condah protested and refused to move.¹⁴⁴

The Victorian Government passed the *Discharged Soldier Settlement Act 1917* (Vic) which provided for the selling or leasing of freehold land, acquired compulsorily or by agreement, from its owners, or Crown land, to returned soldiers from World War I through a closer settlement scheme.¹⁴⁵

1918

Lake Condah Mission closed.

Gunditjmara people continued to live, be born at and use the site. In 1951 most of the site, except the cemetery, an access road and the mission buildings were taken by the Soldiers Settlement Commission.¹⁴⁶

1924

The BPA, with Victorian Government approval, closed Coranderrk to provide more land to soldiers. Residents protested leading to some continuing to live at Coranderrk, being given access to land deemed ‘poor’ and surplus to requirements.¹⁴⁷

1928

The Victorian Government passed the *Aborigines Act 1928* (Vic). This legislation allowed ‘half caste’ adults or their children to reside on a reserve if they applied for a licence.¹⁴⁸

1936

Housing Investigation and Slum Abolition Board established to address ‘slums’ in Fitzroy and Collingwood which led to the *Housing Act 1937* (Vic), the *Slum Reclamation Act 1938* (Vic) and to the establishment of the Housing Commission of Victoria in 1938.¹⁴⁹

1939

Cummeragunja Mission walk off, large numbers of residents dissatisfied with poor living conditions and unjust, harsh treatment at the Mission left.¹⁵⁰

1945

The Victorian Government passed the *Soldier Settlement Act 1945* (Vic) (starts operating in 1946) allowing the compulsory acquisition of land for soldier settlement.¹⁵¹

1948

Aside from the cemetery, the land at Coranderrk was sold for soldier settlement following WW2. The permanent status of the reserve was revoked by the *Coranderrk Lands Bill 1948* (Vic) which was passed on 6 July 1948.¹⁵²

Reserve land at Lake Condah was sold for soldier settlement aside from the land around the church.¹⁵³

1957

McLean Inquiry established December 1955:

Former magistrate Charles McLean was to advise on legislative reform, a definition of Aboriginality, whether the BPA as a separate form of administration for First Peoples should be kept and to investigate the living standards of First Peoples. Assimilationist ideas framed the terms of reference and McLean’s investigation and recommendations which were published in the *Report on the Operation of the Aborigines Act 1928* (the McLean Report). The outcome of the inquiry led to new legislation the *Aborigines Act 1957* (Vic) and abolition of the Board for the Protection of Aborigines [sic], to be replaced by the Aborigines Welfare Board.

McLean also recommended the sale of land at Lake Tyers.¹⁵⁴

The Victorian Government made assimilation its official policy.

1958

The Victorian Government passed the *Land Act 1958* (Vic). This legislation regulated the sale and occupation of Crown lands covering numerous matters including grants, licenses, permits, leases and watercourses. From 1958 to the present there have been no major changes to legislation dealing with the alienation of Crown land.¹⁵⁵

The Victorian Government passed the *Forests Act 1958* (Vic) which entrenched the modern era of industrial forestry, extending the State’s plantation program.¹⁵⁶

1959

The Victorian Government passed the *Aborigines (Houses) Act 1959* (Vic) which gave the Housing Commission of Victoria power to enter into contracts to build houses for Aboriginal people on behalf of the Aborigines Welfare Board.¹⁵⁷

1963

Pastor Doug Nicholls marched with Lake Tyers’ representatives and other First Peoples in Melbourne to protest the Victorian Government’s decision to close Lake Tyers.¹⁵⁸

1967

Referendum to change two sections of the Australian Constitution in relation to First Peoples. More than 90 per cent of the electorate voted ‘Yes’ to amend the constitution to allow the Commonwealth Government to make laws on the behalf of First Peoples and to count them in the census.¹⁵⁹

Aborigines Welfare Board abolished with the *Aboriginal Affairs Act 1967* (Vic) and Minister of Aboriginal Affairs and Aboriginal Advisory Council established.¹⁶⁰

1970

Aboriginal Lands Act 1970 (Vic) granted freehold title to residents of some former Victorian mission sites: Framlingham (583 acres) and Lake Tyers (4000 acres).¹⁶¹

1971

National Tribal Council issued claim for title to all reserves in Australia to be given to First Peoples and mining royalties and compensation for white colonisation, managed by trust and paid over 20 years.¹⁶²

1972

Aboriginal Tent Embassy established outside parliament House on Ngunnawal / Ngambri Country (Canberra)¹⁶³

The Victorian Government passed the *Archaeological and Aboriginal Relics Preservation Act 1972* (Vic) which was the first dedicated Aboriginal heritage legislation established to protect ‘relics’ and remains relating to Aboriginal occupation.¹⁶⁴

1974	Ministry for Aboriginal Affairs abolished by the <i>Aboriginal Affairs (Arrangements with the States) Act 1973</i> (Cth) and the <i>Aboriginal Affairs (Transfer of Functions) Act</i> (Vic). These Acts allowed the Commonwealth to assume legislative power for '[A]boriginal affairs' and undertake major responsibility for funding, while State departments and Ministers continued to provide health, housing, education, employment and welfare services for First Peoples. ¹⁶⁵
1975	The Victorian Government passed the <i>National Parks Act 1975</i> (Vic) and established a statutory basis for the protection, use and management of National and State Parks in Victoria. ¹⁶⁶
	Aboriginal Affairs Unit established to coordinate state policies and administer Victorian Government sponsorship of economic development and cultural initiatives. ¹⁶⁷
1978	The Victorian Government passed the <i>Crown Land (Reserves) Act 1978</i> (Vic) which reserved Crown land for various public purposes, areas of ecological significance and for public utilities. The Act provided for the management of public reserved lands through powers, licences, offences and penalties, including creating rights and responsibilities relating to taking firewood on Crown land. ¹⁶⁸
1979	Framlingham community blockaded Framlingham Forest to secure land rights. ¹⁶⁹
1980	High court case <i>Onus v Alcoa</i> . Sandra Onus and Christina Frankland challenged the proposed construction of an aluminium smelter which they argued would damage Gunditjmara cultural heritage. The case concerned whether the Gunditjmara had standing to bring the case under the <i>Archaeological and Aboriginal Relics Preservation Act 1972</i> (Vic). The High Court unanimously held that they did. ¹⁷⁰ In 1984 the Premier of Victoria, John Cain, wrote to the Gunditjmara to offer a deal in return for the withdrawal of the legal action against Alcoa. ¹⁷¹ This led to the transfer of the former Lake Condah Mission and cemetery in 1987 to the Gunditjmara under the <i>Aboriginal Land Lake Condah and Framlingham Forest Act</i> (Cth) (the Victorian Government tried to pass legislation but was unable to gain support from the Opposition and so worked with the Commonwealth Government to affect the transfer). ¹⁷²
	The Victorian Government introduced the <i>Alcoa (Portland Aluminium Smelter Act) 1980</i> (Vic) which exempted the smelter area from Victorian Aboriginal cultural heritage legislation (this Act remains in force today). ¹⁷³
1982	
	The Victorian Government established a Parliamentary Committee to report on compensation for the dispossession of Victorian Traditional Owners. ¹⁷⁴
	In 1984 the Committee recommended that the 'land rights issue' could not be resolved without providing compensation to Traditional Owners and proposed a minimum annual amount of \$5 million from Victorian and Federal Government revenue as compensation. ¹⁷⁵ The Victorian Government provided in principle support but proposals in the <i>Aboriginal Land Claims Bill 1983</i> (Vic) were not revived. ¹⁷⁶

1983	Victorian Government introduced the <i>Aboriginal Land Claims Bill 1983</i> (Vic) which intended that an Aboriginal Land Claims Tribunal would be set up to hear and make recommendations to the Victorian Government on claims by Victorian Traditional Owners to Crown land based on historical association, traditional rights and compensation for dispossession. ¹⁷⁷ An Aboriginal representative body was also to be appointed by the Victorian Government to assist claimants in the preparation of a claim. ¹⁷⁸ The Bill was introduced by former Premier John Cain but did not pass. ¹⁷⁹
1984	In <i>Berg v University of Melbourne</i> (Unreported, 18 June 1984) and <i>Berg v Museum of Victoria</i> [1984] VR 613, Jim Berg, inspector under the <i>Archaeological and Aboriginal Relics Preservation Act 1972</i> (Vic), successfully challenged the rights of the University of Melbourne and Museum of Victoria to have control of Aboriginal cultural remains. ¹⁸⁰
1987	
	<i>Commonwealth Aboriginal and Torres Strait Islander Heritage Protection (Amendment) Act 1987</i> (Cth) passed, increasing First Peoples' role in heritage protection. ¹⁸¹
1989	The Victorian Government passed the <i>Water Act 1989</i> (Vic). ¹⁸² The Act made no mention of First Peoples or Traditional Owners until 2019 when provisions for consideration of First Peoples' interests were introduced in relation to certain planning and decision-making actions.
1991	Victorian Government passed the <i>Aboriginal Lands Act 1991</i> (Vic) which granted freehold title over three First Peoples burial sites.

1992	<i>Mabo</i> and recognition of native title: The High Court recognised the Meriam people as the Traditional Owners of the Murray Islands, overturning the lie that at the time of colonisation Australia was terra nullius. ¹⁸³
1993	<i>Native Title Act 1993</i> (Cth) ('NTA').
1994	Introduction of <i>Land Titles Validation Act 1994</i> (Vic) to validate, in accordance with the NTA, past acts that are invalid because of the existence of native title; provide compensation rights for native title holders whose rights have been affected by past acts; and confirm certain existing rights. ¹⁸⁴
1998	Yorta Yorta Native Title litigated Native Title determination, where the Federal Court found that Native Title did not exist. ¹⁸⁵
2002	Decision of the High Court in <i>Members of the Yorta Yorta Aboriginal Community v Victoria</i> (2002) 214 CLR 422 majority upheld the decision of the Full Court of the Federal Court rejecting their native title claim. ¹⁸⁶
2004	Yorta Yorta co-operative management agreement signed. ¹⁸⁷
2005	Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagulk peoples Native Title determination (Federal Court ceremonial hearing). ¹⁸⁸
2006	
	Introduction of <i>Aboriginal Heritage Act 2006</i> (Vic).
2007	The Murray Lower Darling Rivers Indigenous Nations <i>Echuca Declaration</i> on First Nations' rights and aspirations for water including cultural flows. ¹⁸⁹
	Gunditjmara people Native Title consent determination. ¹⁹⁰
2009	Australia formally endorses the <i>United Nations Declaration on the Rights of Indigenous People</i> ('UNDRIP').
2010	The Victorian Government introduces <i>The Traditional Owner Settlement Act 2010</i> (Vic) ('TOSA') which provides an alternative framework to the federal native title system.
	Gunai/Kurnai Native Title consent determination ¹⁹¹ and Gunai/Kurnai recognition and settlement agreement signed (under TOSA). ¹⁹²
2011	Gunditjmara and Eastern Maar Peoples Native Title consent determination (Federal Court ceremonial hearing). ¹⁹³
2013	
	Dja Dja Wurrung people recognition and settlement agreement signed (under the TOSA). ¹⁹⁴

2018	Victorian Treaty Advancement Commission established and in 2018 commencement of <i>Advancing the Treaty Process with Aboriginal Victorians Act 2018</i> (Vic). Taungurung people recognition and settlement agreement signed (under TOSA, with variations to the agreement signed in 2020). ¹⁹⁵
2019	First Peoples' Assembly of Victoria established following elections by First Peoples. ¹⁹⁶
2022	Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagulk Peoples recognition and settlement agreement signed (under TOSA). ¹⁹⁷
	Treaty Negotiation Framework established by agreement between First Peoples' Assembly of Victoria and the State. ¹⁹⁸
2023	Eastern Maar people Native Title consent determination. ¹⁹⁹
2024	Eastern Maar people Native Title consent determination. ²⁰⁰

Endnotes

Key facts

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3. Richard Broome, *Aboriginal Victorians: A History since 1800* (Allen & Unwin, 2nd ed, 2024) 91–2; Len Smith et al, ‘Fractional Identities: The Political Arithmetic of Aboriginal Victorians’ (2008) 38(4) *Journal of Interdisciplinary History* 533, 535.

4. These figures reflect data from the Colonial Frontier Massacre project site list, as of 11 March 2025. The project defines a massacre as the murder of six or more undefended people in one operation and only records massacres supported by verifiable evidence. Yoorrook notes that the data is updated on a regular basis, which can lead to changes to the number of massacres and victims. The total number of massacres in Victoria recorded as of 11 March 2025 was 50, including 49 massacres where colonists were the aggressors, and one massacre where Aboriginal people were recorded as the aggressors against colonists, the ‘[Faithfull Massacre, Benalla](#)’ in 1838, and two recorded massacres of First Peoples by First Peoples: ‘[LaTrobe Valley](#)’ in 1840 and ‘[Tambo Crossing](#)’ in 1842.

The total number of Aboriginal people killed was 978, this includes one Aboriginal person who died at the ‘[Faithfull Massacre, Benalla](#)’, and 90 Aboriginal people who died at the ‘[LaTrobe Valley](#)’ 1840 and ‘[Tambo Crossing](#)’ 1842 massacres. The total number of recorded colonists killed in massacres in Victoria was 10, including eight killed at the ‘[Faithfull Massacre, Benalla](#)’ and two killed at the ‘[Apsley, Western Wimmera](#)’ massacre in 1854.

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11. Transcript of Minister Lily D’Ambrosio MP, 22 April 2024, 17 [6]–[9].

12. Transcript of Minister Steve Dimopoulos MP, 16 April 2024, 38 [15]–[23].

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Chapter 6: Country

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We have unbroken and undeniable bloodlines to our Country because we all have blood in the ground. That's our connection.¹

NGARRA MURRAY, CO-CHAIR OF FIRST PEOPLES' ASSEMBLY OF VICTORIA

Introduction

First Peoples' profound connection to Country is central to understanding the systemic injustices that persist in Victoria today. This connection, which colonisation violently disrupted, forms the foundation of First Peoples' identity, culture, and wellbeing. As Paul Paton (Gunnai, Monaro, Gunditjmara), CEO of the Federation of Victorian Traditional Owner Corporations (FVTOC), explained:

Land is life, land gives life, and land sustains life. Land is us and we are land. Land is central to what we call Country. Country is the land and the water and the skies and their many resources. Country is part of us and we are part of it. Country is our family, Country is our culture, our language, our customs and spiritual beliefs. Our traditional knowledge and teachings. Country is the plants and the animals, the birds and the fish and everything that makes up the intricate ecosystems that connect and sustain us every day. Country is a living entity with memory and consciousness. Our connection to Country flows from the past and influences the future. Our connection to Country gives us our identity, the Country is us, and we are Country.²

PAUL PATON

For First Peoples, Country embraces various elements: the physical landscape of land, sky and waters; resources; animals; and the deep spiritual connection between First Peoples and land. This connection is crucial for self-determination and underpins First Peoples' inherent collective rights (see Chapter 3: Self-determination and Chapter 4: Rights).

The State now known as Victoria has recognised the fundamental importance of First Peoples' connection to Country and that First Peoples have never ceded their sovereignty (see Chapter 2: Sovereignty).³ The Premier of Victoria the Hon Jacinta Allan MP acknowledged 'that sovereignty was never ceded, and that Traditional Owners' spiritual and ancestral ties to their lands and waters can never be extinguished'.⁴ Minister for Treaty and First Peoples the Hon Natalie Hutchins MP acknowledged that these ties to Country have driven First Peoples' long-running campaign for the return of land.⁵ However, significant barriers persist in connecting to and caring for Country. These barriers reflect ongoing systemic injustices rooted in the colonial theft of land and the State's continued denial of First Peoples' rights to Country.

Connection to Country is related to all other areas of Yoorrook's inquiry: self-determination, land justice, cultural heritage protection, health, education, housing and economic prosperity. Each of these depends on access to and connection with Country. Similarly, in *Yoorrook for Justice*, Yoorrook explored the importance of connection to Country and culture as a protective factor in the context of the child protection and criminal justice systems.⁶

This chapter examines the importance of Country to First Peoples and how systemic injustices have disrupted their connection to and care for land. It explores the ongoing impacts of these injustices on First Peoples' wellbeing and cultural obligations. By highlighting these issues, the chapter emphasises the urgent need for transformative reforms to address land injustice and uphold First Peoples' rights in Victoria, as set out in later chapters.

What Yoorrook heard

We use the word ‘country’ to describe actually a very broad range of concepts. Country is an English word, it doesn’t quite cover the entire thing ... it’s experiential. It can’t really be summarised with lines on a map...⁷

PARTICIPANT, NINDI-NGUJARN NGARIGO MONERO ROUNDTABLE

‘Country is the essence of who we are’

Country is the essence of who we are, Country is in our blood, and our blood is in this Country.⁸

NGARRA MURRAY, CO-CHAIR OF FIRST PEOPLES’ ASSEMBLY OF VICTORIA

Sources of connection: Ancestor spirits, creation stories, totems and songlines

For First Peoples, Ancestor spirits or creator beings made the landscape, animals and people from a formless land.⁹ Those Ancestors are still powerful and Country is alive with their power, particularly at sacred sites.¹⁰ Yoorrook heard about the power of Ancestors and ancestral beings. For example, roundtable participants described feeling connection to Country and Ancestors:

I found my safe place ... is actually putting my feet in the water and allowing the sand and the water to actually move through me ... when I put my feet in Country, I know that I’m in the same water and the same sand as my ancestors. Because it’s just shifting and changing.¹¹

PARTICIPANT, BOONWURRUNG LAND AND SEA COUNCIL ROUNDTABLE

Yoorrook heard evidence about how First Peoples are connected to Country and their Ancestors through creation stories.¹² There are different stories about how creation occurred.¹³ Some Victorian First Peoples describe how Bunjil (Bundjil), the wedge-tailed eagle, carved figures in bark, breathed life into them¹⁴ and created the land, waterways, all living creatures, laws and lore.¹⁵ Others tell the story of the creator being revealing himself in the Country from a volcano erupting with molten lava and stone.¹⁶ Some ancestral beings ‘are created by and dwell within water’.¹⁷ These stories have a consistent meaning: ‘[g]reat ancestors shaped and breathed life into the land and made it rich for the people’.¹⁸

Creation and Dreaming stories are the foundation of First Peoples’ lore and customs.¹⁹ Environmental Justice Australia explained:

Aboriginal peoples’ law, lore and cultural authority ... are commonly expressed in ontological and spiritual terms, by which features and elements of Country are ancestral beings and expressions of those beings’ existence and conduct. Lands and waters are inscribed with these characteristics. Law, lore and cultural authority emanate from these relationships and are often understood in non-indigenous terms as manifestations of ‘culture’ or ‘tradition’.²⁰

ENVIRONMENTAL JUSTICE AUSTRALIA

Professor Julie Andrews (Wurundjeri Woiwurrung, Yorta Yorta, Wiradjuri) told Yoorrook about the interconnectedness of creation stories, Country, culture and identity:

[C]reation stories are about birthing, and it’s about how life came to be, but we’re also connected to land and Country and animals as well. We have totems. So all these kind of connections to Country come from our birthing stories and what we have inherited from our ancestors ... our astronomy tells a story, and that they guide us while we are travelling as well. So all of that connection to our dreamtime stories for land and water is very important in the makeup of Aboriginal identity and culture as we know it here today.²¹

PROFESSOR JULIE ANDREWS

Dr Aunty Vicki Couzens (Keerray Wooroong Gunditjmara), Secretary of the Victorian Aboriginal Corporation for Languages, also explained:

So your name, your kinship, your totems, your clans tell you who you are and how you are related to each other, including the place or the tree or the bird or the animal, fish ... insect, grass, everything.²²

DR AUNTY VICKI COUZENS

Yoorrook heard how First Peoples are connected to Country and each other through totems (see box: The importance of totems).²³

THE IMPORTANCE OF TOTEMS

A totem can be any natural object, animal or plant that is linked to the cultural identity of First Peoples.²⁴ Totems come with cultural obligations, including the protection of the totem and guardianship of stories associated with it.²⁵

Often First Peoples have totems at the nation, clan, family and individual level.²⁶ For example, for many Kulin nations, clans are divided into halves or ‘moieties’ of either Bunjil (wedge-tailed eagle) or Waa (crow).²⁷ Other nation and clan totems include the long-necked turtle (Yorta Yorta people),²⁸ the red-tailed cockatoo (Wemba Wamba people),²⁹ and blue wren (Gunaikurnai people).³⁰

Uncle Larry Walsh (Daung Whurrung/Taungurung) told Yoorrook:

My totems and the animals that carry great significance to me and my family play dual roles for us. They act as messengers and storytellers, but we too have cultural obligations to them. To their ongoing existence, to their family’s ongoing existence, to the ongoing existence of their habitat, food sources and eco-systems they rely upon.³¹

UNCLE LARRY WALSH

Artist Mick Harding (Taungurung) explained the importance of totems:

[A]ll these kinds of different animals that are important spiritual beings from different parts of Victoria ... they are just not animals or birds, they are actually our spiritual beings ... they are these things that we are connected to in an ongoing storytelling sense, in an ongoing connection sense ... we tell stories with these things and we belong to these things, we understand our relationship to these things.³²

MICK HARDING

Uncle Robbie Thorpe (Krauatungalung Gunaikurnai), who also has the cultural name of Djuran Bunjilinee, explained the role of totems in governing First Peoples’ connections to Country as well as human relationships:

[W]e come from Country and there’s laws and ... totem relationships to the land that connect us to that place. Important part of who we are as well. So, it’s fundamental to know who you are, from Country.³³

UNCLE ROBBIE THORPE / DJURAN BUNJILINEE

The black duck is part of my tribe ... everyone across the Borun, which is the pelican, Bunjil, the eagle and Waang, crow, they’re all connections ... if you were one of these things you couldn’t marry back in. So it was an important part of our marriage systems.³⁴

UNCLE ROBBIE THORPE / DJURAN BUNJILINEE

Uncle Larry Walsh (Daung Whurrung/Taungurung) told Yoorrook about the importance of totems (see box: The importance of totems). Uncle Larry also discussed how ongoing colonisation and destruction of Country through logging, land clearing and controlling water flows threatens the survival of totems.³⁵ Uncle Larry explained:

I am a storyteller. And as a storyteller to protect and maintain the strength, knowledge and existence of creation we must ensure the animals that feature also survive. I am very worried the koala stories will one day disappear. For if they do my family will not speak of them anymore. I am particularly connected to Waa Crow and his family, to the Tawny Frogmouth, and to the goanna and their families.³⁶

UNCLE LARRY WALSH

For First Peoples, Country holds songlines — the connections between ‘sites of knowledge embodied in the features of the land’.³⁷ The Victorian Aboriginal Legal Service explained: ‘Country holds the songlines for 60000 years of the longest continuing cultures in the world’.³⁸ Professor Margo Neale (Gumbayngirr, Wiradjuri) has written about the role of songlines in keeping Indigenous knowledges and navigating the landscape:

As a set of complex arterial connections, the Songlines comprise an organic network of lines crisscrossing the continent along distributed nodes of concentrated knowledge, often referred to as sites of significance (places) and also known as story places. Like libraries, these sites contain stories in which knowledge is embedded.³⁹

PROFESSOR MARGO NEALE

Uncle Robbie Thorpe / Djuran Bunjilinee told Yoorrook that ‘We had an incredible system, our people, which was developed over thousands and thousands of years, and it stood the test of time’.⁴⁰

It is critical to understand that First Peoples’ connection to Country is not just to the physical landscape. It is a deep, continuous connection since time immemorial that links First Peoples to their knowledges, worldviews, identities, lore, language and culture today.

Country set the rules of First Peoples’ societies

Yoorrook heard that Country is the source of First Peoples’ customs, clan structures, lore and social rules. The Victorian Aboriginal Community Controlled Health Organisation (VACCHO) explained:

Country anchors us as people. Our knowledge and stories, culture, kin and ancestors are intrinsically tied to Country. The many seasons that we experience in Victoria are as much tied to the changing skies as is the way the tides pull the oceans in and out. That land holds our places of cultural and spiritual significance. Country holds our Lore. Country sets the rules of our societies.⁴¹

VICTORIAN ABORIGINAL COMMUNITY CONTROLLED HEALTH ORGANISATION

First Peoples’ customs, including language, ceremony, story, song, dance and art, arose out of each group’s unique relationship to their Country. First Peoples’ knowledges and customs guided how to sustainably care for the environment, and relationships between people and Country.⁴² Yoorrook heard that Victorian languages are central to land and people. When asked about the relationship between land and language, Dr Aunty Vicki Couzens said that language is the ‘voice of the land’ and that

language is central to everything ... it’s the repository. It holds all of our knowledges, our laws, our custom ... kinship networks ... language is across all parts of your life ... languages are developed from place ... It is the sounds of our Country. It’s the forms, the shapes and the actions that are the foundational building blocks of our language which come from the land.⁴³

DR AUNTY VICKI COUZENS

Co-Chair of the First Peoples’ Assembly of Victoria Ngarra Murray (Wamba Wamba, Yorta Yorta, Dhudhuroa, Jupagulk, Baraparapa, Wiradjuri, Dja Dja Wurrung) told Yoorrook how before colonisation, First Peoples lived and connected with Country:

Our Country was pristine and plentiful of resources and we lived in harmony with the lands and waters within our kinship structures and where the foundations of our relationships was based on our coexistence. We worked alongside and as part of our environments, connecting us to every part of the cosmos — that’s lands, waters, sky, stars, plants and our totems. We had ceremonies and songlines and trade with our neighbouring tribes. We came from ancient jurisdictions made up of tribal territories, laws, traditions, rules and values that were effective for thousands of years and [around] which tribes continue to adopt and collectively organise themselves.⁴⁴

NGARRA MURRAY, CO-CHAIR OF FIRST PEOPLES’ ASSEMBLY OF VICTORIA

Local clans or family groups are sub-groups of nations and the foundational land-owning units⁴⁵ of First Peoples’ societies. Before colonisation, there were 300 to 500 clan groups in Victoria.⁴⁶ Clans are tied to Country. For example, in relation to the Kulin Nations, anthropologist Diane Barwick has said:

clan membership was fixed at birth. Each person inherited clan (and moiety) membership from his or her father and retained that membership until death. The [clans] ... were stable units owning particular territories: their members’ sense of identity derived from their own recognition, and public acceptance, of their inherited responsibility for that land.⁴⁷

The McDonald family of Tae Rak (Lake Condah) explained how clans operated for the Gunditjmara:

Gunditjmara [clans] owned different estates, each estate containing a set of eel traps and associated structural complexes, including a village ... they were passed on to their descendants.⁴⁸

MCDONALD FAMILY OF TAE RAK (LAKE CONDAH)

Yoorrook heard that respected Elders guided clans through collective decision making.⁴⁹ Kinship and cultural and social bonds, including marriage, facilitated social and cultural exchange between different clans and nations.⁵⁰

Clans and nations engaged in trade and exchange of produce, goods and services along trade routes and songlines across Country⁵¹ (see Chapter 36: Economic prosperity).

PRE-COLONISATION TAUNGURUNG SOCIETY⁵²

Taungurung Land and Waters Council Aboriginal Corporation (Taungurung Land and Waters Council) told Yoorrook that Taungurung Country covers a vast and diverse area, including ‘snow-capped alpine country, grasslands, woodlands and river country’.⁵³ Taungurung society was made up of different clans (sometimes referred to as family group clusters of patrilineal).⁵⁴ Before colonisation, it is thought there were 12 to 13 Taungurung clans, each made up of around 120 people.⁵⁵

Taungurung Land and Waters Council explained the importance of totems and clans:

The other significant organising principle of Taungurung societies was ... moieties, whereby the entire society was divided into two halves — one [half] named for the eagle (bundjil) and the other for the crow (waa) ... two principal figures in Taungurung creation stories. Every clan was associated with one ... moiety ... either Bunjil or Waa.⁵⁶

TAUNGURUNG LAND AND WATERS COUNCIL

Taungurung Land and Waters Council further explained how moieties structured social life, including ceremonial activities and marriage arrangements:

[A]t times of ceremonial activity, when ritual groupings would often reflect moiety affiliation, with Bundjil people ... dancing or sitting together. The moieties were also important determinants of marriage arrangements ... a Taungurung person would always [marry a] partner in the other moiety ... Every marriage was a pairing of eagle and crow.⁵⁷

TAUNGURUNG LAND AND WATERS COUNCIL

Reflecting on the impact of colonisation, Taungurung Land and Waters Council said that prior to the 1830s

the Taungurung people enjoyed a rich life on their beautiful lands — country with an abundance of resources and with which they had both an intimate knowledge and a relationship that went far beyond the mere utilitarian and was essential to their sense of meaning. They engaged in ceremony; waged both war and peace with neighbouring groups; dug yams, fished, collected, and hunted; organised marriage and embraced a lively social intercourse ... Until the sky fell in, and their world changed.⁵⁸

TAUNGURUNG LAND AND WATERS COUNCIL

Yoorrook heard that despite the devastating impacts of colonisation (see Chapter 8: Impacts of Country being stolen), First Peoples’ cultures continue to be shared and developed in communities and on Country today. Yoorrook heard many stories about the ongoing power and strength of First Peoples’ customs and culture. For example, Dr Aunty Vicki Couzens described

I also do basket weaving. When I’m weaving, I think — this is an unbroken trajectory all the way back to I don’t know when. All my grandmothers are sitting there watching me.⁵⁹

DR AUNTY VICKI COUZENS

Yoorrook heard that Wil-im-ee Moor-ing (also spelt Wil-im-mee Moor-ing and Willam-ee moor-ing) / Mount William is an important cultural place for Wurundjeri people to connect with Country and Ancestors by continuing cultural practices including making greenstone axes, and viewing the surrounding Country, old trade and travel routes, and songlines.⁶⁰

Uncle Johnny Lovett (Gunditjmara, Boandik) described how connection to Country continues today:

[The] lands contained our spiritual connection to who we were and traditionally custom, lore, religion, spiritualism, language, song, dance, they were all part of our country and those things still live on in our country today, and they will live on after today.⁶¹

UNCLE JOHNNY LOVETT

Country and identity

For First Peoples, land is about belonging. It deeply connects with identity, community and culture. Yoorrook heard that First Peoples’ relationship with land is entirely different to Western relationships with land. For First Peoples, land is not a commodity or something that can be possessed or sold. VACCHO contrasted these two perspectives of Country and how Country is critical to First Peoples’ identity:

Rather than viewing Country, or land, as a physical environment, Aboriginal and Torres Strait Islander people consider Country as a deeply symbolic and spiritual place. The connection between person and Country reinforces Aboriginal and Torres Strait Islander peoples’ identity and sense of belonging.⁶²

VICTORIAN ABORIGINAL COMMUNITY CONTROLLED HEALTH ORGANISATION

First Peoples described to Yoorrook the centrality of Country. First Peoples described Country as home,⁶³ providing a sense of identity and belonging,⁶⁴ and providing protection and faith.⁶⁵ As VACCHO told Yoorrook, ‘the land is not just a physical space but a living entity with its own spirit and significance’.⁶⁶ Ngarra Murray in the First Peoples’ Assembly of Victoria submission said:

Our peoples’ relationship with land, water, animals, plants, the sky, and the stars, has been built over thousands of generations of our families, all of us here today, and that connects us to Country, our blood, spirit and place. We carry an intergenerational responsibility, to care and protect our Country and our families and communities that live on our Countries.⁶⁷

NGARRA MURRAY, CO-CHAIR OF FIRST PEOPLES’ ASSEMBLY OF VICTORIA

Country is critical to the ‘personhood’ and ‘Peoplehood’ of First Peoples. As Associate Professor Nikki Moodie (Gomerioi) said, ‘We are Country’.⁶⁸ Associate Professor Moodie illustrated how for First Peoples, culture is based on collective identity:

First Nations societies are made up of groups of people connected by language, institutions, politics, economics and culture but defined by their connection to land. Indigenous societies developed from land-based rules to manage ecological fragility and social relations.⁶⁹

ASSOCIATE PROFESSOR NIKKI MOODIE

Forcibly removing people from their lands, separating families, preventing language from being spoken and culture from being practised are all acts of colonial violence. These acts are part of a deliberate strategy to deny the Peoplehood of First Peoples, their sovereignty and collective rights to land.⁷⁰ Associate Professor Moodie described how settler–colonialism attempted to remove First Peoples from Country and from each other.⁷¹

Our societies were complex and thriving. We had legal systems, economic and political systems. We had language, education, healthcare and knowledge systems. All these systems come from the land ...

They took our land and tried to destroy our families, language groups and nations ...

We have an obligation to care for Country so that our languages, law/lore, lives and livelihoods continue to come from land, to heal ourselves and to heal Country. Our right to do so is being denied, and our rights will continue to be denied unless we walk new ways forward together.⁷²

ASSOCIATE PROFESSOR NIKKI MOODIE

This loss of personhood and Peoplehood was reflected in submissions to Yoorrook that spoke about how First Peoples’ Ancestors and culture are constituted in the land itself. Uncle Brendan Kennedy (Tati Tati) told Yoorrook how the very existence of the Tati Tati people depends on living on and connecting with their Country.⁷³ Dr Aunty Vicki Couzens explained that, beyond a connection to Country in the material sense, First Peoples come from, and are part of Country:

We don’t have a connection to the Country. We are from, we belong in and we are of Country.⁷⁴

DR AUNTY VICKI COUZENS

Similarly, an anonymous submission to Yoorrook, reflected on the centrality of Country to their sense of self:

Country is the centre of my being. Without country I am lost.⁷⁵

ANONYMOUS 559

Understanding and accepting First Peoples’ connection to and responsibility for Country is necessary for transformation and reform. As FVTOC explained:

The realisation of land justice for First Peoples is dependent on a firm understanding of and respect for First Peoples’ worldview.⁷⁶

FEDERATION OF VICTORIAN TRADITIONAL OWNER CORPORATIONS

Responsibility to care for Country

First Peoples have been caring for Country for tens of thousands of years

The relationship or connection between First Peoples and Country ‘is characterised by a deep sense of respect, responsibility and reciprocity’.⁷⁷ This is often described as custodianship and caring for Country.⁷⁸ For example, Ngarra Murray said:

Country is both our heritage and our responsibility. We are its custodians. We sing for Country, we dance for Country. When Country is sick, we are sick. Damage to Country affects us on many levels. We feel today past impacts on Country and what we do today will impact Country for generations to come.⁷⁹

NGARRA MURRAY, CO-CHAIR OF FIRST PEOPLES’ ASSEMBLY OF VICTORIA

Associate Professor Katherine Ellinghaus told Yoorrook that historical records show that the British and early colonisers recognised that there were complex systems in place in First Peoples societies, such as land management, agriculture (including animal husbandry) and aquaculture.⁸⁰ Emeritus Professor Richard Broome said that First Peoples developed and managed their local landscapes, including through fire, creating templates across Country that influenced and controlled the movement of animals.⁸¹

It was a sophisticated system that worked. It was sustainable over many thousands of years. And, therefore, like any other culture, it adapted to its unique environments and created ... a great tradition.⁸²

PROFESSOR RICHARD BROOME

Ngarra Murray told Yoorrook that when the British arrived, they noted how well cared for the lands were.⁸³ Professor Broome told Yoorrook that Surveyor-General Thomas Mitchell ‘was astonished at the pasture land which had been created by Aboriginal fire stick farming’ during travels in northern Victoria in 1836.⁸⁴ The Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation noted in their submission that their lands were ‘not natural parklands, but culturally created, managed landscapes, the result of countless generations of firestick farming’.⁸⁵ Chapter 7: How colonisers stole Country further explores how colonisers exploited the land First Peoples cared for.

Caring for Country is a continuing practice

This close connection and responsibility to care for land is often described as ‘Caring for Country’ and is based in the traditional knowledge and teachings, laws, customs, culture, ceremony, and ways of life that First Peoples people have inherited from their ancestors.⁸⁶

FEDERATION OF VICTORIAN TRADITIONAL OWNER CORPORATIONS

Caring for Country encompasses a wide range of activities and practices, including land management, natural resource management and cultural heritage protection.⁸⁷ These practices are underpinned by cultural and ecological knowledge and ways of knowing, being and doing that have been passed down for generations, and which First Peoples still practise today.⁸⁸ This is important for maintaining connection to Country and knowledges, and ensuring the passing of knowledge.⁸⁹ VACCHO explained that First Peoples knowledges and learning ‘is often experiential, with individuals acquiring knowledge through direct experience and observation of the natural world’.⁹⁰

First Peoples have cultural obligations to care for Country in particular areas, which supports strong identity and wellbeing. As Djirra explained:

Knowing and caring for Country is part of knowing and caring for community, culture, identity, language, law, lore and wellbeing.⁹¹

DJIRRA

Other witnesses and submissions reflected on the relationship between First Peoples and Country. For example, FVTOC explained how First Peoples belong to, and hold responsibility for Country:

Rather than owning land, each person belongs to the land with which they have a connection and is entrusted with knowledge and responsibility to care for their land, providing a deep sense of identity, purpose and belonging.⁹²

FEDERATION OF VICTORIAN TRADITIONAL OWNER CORPORATIONS

Ngarra Murray described how the knowledges and practices about how to care for Country have been passed down generationally:

Our people’s relationship with this Country has been formed over thousands of generations. This unique connection has built up a profound intelligence and specialised knowledge about caring for it. Our old people instilled in all of us a culture of caring for the environment. Their old people told them the same and we will tell our kids the same.⁹³

NGARRA MURRAY, CO-CHAIR OF FIRST PEOPLES’ ASSEMBLY OF VICTORIA

Uncle Alby Zantuck (Wadawurrung) also described how central the concept of caring for Country is to First Peoples:

[It means] everything. Our culture and upbringing always taught us to respect our people, respect the Country, waterways and oceans.⁹⁴

UNCLE ALBY ZANTUCK

First Peoples continue to care for Country today. This includes activities such as spending time on Country, cultural fire practices, hunting and gathering food and medicines, ceremony and protecting sacred sites.⁹⁵ The Victorian Aboriginal Child and Community Agency (VACCA) shared what ‘heal Country’ meant to different Elders and community members to celebrate the 2021 NAIDOC theme. VACCA reflected:

Heal Country means different things to each of us. It means protecting our lands, waters, sacred sites and culture heritage. Its means embracing and respecting Indigenous culture and values. It means resolving injustices which impact our lives today, and addressing the injustices of the past. It means creating a landscape where we celebrate the communities, nations and heritage of Aboriginal and Torres Strait Islander peoples.⁹⁶

VICTORIAN ABORIGINAL CHILD AND COMMUNITY AGENCY

VACCHO explained that First Peoples’ knowledges and practices are ‘often passed down through oral traditions, storytelling, and narratives’ and that ‘Elders play a crucial role in transmitting knowledge to younger generations’.⁹⁷ Uncle Colin Walker (Yorta Yorta) also explained the knowledge he received from his Elders:

My real education came from our Elders. They would talk to us about our Yorta Yorta law, they were very spiritual people. My grandfather took me fishing and taught me about the importance of Dhungalla. The stories were handed to us to teach us things. Like the Bunyip story. We were told if you go in deep water, the Bunyip will get you. This taught us as children not to go in too deep in the river.⁹⁸

In the early 1950s, I got to go with my uncles and grandfathers and camp in the forest. It was unreal. The food they would cook, and stories they would tell. I was blessed to be able to go with them. Women would get reeds from the river in the forest for weaving. I wouldn’t swap any of my cultural knowledge for any university degree.⁹⁹

UNCLE COLIN WALKER

When First Peoples care for Country, everyone benefits

Yoorrook heard that when First Peoples care for Country, it benefits everyone.¹⁰⁰ For example, there are clear economic benefits to enabling First Peoples to manage Country.¹⁰¹ The 2016 Department of Prime Minister and Cabinet Report on the social return on investment of Indigenous Protected Areas¹⁰² concluded that Indigenous Protected Area and associated Indigenous ranger programs had social return on investment ratios of between 1.5:1 and 3.4:1 (net return versus cost).¹⁰³

The ability to access land and determine how it is managed is important for First Peoples to fulfil their obligations to care for the land. As FVTOC explained:

Traditional Owner access to, and authority over, caring for and healing Country and its resources is considered central to maintaining connection to Country and the maintenance and practice of culture, including the management and protection of cultural heritage.¹⁰⁴

FEDERATION OF VICTORIAN TRADITIONAL OWNER CORPORATIONS

Evidence also suggests that when Traditional Owners are empowered to care for Country, it can lead to improved emergency management of natural disasters, including bushfires.¹⁰⁵ Ensuring access to Country and enabling Traditional Owners to practise cultural fire and other cultural land-management activities plays a critical role in supporting self-determination.¹⁰⁶ Cultural fire is further discussed in Chapter 13: Joint management.

The Budj Bim Cultural Landscape, discussed further below, is an example of the enduring cultural traditions, knowledge and practices of the Gunditjmara and the joint benefits that flow from empowering First Peoples to care for Country.

BUDJ BIM CULTURAL LANDSCAPE

Thirty thousand years ago, in the heart of Gunditjmara Country, the Ancestors witnessed the eruption of the Budj Bim volcano, where the ancestral being Budj Bim transformed into part of the landscape.¹⁰⁷ Gunditjmara people have been sharing the story of Budj Bim’s eruption for centuries. There are stories of people running away from the rain and rivers of fire.¹⁰⁸ There are also stories about the offshore island Deen Maar (now sometimes known as Julia Percy Island), which was a vicious giant who the women had to trick and kill with snakes and then push out to sea.¹⁰⁹

Budj Bim is the source of the Tyrendarra lava flow, which flowed to the sea and created a patchwork of waterways and wetlands. Here, the Gunditjmara created an advanced and extensive aquaculture system to capture kooyang (short-finned eel) and fish through weirs, channels and holding ponds.¹¹⁰ The system is at least 6600 years old, one of the oldest in the world — older than Stonehenge and the Pyramids.¹¹¹ It ‘provided a six millennia-long [food source and] economic and social base for Gunditjmara society’, allowing them to establish semi-permanent villages of stone houses and to trade with other nations.¹¹²

In 1834, this way of life ended when European colonisers took Gunditjmara land and murdered and forced the Gunditjmara off their Country. To try and escape, Yoorrook heard how the Gunditjmara hid along the lava flow. The colonisers followed, hunting men, women and children.¹¹³

The Gunditjmara maintained their connection to their Country. After years of advocacy,¹¹⁴ this was recognised in 2007 with the grant of native title. More advocacy followed and in 2019, the Budj Bim Cultural Landscape was granted UNESCO World Heritage status. It was the first Australian place nominated for inclusion solely because of its cultural value for First Peoples.

The World Heritage Committee described Budj Bim as of ‘outstanding universal value’ and said that the Budj Bim Cultural Landscape ‘bears an exceptional testimony to the cultural traditions, knowledge, practices and ingenuity of the Gunditjmara’.¹¹⁵ The ongoing relationship of the Gunditjmara with their land and waters continues today, retained through the oral transmission of knowledge systems and continuity of cultural practice.

The Gunditjmara manage the Budj Bim Cultural Landscape through the Gunditj Mirring Traditional Owners Corporation and Winda-Mara Aboriginal Corporation. Aquaculture has returned and Budj Bim draws tourism to the south-west of Victoria with around 25000 visitors per year.¹¹⁶ The visitor infrastructure commissioned by the Gunditj Mirring Traditional Owners Corporation won the 2023 Premier’s Design Award.¹¹⁷

The return of Country to the Gunditjmara has been essential for conservation of the area and the wellbeing and cultural thriving of the Gunditjmara people.

RETURN OF RANCH AND BILLABONG IN DIMBOOLA TO BARENGI GADJIN LAND COUNCIL

The Barengi Gadjin Land Council rehabilitation of the Ranch Billabong in Dimboola is an example of the environmental benefits for Victoria of allowing First Peoples to care for Country.¹¹⁸ The Wotjobaluk People have a strong connection to this area of Country, having lived there for thousands of generations.¹¹⁹ This area was returned to the Wotjobaluk People following their native title agreement in 2005.¹²⁰ Since the return of the billabong, ‘water quality [in the area] has improved, pest plants and animals have been reduced and [native] plants and animals restored’.¹²¹

Barriers to caring for Country

There are significant barriers to First Peoples in caring for Country and undertaking other related cultural practices.

Roundtable participants from Dja Dja Wurrung Aboriginal Corporation told Yoorrook that if they want to practise cultural fire they need to obtain permission¹²² or they might be charged with arson.¹²³ Yoorrook was also told of culturally unsafe practices that First Peoples were required to go through in order to burn Country, including having non-First Peoples fire officers in attendance. Roundtable participants from Barengi Gadjin Land Council said that the success of projects like Ranch Billabong depends on Traditional Owners having access to water and the power to decide how it is used, which is often denied (see further Chapter 14: Water).¹²⁴

Roundtable participants from Dja Dja Wurrung Clans Aboriginal Corporation outlined further barriers to self-determination in caring for Country:

We can’t burn Country as Djaara [Dja Dja Wurrung] women the way we’d like to. We can’t harvest the seeds the way we’d like to, because our six parks — you have to have permits.¹²⁵

PARTICIPANT, DJA DJA WURRUNG CLANS ABORIGINAL CORPORATION
ROUNDTABLE

First Peoples’ rights to Country must be upheld. For example, roundtable participants from Bunurong Land Council described how they want their rights ‘to manage and care for Country’ to be respected.¹²⁶ FVTOC CEO Paul Paton explained that recognition of proprietary rights is required to enable the management of Country:

Having rights over Country provides us the ability to exercise our obligations as Aboriginal people, as Traditional Owners, to manage Country, and that is something that needs to be enabled through the activation of proprietary rights, to be able to manage Country.¹²⁷

PAUL PATON

Chapter 13: Joint management explores further evidence and examples of barriers to caring for Country and ways forward.

Connection to Country enhances health and wellbeing

The link between connection to Country and culture and First Peoples’ health and wellbeing outcomes is well established. Yoorrook heard from multiple participants about the symbiotic relationship between the health of First Peoples and Country:

First Peoples are intrinsically linked to and with Country. This reciprocal relationship is reflected in familiar sayings like ‘healthy Country, healthy people’ and beliefs, held by many, that if Country is sick or not managed in accordance with cultural obligations it will impact the health of Community.¹²⁸

FIRST PEOPLES’ ASSEMBLY OF VICTORIA

When our Country is sick, it makes our people sick too. It’s all interconnected. You can’t have one without the other. People and Country.¹²⁹

NGARRA MURRAY, CO-CHAIR OF FIRST PEOPLES’ ASSEMBLY OF VICTORIA

Forced removal and continued exclusion from the management of our traditional lands that had sustained our families and ancestors since time immemorial continues to have profound impacts on us as a people. The taking, and continued misappropriation and destruction of cultural knowledge and heritage, continues to impact Aboriginal health and wellbeing.¹³⁰

VICTORIAN ABORIGINAL COMMUNITY CONTROLLED HEALTH ORGANISATION

If we heal country, we heal ourselves.¹³¹

AUNTY FAY CARTER

Part F: Health considers the relationship between Country and health and the importance of embedding this understanding in the healthcare system.

Yoorrook heard evidence and examples about how connection to Country supports health and wellbeing outcomes.¹³² Country and culture protect First Peoples by providing cultural identity and supporting individual and collective health and wellbeing.¹³³

Aboriginal peoples’ Social and Emotional Wellbeing is complex and multidimensional and inextricably linked to Country.¹³⁴

VICTORIAN ABORIGINAL COMMUNITY CONTROLLED HEALTH ORGANISATION

Professor Raymond Lovett (Ngiyampaa, Wongaibon), epidemiologist and researcher, told Yoorrook that First Peoples’ survival has been based on the ability to connect with Country and culture.¹³⁵ Sheree Lowe (Djab Wurrung, Gunditjmara), Executive Director of the Social and Emotional Wellbeing (SEWB) Unit at VACCHO, explained how good health and wellbeing are supported by ‘connection to Country, culture, spirituality, our ancestries, our families and our communities’.¹³⁶ Similarly, Professor Julie Andrews told Yoorrook that ‘[a]ccess to Country is imperative to a healthy mind and a healthy body’.¹³⁷ Brittany Pettit (Tati Tati) said that ‘[w]orking on country is something that all Aboriginal people should have the opportunity to do’ as it ‘[p]romotes healing, identity and well-being’.¹³⁸

This evidence is consistent with external research. Studies have shown that reconnecting First Peoples to traditional cultural practices and caring for Country has been associated with improvements in educational and employment outcomes, improvements in physical health (including exercise and diet), and reduction in risk-taking behaviour.¹³⁹ Other studies also demonstrate that engaging with traditional cultural land-care practices is associated with better physical and mental health and community and individual

wellbeing for First Peoples.¹⁴⁰ Research in Victoria among the Bangerang, Boonwurrung and Yorta Yorta peoples found that a ‘spiritual and cultural relationship to land increased identity, pride and self-esteem’.¹⁴¹

Yoorrook heard that caring for Country is also an important element of healing from the impacts of colonisation. Djirra explained that caring for Country supports healing:

also aid[s] healing and overcoming the trauma of institutional abuse; and the building of Aboriginal and Torres Strait Islander economic security, and sharing inventions, stories and culture more broadly.¹⁴²

DJIRRA

Conversely, separation and dislocation from Country continues to damage First Peoples’ health and wellbeing outcomes today.¹⁴³ Aunty Marjorie Thorpe (Gunaikurnai, Tjapwurrung) explained:

People who are disconnected from their country, their land, lose connection from their culture and when this happens their self-esteem, confidence and sense of identity is also lost.¹⁴⁴

AUNTY MARJORIE THORPE

The State must recognise the fundamental importance of connection and belonging to Country as elements of the health and wellbeing of First Peoples (see Chapter 26: First Peoples and the Victorian health system). To enable this, it is critical that First Peoples have ownership of and access to Country.¹⁴⁵ VACCHO CEO Aunty Dr Jill Gallagher (Gunditjmara) told Yoorrook:

Being connected as Aboriginal people to your culture and your Country, it is vital for your ongoing wellbeing and strength. For our children, if they are strong in that, they can deal with anything that life throws at them. And we don’t have the opportunity to go back to Country when we need to, but it’s vital.¹⁴⁶

AUNTY DR JILL GALLAGHER

Spending time on Country engaging in cultural activities, such as cultural burning, gathering food and medicines, or ceremony, are important forms of connectedness to land.¹⁴⁷ Although many First Peoples do not live on their own Country today, they can still maintain a sense of connection in other ways, such as visiting Country, sharing stories and teaching their children about significant places or plants.¹⁴⁸

For example, Camp Jungai is an important healing place for First Peoples in Victoria. It provides a place for people to gather, connect with Country and each other, and learn about culture.¹⁴⁹ VACCHO explained:

After colonisation, we didn’t have any safe places. We weren’t allowed into towns. We weren’t welcome in the cities. We wouldn’t be served in shops. It wasn’t safe to be an Aboriginal person anywhere — Camp Jungai gave us that safe place.¹⁵⁰

VICTORIAN ABORIGINAL COMMUNITY CONTROLLED HEALTH ORGANISATION

Traditional Owner groups told Yoorrook about the importance of getting First Peoples back on Country to connect with culture and community.¹⁵¹ It is something First Peoples would like to see continue so that the next generation has access to Country.¹⁵²

The way forward

The connection of First Peoples to Country is a profound bond that transcends geography; it embodies spirituality, identity, Peoplehood, wellbeing and cultural heritage. Colonisation violently disrupted this intricate relationship, resulting in a multifaceted dispossession that extended beyond the physical theft of land to encompass the severance of ties to Ancestors, kin, customs and culture. The consequences of this historical injustice persist in contemporary systemic inequities. They manifest as social, economic, and environmental disparities that reflect a longstanding disregard for First Peoples sovereignty, land ownership and collective rights.

It’s really important ... that our stories, our connections, our songs, and our language continues to be passed on and we live on country.¹⁵³

PARTICIPANT, NINDI-NGUJARN NGARIGO MONERO ROUNDTABLE

In Victoria, we do have a very rich and diverse Aboriginal cultural heritage and we have ancient and we also have contemporary. Aboriginal people with our culture and our past, the stories that we can tell and the gifts that we can give to all Victorians is amazing. People just don’t realise that.¹⁵⁴

AUNTY DR JILL GALLAGHER

Aboriginal people and their toughness and their determination not to let go of this land which is sacred to us. We see the land as our mother. We’re not going to let that go too easy. So, we continue to fight, and we’re not going to stop fighting either. It’ll always be that we want some justice for our people, simple justice.¹⁵⁵

UNCLE ROBBIE THORPE / DJURAN BUNJILINEE

The way forward must enable First Peoples to reconnect with Country and uphold cultural rights and self-determination. Real transformation requires acknowledging the foundational injustice of land dispossession and recognising First Peoples’ connection to and responsibility for Country as integral to all aspects of identity, community and wellbeing. This recognition must be actioned by systematically incorporating First Peoples’ knowledges and principles regarding land and water management into legislative and policy frameworks. Restoring First Peoples’ connection to Country is a vital part of healing for First Peoples and the Victorian community. Later chapters set out how this should be achieved.

Endnotes

1. Ngarra Murray in First Peoples’ Assembly of Victoria, Submission 378 (Land, Sky, Waters), 8, 19.

2. Transcript of Paul Paton, 17 April 2024, 52 [15]–[25].

3. Transcript of Premier the Hon Jacinta Allan MP, 29 April 2024, 9 [1]–[2], 18 [20]–19 [22], 53 [36]–[40], 54 [10]–[26]; Transcript of Minister the Hon Harriet Shing MP, 24 April 2024 (Part 1), 41 [37]–[45]; Transcript of Minister Harriet Shing MP, 24 April 2024 (Part 2), 5 [22]–[29], 11 [11]–[14].

4. Witness Statement of Premier Jacinta Allan MP, 18 March 2024, 1 [4].

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8. Transcript of Ngarra Murray, Co–Chair of First Peoples’ Assembly of Victoria, 17 April 2024, 4 [20].

9. Victorian Aboriginal Corporation for Languages, *Nyernila: Listen Continuously. Aboriginal Creation Stories of Victoria* (Creative Victoria, 2015).

10. Transcript of Professor Richard Broome, 26 March 2024, 13 [45].

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15. Department of Transport and Planning, Response to NTP–003–015 — ‘Statement of Significance’, 1, produced by the State in response to the Commission’s Notice to Produce, received by Yoorrook on 22 December 2023, citing Wadawurrung Traditional Owners, ‘Places of Wadawurrung dreaming – The place’, ABC Indigenous (Online video, 27 May 2019).

16. Transcript of Damien Bell, 25 March 2024, 12 [40]–[44]; Victorian Aboriginal Corporation for Languages, *Nyernila: Listen Continuously. Aboriginal Creation Stories of Victoria* (Creative Victoria, 2015), 58, 58.

17. Murray and Lower Darling Rivers Indigenous Nations, *Echuca Declaration* (Declaration, 19 May 2010), 1.

18. Richard Broome, *Aboriginal Australians: A History since 1788* (Allen & Unwin, 4th ed, 2010), 16.

19. Transcript of Professor Julie Andrews, 26 March 2024, 14 [20].

20. Environmental Justice Australia, Submission 346 (Land, Sky, Waters 1), 27–8.

21. Transcript of Professor Julie Andrews, 26 March 2024, 14 [15]–[20].

22. Transcript of Dr Aunty Vicki Couzens, 28 March 2024, 37 [33]–[35].

23. Transcript of Ngarra Murray, Co–Chair of First Peoples’ Assembly of Victoria, 17 April 2024, 4 [20]–[30]; Theresa Morgan, Submission 505, 1; Witness Statement of Aunty Dr Alma Thorpe, 3 May 2022, 10 [50].

24. Witness Statement of Uncle Larry Walsh, 19 May 2022, 18 [91].

25. Transcript of Uncle Joey, 25 March 2024, 34 [20]–[25]; Witness Statement of Uncle Larry Walsh, 19 May 2022, 18 [91]; Mick Harding, Submission 891 ([Video Submission](#)), 6.

26. University of Sydney, ‘[Aboriginal Kinship Presentation: Totems](#)’ (Webpage, 12 August 2014); Transcript of roundtable with Dja Dja Wurrung Clans Aboriginal Corporation, 25 November 2023, 36, served on the State of Victoria on 1 April 2024; Transcript of Uncle Gary Murray, 26 April 2024, 51 [40]–[42].

27. Taungurung Land and Waters Council Aboriginal Corporation, Submission 596 (Land, Sky, Waters), 2–3.

28. Summary Report — Rumbalara Elders Facility site visit, 31 January 2024, 5; Witness Statement of Uncle Colin Walker, 27 May 2022, 14 [106]; Families of Dja Dja Wurrung and Jessica Kate Hodgens, ‘Aunty Fay Carter’ in *Djuwima Djarra; Dja Dja Wurrung Kiakiki Wangedak (Sharing Together: Dja Dja Wurrung: Our Story)* (2014), 103.

29. Transcript of roundtable with Dja Dja Wurrung Clans Aboriginal Corporation, 25 November 2023, 36, served on the State of Victoria on 12 April 2024; Transcript of Uncle Brendan Kennedy, 24 April 2024, 3 [32]–4 [5].

30. Witness Statement of Shaun Braybrook, 13 December 2022, 2 [14]; Summary Report — Kurnai College Morwell site visit, 11 December 2023, 2.

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33. Transcript of Uncle Robbie Thorpe (Djuran Bunjilinee), 27 March 2024, 54 [30].

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35. Witness Statement of Uncle Larry Walsh, 19 May 2022, 18 [91].

36. Witness Statement of Uncle Larry Walsh, 19 May 2022, 18 [91].

37. Margo Neale, ‘First Knowledges’ in Margo Neale and Lynne Kelly (eds), *Songlines: The Power and Promise* (Thames & Hudson, 2020) 9, 9.

38. Victorian Aboriginal Legal Service, Submission 339 (Land, Sky, Waters), 11.

39. Margo Neale, ‘Knowledge in Country and the Third Archive’ in Margo Neale and Lynne Kelly (eds), *Songlines: The Power and Promise* (Thames & Hudson, 2020) 31, 36. See also Stephanie Boltje, ‘[In Aboriginal Culture, Songlines Are Like Libraries and They Store Knowledge that’s Critical to Survival](#)’, ABC News (Webpage, 4 October 2023).

40. Transcript of Uncle Robbie Thorpe (Djuran Bunjilinee), 27 March 2024, 54 [3]–[5].

41. Victorian Aboriginal Community Controlled Health Organisation, Submission 340 (Land, Sky, Waters), 3.

42. Arthur Smith, Submission 357, 3; First Peoples’ Assembly of Victoria, Submission 378 (Land, Sky, Waters), 19; Witness Statement of Ngarra Murray, Co–Chair of First Peoples’ Assembly of Victoria, 11 April 2024, 1[3]; Djirra, Submission 348 (Land, Sky, Waters), 17.

43. Transcript of Dr Aunty Vicki Couzens, 28 March 2024, 24 [42]–25 [1], 36 [45]–37 [1].

44. Transcript of Ngarra Murray, Co–Chair of First Peoples’ Assembly of Victoria, 17 April 2024, 4 [27]–[31].

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48. McDonald Family of Tae Rak (Lake Condah), Submission 202, 13, citing Frank Cahir, Ian D Clark and Philip Clarke, *Aboriginal Biocultural Knowledge in Southeastern Australia. Perspectives of Early Colonists* (CSIRO Publishing, 2019).

49. See for example, Hamish McPherson, Submission 290, 9. See also Gary Presland, *First People: The Eastern Kulin of Melbourne, Port Phillip and Central Victoria* (Museum Victoria Publishing, 2010), 18.

50. Taungurung Land and Waters Council Aboriginal Corporation, Submission 596 (Land, Sky, Waters), 2; Hamish McPherson, Submission 290, 9, citing Diane Barwick, ‘Mapping the past: An atlas of Victorian clans 1835–1904: Part 1’, (1984) 8 *Aboriginal History*, 105–106. See also Gary Presland, *First People: The Eastern Kulin of Melbourne, Port Phillip and Central Victoria* (Museum Victoria Publishing, 2010), 15, 33–37.

51. Federation of Victorian Traditional Owner Corporations, Submission 566 (Economic Prosperity), 14.

52. This case study was created using evidence drawn from Taungurung Land and Waters Council Aboriginal Corporation, Submission 596 (Land, Sky, Waters), 1–7.

53. Taungurung Land and Waters Council Aboriginal Corporation, Submission 596 (Land, Sky, Waters), 2.

54. Taungurung Land and Waters Council Aboriginal Corporation, Submission 596 (Land, Sky, Waters), 2.

55. Taungurung Land and Waters Council Aboriginal Corporation, Submission 596 (Land, Sky, Waters), 2.

56. Taungurung Land and Waters Council Aboriginal Corporation, Submission 596 (Land, Sky, Waters), 2.

57. Taungurung Land and Waters Council Aboriginal Corporation, Submission 596 (Land, Sky, Waters), 2.

58. Taungurung Land and Waters Council Aboriginal Corporation, Submission 596 (Land, Sky, Waters), 3.

59. Witness Outline of Dr Aunty Vicki Couzens, 28 March 2024, 13 [100].

60. Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation, Submission 344 (‘Summary of Past and Ongoing Land Injustice’), 3; Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation, ‘[Management of Cultural Heritage Places](#)’ (Webpage); Transcript of Professor Julie Andrews, 26 March 2024, 16 [46]–17 [5], 19 [29]–[40]; Mick Harding, Submission 891, 20; Darren Griffin, Delta Lucille Freedman, Bill Nicholson Jnr, Fiona McConachieb and Alexander Parmington, ‘[The Koorong Project: experimental archaeology and Wurundjeri continuation of cultural practices](#)’ (La Trobe University, 2013), 59–65, 60; Angela Foley, ‘[The art of place-making on Wurundjeri Country today](#)’ (Phd Thesis, 2020, Western Sydney University).

61. Transcript of Uncle Johnny Lovett, 28 April 2022, 76 [28]–[31].

62. Victorian Aboriginal Community Controlled Health Organisation, Submission 445 (Health, Education, Housing), 15.

63. Anonymous 421, Submission 421, 1.

64. Ricky Kirby, Submission 371, 1; Bernadette Atkinson, Submission 358, 1.

65. Transcript of Aunty Maude Alberts, 25 March 2024, 3 [13].

66. Victorian Aboriginal Community Controlled Health Organisation, Submission 445 (Education, Health, Housing), 61.

67. Ngarra Murray in First Peoples’ Assembly of Victoria, Submission 378 (Land, Sky, Waters), 8.

68. Associate Professor Nikki Moodie, Submission 526, 2–3.

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73. Transcript of Uncle Brendan Kennedy, 24 April 2024 (Part 1), 17 [5]–[37].

74. Transcript of Dr Aunty Vicki Couzens, 28 March 2024, 31 [1]–[10].

75. Anonymous 559, Submission 559, 1.

76. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 11.

77. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 14.

78. Transcript of Ngarra Murray, Co–Chair of First Peoples’ Assembly of Victoria, 17 April 2024, 12 [14]–[34]; Witness Statement of Ngarra Murray, Co–Chair of First Peoples’ Assembly of Victoria, 11 April 2024, 21 [63]–[66]; First Peoples’ Assembly of Victoria, Submission 378 (Land, Sky, Waters), 19.

79. Witness Statement of Ngarra Murray, Co–Chair of First Peoples’ Assembly of Victoria, 11 April 2024, 10–11 [25].

80. Transcript of Associate Professor Katherine Ellinghaus, 26 March 2024, 15 [35]–[45].

81. Transcript of Professor Richard Broome, 26 March 2024, 16 [14]–[26].

82. Transcript of Professor Richard Broome, 26 March 2024, 16 [22]–[26].

83. Witness Statement of Ngarra Murray, Co–Chair of First Peoples’ Assembly of Victoria, 11 April 2024, 21 [63].

84. Transcript of Professor Richard Broome, 26 March 2024, 32 [7]–[15].

85. Wurundjeri Woi–Wurrung Cultural Heritage Aboriginal Corporation, Submission 344 (‘Summary of Past and Ongoing Land Injustice’), 1.

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93. Transcript of Ngarra Murray, Co–Chair of First Peoples’ Assembly of Victoria, 17 April 2024, 4 [33]–[37].

94. Uncle Alby Zantuck, Submission 390, 1.

95. Victorian Aboriginal Child and Community Agency, ‘[What Heal Country Means To Me](#)’

(Webpage).

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97. Victorian Aboriginal Community Controlled Health Organisation, Submission 445 (Education, Health, Housing), 61.

98. Witness Statement of Uncle Colin Walker, 27 May 2022, 3 [18].

99. Witness Statement of Uncle Colin Walker, 27 May 2022, 3 [19].

100. Victorian Aboriginal Community Controlled Health Organisation, Submission 340 (Land, Sky, Waters), 11.

101. First Peoples’ Assembly of Victoria, Submission 378 (Land, Sky, Waters), 20.

102. The NIAA have said: ‘Indigenous Protected Areas (IPAs) are areas of land and sea Country managed by First Nations groups in accordance with Traditional Owners’ objectives. IPAs deliver biodiversity conservation outcomes for the benefit of all Australians, through voluntary agreements with the Australian Government’: National Indigenous Australians Agency, [‘Indigenous Protected Areas \(IPA\)’](#) (Webpage).

103. The report stated: ‘The analyses have concluded that, over the period between the 2009 and 2015 financial years, an investment of \$35.2m from Government and a range of third party investors has generated social, economic, cultural and environmental outcomes with an adjusted value of \$96.5m’: Social Ventures Australia Consulting, *Department of the Prime Minister & Cabinet: Consolidated Report on Indigenous Protected Areas following Social Return on Investment analyses* (Report, February 2016), 30.

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105. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 15.

106. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 15.

107. Transcript of Damien Bell, 25 March 2024, 12 [40]–[44].

108. Transcript of Aunty Maude Alberts, 25 March 2024, 2 [29]–[32].

109. Transcript of Uncle Johnny Lovett, 25 March 2024, 46 [20]–[30].

110. Witness Statement of Ngarra Murray, Co–Chair of First Peoples’ Assembly of Victoria, 11 April 2024, 12–14, citing World Heritage Committee, Budj Bim Cultural Landscape (Australia), Decision 43 COM 8B.14 (2019); Witness Statement of Premier Jacinta Allan MP, 18 March 2024, 9 [78].

111. Transcript of Aunty Maude Alberts, 25 March 2024, 2 [33]–[37]; Nine News, [‘Site in Victoria older than pyramids added to World Heritage List’](#) (Webpage, 6 July 2019).

112. Witness Statement of Ngarra Murray, Co–Chair of First Peoples’ Assembly of Victoria, 11 April 2024, 12–14, citing World Heritage Committee, *Budj Bim Cultural Landscape (Australia)*, Decision 3 COM 8B.14 (2019).

113. Transcript of Aunty Maude Alberts, 25 March 2024, 2 [33]–[37].

114. [See discussion of *Onus v Alcoa Australia Ltd* (1981) 149 CLR 27 in Chapter 9: How we got here — overview of recognition systems How we got here — overview of recognition systems.]

115. World Heritage Convention, [‘Budj Bim Cultural Landscape’](#) (Webpage, 2019).

116. Transcript of Damien Bell, 25 March 2024, 15 [40]–[43].

117. Victorian Premier’s Design Awards, [‘Budj Bim Cultural Landscape’](#) (Webpage, 2023).

118. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 29 [137].

119. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 29 [137].

120. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 29 [137].

121. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 29 [137].

122. The Secretary at the Department of Energy, Environment and Climate Action (DEECA) ‘is responsible for the immediate prevention and suppression of fire, and for the planned prevention of fire on public land. Management responsibilities relating to fire on public land are delivered through Forest Fire Management Victoria (FFM), a collective partnership of government agencies, [led] by DEECA, that facilitates and coordinates collaboration across bushfire-related land management initiatives and which incorporates personnel from DEECA, Parks Victoria, Melbourne Water and VicForests.’ Department of Energy, Environment and Climate Action, Response to NTP-003-004 — *‘The legal and policy frameworks concerning the ownership, management and administration of public land and natural resource’*, 6.

123. Transcript of roundtable with Dja Dja Wurrung Clans Aboriginal Corporation, 25 November 2023, 16, served on the State of Victoria on 12 April 2024.

124. Transcript of roundtable with Barengi Gadjin Land Council, 26 October 2023, 35, served on the State of Victoria on 12 April 2024.

125. Transcript of roundtable with Dja Dja Wurrung Clans Aboriginal Corporation, 25 November 2023, 30, served on the State of Victoria on 12 April 2024.

126. Transcript of roundtable with Bunurong Land Council, 2 November 2023, 49, served on the State of Victoria on 1 April 2024.

127. Transcript of Paul Paton, 17 April 2024, 55 [12]–[15].

128. First Peoples’ Assembly of Victoria, Submission 378 (Land, Sky, Waters), 19.

129. Ngarra Murray in First Peoples’ Assembly of Victoria, Submission 378 (Land, Sky, Waters), 8, 19.

130. Victorian Aboriginal Community Controlled Health Organisation, Submission 340 (Land, Sky, Waters), 6.

131. Transcript of Aunty Fay Carter, 2 May 2022, 175 [15].

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133. Victorian Aboriginal Legal Service, Submission 339 (Land, Sky, Waters), 8, 13–14.

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136. Transcript of Sheree Lowe, 27 May 2024, 52 [19]–[20].

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139. See for example Sarah MacLean et al, ‘Health and wellbeing outcomes of programs for Indigenous Australians that include strategies to enable the expression of cultural identities: a systematic review’ (2017) 23(4) *Australian Journal of Primary Health*, 309–318; Christopher Burgess et al, ‘Healthy country, healthy people: the relationship between Indigenous health status and “caring for country”’ (2009) 190(1) *Medical Journal of Australia*, 567–572; Lowitja Institute, [Culture is Key: Towards cultural determinants-driven health policy](#) (Report, 2020); Ebony Verbunt et al, ‘Cultural determinants of health for Aboriginal and Torres Strait Islander people — a narrative overview of reviews’ (2021) 20(1) *International Journal for Equity in Health* 181–190.

140. Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS), [The Benefits Associated with Caring for Country: Literature Review](#) (Literature Review, 2011); Jonathan ‘Yotti’ Kingsley et al “‘If the land is healthy ... it makes the people healthy’”: The relationship between caring for Country and health for the Yorta Yorta Nation, Boonwurrung and Bangerang Tribes’ (2009) 15(1) *Health & Place*, 291–299; Rudi Louis Taylor-Bragge et al, ‘People Needs Country: the symbiotic effects of landcare and wellbeing for Aboriginal peoples and their countries’ (2021) 56 (6) *Australian Psychologist*.

141. Jonathan ‘Yotti’ Kingsley et al “‘If the land is healthy ... it makes the people healthy’”: The relationship between caring for Country and health for the Yorta Yorta Nation, Boonwurrung and Bangerang Tribes’ (2009) 15(1) *Health & Place*, 291–299.

142. Djirra, Submission 348 (Land, Sky, Waters), 17.

143. Jane McKendrick and Marjorie Thorpe, ‘The impact of forced internal migration on Australian Aboriginal people’ (2014) 17(3) *Australian Journal of Grief and Bereavement*, 90; Victorian Aboriginal Community Controlled Health Organisation, Submission 340 (Land, Sky, Waters), 5; Transcript of Aunty Dr Jill Gallagher, 28 March 2024, 60 [39]–[47].

144. Witness Outline of Aunty Marjorie Thorpe, 14 April 2024, 4 [21], citing Jane McKendrick and Marjorie Thorpe, ‘The impact of forced internal migration on Australian Aboriginal people’ (2014) 17(3) *Australian Journal of Grief and Bereavement* 90, 92.

145. Victorian Aboriginal Community Controlled Health Organisation, Submission 340 (Land, Sky, Waters), 12.

146. Transcript of Aunty Dr Jill Gallagher, 28 March 2024, 61 [3]–[7].

147. Colin Wayne Rigby et al, ‘If the land’s sick, we’re sick: the impact of prolonged drought on the social and emotional well-being of Aboriginal communities in rural New South Wales’ (2011) 19(5) *Australian Journal of Rural Health*, 249–254, 429.

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149. Witness Outline of Aunty Dr Jill Gallagher, 28 March 2024, 4 [32]–[35].

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151. Transcript of roundtable with Nindi-Ngujarn Ngarigo Monero, 13 November 2023 (Part 2), 13, served on the State of Victoria on 12 April 2024; Transcript of roundtable with Barengi Gadjin Land Council, 26 October 2023, 37, served on the State of Victoria on 12 April 2024; Transcript of roundtable with Dja Dja Wurrung Clans Aboriginal Corporation, 25 November 2023, 17, served on the State of Victoria on 12 April 2024.

152. Transcript of roundtable with Nindi-Ngujarn Ngarigo Monero, 13 November 2023 (Part 1), 10–13, served on the State of Victoria on 12 April 2024.

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154. Transcript of Aunty Dr Jill Gallagher, 28 March 2024, 55 [19]–[22].

155. Transcript of Uncle Robbie Thorpe (Djuran Bunjilinee), 27 March 2024, 63 [36]–[39].

Chapter 7: How colonisers stole Country

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Content warning

Please be aware that this chapter discusses material that is likely to be emotionally confronting and cause distress. It includes discussion of frontier violence and massacres, including details of individual massacres and the way in which they were carried out. It includes discussion of physical and sexual violence, including against women and children. It discusses the devastation of Country, and systemic injustices against First Peoples including assimilation and protectionist policies, and the separation of families.

It also draws on historical sources which use antiquated racist language to refer to First Peoples and racist depictions of First Peoples.

This chapter contains stories and mention of First Peoples who have passed away.

We suggest readers consider their wellbeing before, during and after reading. If you are distressed by material in this report, or if you or a loved one require support, there are services to support you. Please see the support resources at [Keeping You Safe & Strong – Yoorrook Justice Commission](#).

There was a wave of massacres. You can't deny that. It is in the history books. Our lands were stolen. No one can deny that. ... Our culture was suppressed. Our languages were forbidden. Our women raped. And our families torn apart. That's fact. It's not fiction.¹

AUNTY DR JILL GALLAGHER

Introduction

The purpose of colonisation is the acquisition of land. To acquire the lands and waters of the place now known as Victoria,² colonisers violently dispossessed 300 to 500 clan groups of their lands. These clan groups had occupied, owned and cared for those lands since time immemorial.³ The theft of Country resulted in the destruction of Country, cultures, communities, songlines, trade routes, languages and lives of the clans, who were grouped into a constellation of 35 to 40 nations, each with their own identity, language and territory.⁴

The invasion of Victoria and the expansion of the colony was rapid and catastrophic. British colonisers killed First Peoples, stole their lands, waters and resources and used a combination of violence and oppressive laws and policies to generate wealth at the expense of First Peoples.⁵ Many of these events have been rendered as distant history in the wider Victorian population's consciousness, but Yoorrook heard that these atrocities continue to fuel persistent experiences of state-inflicted inequities in health, education, housing and socioeconomic outcomes for First Peoples today. This chapter sets out the evidence presented to Yoorrook on the colonisation of the lands and waters of First Peoples.

What Yoorrook heard

‘They came for the Land. We were just in the way.’⁶

With settler colonial theory, in order for colonisation to be completed ... you need to eliminate the native. ... [W]e saw massacres, we saw frontier violence, we saw brutal, brutal acts ... to attempt to clear the native from the land almost like pests to be exterminated.⁷

DR JACYNTA KRAKOUER

[T]he original sin of Australian colonisation ... [was] the refusal to recognise that the First Nations people had property rights; that it was their land, they were in occupation.⁸

PROFESSOR HENRY REYNOLDS

In the early 1800s, Europeans came to the place now known as Victoria in search of land and wealth.⁹ British colonisers invaded Gunditjmara Country in 1834 and Kulin Country in 1835, establishing the first permanent settlements.¹⁰ Dr Jacynta Krakouer (Mineng Noongar) told Yoorrook that settler colonialism aimed to remove First Peoples from the land through massacres and violence. Similarly, Associate Professor Nikki Moodie (Gomerioi) told Yoorrook that colonists wanted to acquire land, and to do so they removed First Peoples through waves of dispossession including through massacres, denial of cultural, economic and political rights, and separation of families.¹¹ She said: ‘They came for the land. We were just in the way.’¹²

The incursions were illegal under colonial laws. Historian Professor Henry Reynolds gave evidence about the colonial government's attempts to control and regulate land use in the colony at that time:

The government of New South Wales, the imperial government, was very, very strongly of the view that they had to try and contain the spread of settlement. In 1829, they established the area within 300 kilometres or so of Sydney and this was to be the limit of location, that is, if you tried to go beyond this, then you had no legal justification for doing so. It was illegal to take up land beyond the limits of location.¹³

PROFESSOR HENRY REYNOLDS

The Premier of Victoria the Hon Jacinta Allan MP acknowledged that the first wave of colonisers began to arrive in Victoria in the 1830s without the British Imperial Government’s permission.¹⁴

The invasion of Gunditjmara Country

Despite the prohibition on occupying land outside of the limits of location,¹⁵ the Henty brothers arrived on Gunditjmara Country in 1834.¹⁶ The Henty family had unsuccessfully petitioned the British government three times, asking for permission to settle in the Port Phillip district. Eventually they made the decision to enter unlawfully.¹⁷ First Peoples described the arrival of the Henty brothers on their Country and the impacts of invasion, for example Keicha Day (Gunditjmara, Yorta Yorta) and Braydon Saunders (Gunditjmara) said:

After a voyage of 34 days, the poxy Thistle arrived on Gunditjmara Mirring on 19 November 1834 at 8 am. And so begins the deliberate and ongoing colonisation by Edward Henty and his brothers. It was Edward that told the anecdote:

‘I stuck a plough into the ground, struck a she-oak root and broke the point, cleaned my gun, shot a kangaroo, mended the bellows, blew the forge fire, straightened the plough, and then I turned the first sod in Victoria.’

He would have also mentioned, quite matter of fact, how he treated our ancestors with complete disregard of their humanity through acts of violence and theft as he wilfully squatted on Gunditjmara Mirring.¹⁸

KEICHA DAY

There was settlement way before the Hentys showed up here, and there was — there was happiness. There was family. There was sadness and sorrow. And there was wars. ... But there was a civilisation that existed here and ... they attempted to cut that out. They pretended like we didn’t exist, like we didn’t matter ...¹⁹

BRAYDON SAUNDERS

Suzannah Henty, a patrilineal descendent of James Henty — one of the Henty brothers, gave evidence about their arrival:

The Hentys brought with them sheep, cattle and machinery. After they arrived, they established a sheep run called Merino Downs and built a homestead and out-stations where Aboriginal people were enslaved. The process of establishing Victoria’s first settlement was a war. In June 1834, one Gunditjmara was killed by a hut-keeper on Merino Downs. In October 1838, three Aboriginal men were killed on Merino Downs. In March 1840, one Aboriginal man was killed by a hut-keeper in Merino Downs. [In] November 1840 ... ‘dozens of Aboriginal people were killed by an overseer for the Henty brothers’. There are hundreds of unmarked sites of conflict in which members of the Henty family were likely involved.²⁰

SUZANNAH HENTY

Yoorrook also received evidence from Grenville Henty Silvester who represented members of the living Henty family.²¹ Mr Silvester said that ‘the Hentys respected first people [sic], shared the land and showed great patience with all minority groups’.²² He objected to the ‘[c]urrent bureaucracy meddling with history’.²³

Suzannah Henty reflected on how colonial memorials in the Portland area to the Henty family which refer to them as being the founders of and the ‘first’ on the land actively deny ‘the existence of and resistance by First Nations people.’²⁴

The stealing of Kulin Country

While the Henty brothers were taking Gunditjmara land, another group of colonisers sought to acquire Kulin Country to farm around Port Phillip.²⁵ In June 1835, John Batman, on behalf of the Port Phillip Association from Van Diemen’s Land (Lutruwita (Tasmania)), ‘sailed across the Bass Strait to Indented Head on the Bellarine Peninsula’.²⁶ Batman had unsuccessfully applied to the government for a grant of land at Port Phillip, which was then part of the colony of New South Wales.²⁷ Historian and Associate Professor Katherine Ellinghaus²⁸ gave evidence about Batman and the expedition:

They travelled around ... Port Phillip Bay and ... met with people from the Kulin nations a number of times, and when they did so, they gave them gifts like blankets, handkerchiefs, sugar and apples and other items, and also received things in exchange like baskets and spears.²⁹

ASSOCIATE PROFESSOR KATHERINE ELLINGHAUS

Associate Professor Katherine Ellinghaus also told Yoorrook that before coming to Kulin Country, John Batman was involved in massacres of Palawa people in Lutruwita (Tasmania).³⁰ Associate Professor Katherine Ellinghaus said: ‘His party killed an estimated 15 people and captured some, including keeping a two-year-old boy’.³¹

John Batman recognised that the land belonged to the Kulin.³² He met with Kulin Elders and signed two deeds or treaties relating to 500,000 acres of land in Naarm (Melbourne) and over 100,000 acres of land around Geelong and Indented Head.³³ Uncle Andrew Gardiner (Wurundjeri) told Yoorrook about the nature of the agreement:

In 1835 John Batman came to this area, swore a treaty with our ancestors near the Merri Creek ... This document was written in longhand, in English prose, with common law accents. It did not have Aboriginal cultural lore expressed in it ... That document basically gave him all the rights of ownership and could be seen today as being the first property developer. Our ancestors understood from limited translation that Batman sought short-term occupancy and they agreed to a Tanderrum, a temporary use of the land, a bit like a temporary visitor’s visa, but unfortunately that became a permanent residency.³⁴

UNCLE ANDREW GARDINER

Historian and Emeritus Professor Richard Broome gave evidence to Yoorrook. Broome considered John Batman’s motives for executing the deeds:

[Batman] was very well aware that the government in Britain at the time was run by an evangelical lobby group that had been important in ending the slavery in the British empire, so they were sympathetic to the rights of Indigenous peoples, and so by posturing as a land agreement, then he was hoping that that might even stick and he might be able to keep this land.³⁵

PROFESSOR RICHARD BROOME

In August 1835, Governor Richard Bourke declared the deeds null and void.³⁶ Associate Professor Katherine Ellinghaus explained that Governor Bourke’s declaration was consistent with the prevailing doctrine of terra nullius at the time (see Chapter 2: Sovereignty), asserting the fiction that First Peoples did not own the lands and so had no rights to dispose of it.³⁷

Governor Richard Bourke ... declared that the settlement that Batman had undertaken on the lands that would become Victoria was illegal. He called the men trespassers and said that they should be dealt with as if they were intruders on vacant lands of the Crown.³⁸

ASSOCIATE PROFESSOR KATHERINE ELLINGHAUS

Although the deeds were rejected by the colonial government, Yoorrook heard that they helped John Batman to secure his claim — ultimately forcing the hand of colonial officials to formally grant him the land.³⁹

Colonisers rush to seize lands and waters across the state

Yoorrook heard that despite strong resistance from First Peoples, from the 1830s onwards, colonisers established large sheep stations and other agricultural holdings across Victoria.⁴⁰ Professor Reynolds referred to this period as the ‘squatting rush’:⁴¹

[B]it by bit, and in a great rush by the mid-1830s, the settlers in both colonies [Tasmania and New South Wales] came into what was to become Victoria. They came from the north, across the Murray and down into Victoria. They came across by sea from Hobart into the southern parts of Victoria.⁴²

PROFESSOR HENRY REYNOLDS

It was an extraordinary development because of its speed ... [and] the incredible way in which these people came, particularly with their sheep and cattle. And by the 1840s there had been 700 stations established in New South Wales [including what is now Victoria] ... And something like five or six million sheep had also gone out into the wilderness.⁴³

PROFESSOR HENRY REYNOLDS

In 1836, the Surveyor-General Major Thomas Mitchell charted a course overland from the Riverina in New South Wales to the Bass Strait coast of Victoria.⁴⁴ He reported on the fertile pasture-like country of the plains of central and western Victoria.⁴⁵ He called this ‘Australia felix’, meaning (‘happy’ or ‘fortunate’ Australia).⁴⁶ As noted by the Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation:

These [fertile plains] were not natural parklands, but culturally created, managed landscapes, the result of countless generations of firestick farming by Wurundjeri Ancestors.⁴⁷

WURUNDJERI WOI-WURRUNG CULTURAL HERITAGE ABORIGINAL CORPORATION

Uncle Brendan Kennedy (Tati Tati) gave evidence about Major Thomas Mitchell killing First Peoples during his journey, and how geographical features and monuments are still named after him:

[Major Mitchell] was — him and his people they were killers. They were supposed to be doing something else, which is surveying Country and travelling across Country, but they did more than that. They represent the first wave or the first act of aggression on our people by the Europeans.⁴⁸

UNCLE BRENDAN KENNEDY

There’s a place here called Major Mitchell Lagoons. At the Wakool Junction where Mitchell did more massacring. He massacred here at Mount Dispersion. Massacred here, massacred there, all the way along.⁴⁹

UNCLE BRENDAN KENNEDY

On 8 November 1836, *The Australian*⁵⁰ newspaper reported that Major Mitchell had ‘discover[ed] ... a tract of country’ of ‘surpassing beauty and fertility’, ‘replete with the finest possible pasturage ... irrigated by innumerable streams’ and ‘a magnificent mass of mountains’.⁵¹ *The Australian* newspaper report went on to describe how Major Mitchell led a massacre of at least thirty Aboriginal people on the Murray River⁵², which ‘more than counterbalances any advantage the Colony may derive from the results of the journey’:⁵³

[W]e allude to the destruction of the Aborigines by the party in question. It appears that Major Mitchell having, or fancying he had, reason to apprehend danger from a numerous tribe who followed close upon their tracks for above two hundred miles, laid in ambush with his party in a thick scrub bordering upon a river, sending the bullock-drivers on cracking their whips so as to induce a belief that they had proceeded onwards. The natives having unconsciously advanced into the midst of the ambuscade, were set upon and fired at, a large number being killed on the spot, and the remainder taking the river, into which they plunged, swimming to the other side, the Europeans firing at and killing several more in the water. It is said that at least thirty were slain; how many escaped with wounds does not appear.⁵⁴

THE AUSTRALIAN

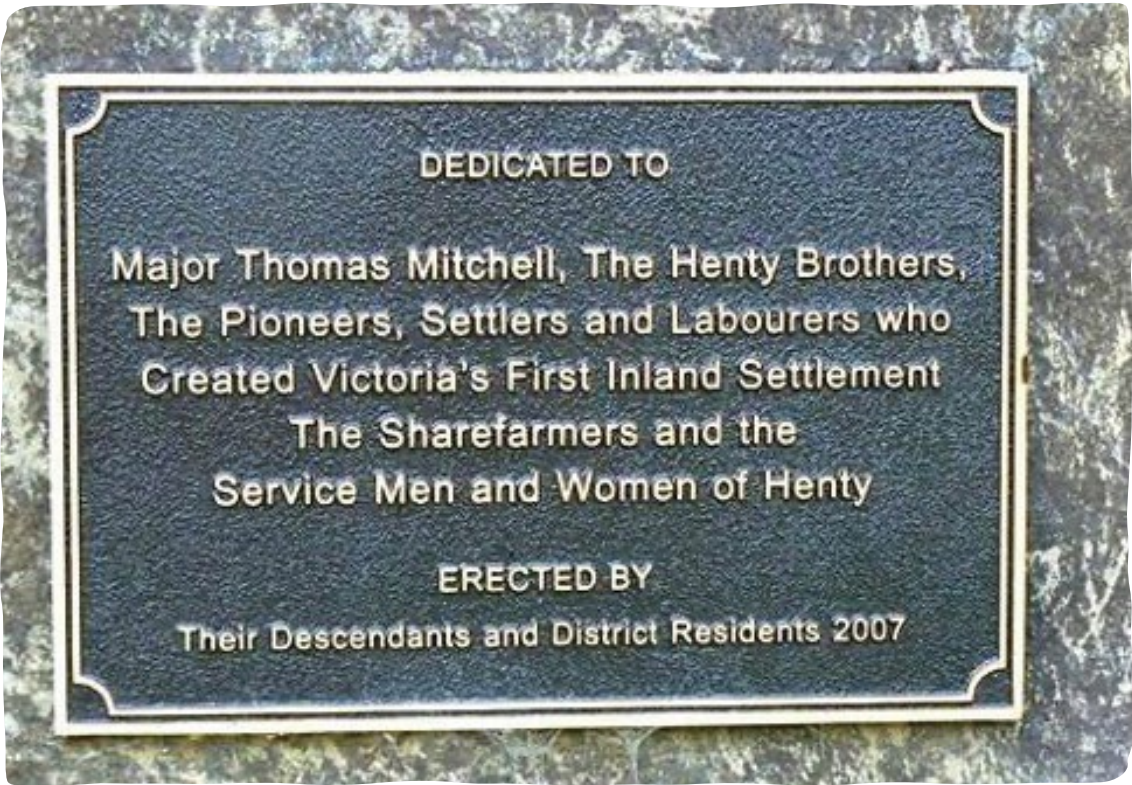
Major Mitchell himself described the effects of the massacre: ‘Thus in a very short time the usual silence of the desert prevailed on the banks of the Murray, and we pursued our journey unmolested’.⁵⁵ Revealing the attitudes of the time to the killing of Aboriginal people, *The Australian* newspaper report commented:

We say nothing of the expenditure of life on this occasion; that is an every-day occurrence in the annals of colonization; and its frequency, justified as it is on the plea of necessity, naturally deadens the horror with which such acts would be regarded by strangers to such deeds of blood, and leads us to be easily reconciled to each step in the process of extermination.⁵⁶

THE AUSTRALIAN

In 2007, a memorial was dedicated to Major Mitchell on Casterton Road in Portland celebrating his role in colonisation, with no regard to this history (see Figure 7.1).⁵⁷

Figure 7.1: Photograph of memorial dedicated to Major Thomas Mitchell and others⁵⁸



Plaque reads ‘DEDICATED TO Major Thomas Mitchell, The Henty Brothers, The Pioneers, Settlers and Labourers who Created Victoria’s First Inland Settlement The Sharefarmers and the Service Men and Women of Henty ERECTED BY Their Descendants and District Residents 2007’.

Yoorrook heard evidence that Major Mitchell’s account encouraged more squatters to illegally seek out land in Victoria.⁵⁹ In 1839, Captain Lachlan Macalister instructed Scottish explorer Angus McMillan to find a route overland from the Monaro Plains (in what is now South-West/South-East NSW) over the mountains to Port Albert (in what is now known as Gippsland).⁶⁰ McMillan and his party invaded Gunaikurnai Country, forcing Gunaikurnai people from their land.⁶¹ Writing about the Gunaikurnai in 1880, Alfred Howitt said that ‘the advance of settlement has, upon the frontier at least, been marked by a line of blood’.⁶² Howitt said:

When the first settlement of white men was formed in Gippsland, the country was found to be well peopled by an aboriginal tribe ... these people were physically and mentally in accordance with the conditions surrounding them ... they existed in numerous communities in a country abounding with food ... The advent of the white man, however, changed all this. Numbers were killed in conflicts with the settlers ... It is difficult to point out all the directions in which ... the settlement of Gippsland by the whites ... has operated injuriously upon the native tribe.⁶³

Squatters also sought access to rivers and other water sources for irrigation and drinking water for livestock.⁶⁴ Dr Erin O’Donnell a water law and policy expert from the University of Melbourne explained, ‘[W]ater went beneath land. So when Aboriginal peoples had their lands stolen, the water went with that’.⁶⁵ Then Minister for Treaty and First Peoples (previously Minister for Aboriginal Affairs) the Hon Gabrielle Williams MP,⁶⁶ gave evidence to Yoorrook and acknowledged the impact of invasion on First Peoples’ waterways: ‘As settlers moved across Victoria, they diverted, dammed and drained landscapes of water to suit and supply their specific needs’.⁶⁷

Between 1834 and 1850, livestock numbers in Victoria increased rapidly, with 6 million sheep in the colony by the end of that period.⁶⁸ The speed of pastoral settlement made this ‘one of the fastest land occupations in the history of empires’.⁶⁹ Livestock trampled First Peoples’ traditional food economies and land management systems. The hard hooves of sheep and cows caused erosion, grazing forced native fauna off the grasslands and the sheep consumed First Peoples’ food sources, including the murnong (yam daisy).⁷⁰ Once livestock was established on First Peoples’ land, competition, grievances and conflict were inevitable.

Yoorrook heard evidence that the squatter rush increased frontier violence, with devastating consequences for First Peoples. For example Professor Henry Reynolds said:

In a way, it represented both the privatisation of the killing and the vast dispersion of it ... there’s no doubt that this was probably one of the most tragic periods for First Nations people, both because of the speed of the occupation and undoubtedly the amount of violence and the killing that took place in this period.⁷¹

PROFESSOR HENRY REYNOLDS

Regulation of land use and exclusion of First Peoples

In 1836, the Governor of the Colony of New South Wales (including Victoria at the time) declared the Port Phillip district ‘open for settlement’.⁷² The Crown introduced squatting licenses and later a leasehold system to regulate land use.⁷³ Yoorrook heard that colonisers used these laws and policies to justify dispossession and more legitimate colonial claims to ownership. Planning specialist Dr Ed Wensing said:

The British planning tools and practices of surveying, mapping, bounding, selecting, zoning, naming, regulating and town-building were never intended to support the interests and livelihoods of First Nations peoples, but rather were, and continue to be the tools of dispossession.⁷⁴

DR ED WENSING

Professor Libby Porter provided further evidence about how colonial surveyors dispossessed First Peoples of their land:

Surveyors were powerful men in the colony because they served some essential functions of the colony. First, they enclosed territory as European space by marking it as known, legible and available for settlement. Second they produced knowledge about land that could be wielded in the interests of settler colonial development and expansion. The ‘resources’ of Country were quantified, mapped, measured and classified and turned into water supplies, drainage systems, urban settlements and pastureland.⁷⁵

PROFESSOR LIBBY PORTER

The current Victorian Surveyor-General Craig Sandy acknowledged the role of his office in dispossessing First Peoples of their lands:

The position of Surveyor-General ... has played a major role in land settlement and land administration within the State. ... I acknowledge that Surveyors-General both past and present played a role in the dispossession of First Peoples from their land ... I accept and deeply regret that the presence on Country of Surveyors-General or surveyors under direction has caused First Peoples communities significant trauma and diminished their ability to care for Country, practice culture and exercise their rights; I acknowledge that this contributed significantly to a loss of culture and language and impacted the physical, spiritual and economic wellbeing of First People.⁷⁶

SURVEYOR-GENERAL CRAIG SANDY

In 1837, shortly after John Batman’s arrival, the colony’s surveyor Robert Hoddle laid out the grid of streets that is now Naarm (Melbourne) city centre.⁷⁷ Professor Libby Porter described the impact of this:

These actions had the immediate effect of beginning to create property out of stolen land. A new colonial regulation at the same time stipulated that all lands had to be sold at auction, and Hoddle was appointed auctioneer. So began the rampant speculation on which the rest of the city of Melbourne was built.⁷⁸

PROFESSOR LIBBY PORTER

The City of Melbourne also stated that during this period, the Melbourne city council ‘played a prominent role in the destruction and reshaping of Wurundjeri Country and Bunurong Boon Wurrung Country through the Council’s role in building legislation and planning decisions’.⁷⁹ This included overseeing ‘the elevation, levelling and surfacing of streets within the Hoddle Grid and within new suburbs as the Council’s boundaries extended and altered over the years’.⁸⁰ The City of Melbourne told Yoorrook:

The development of the colonial-built environment on Wurundjeri Country and Bunurong Boon Wurrung Country not only altered the physical environment, but it also harmed the environment for animals, birds and fauna. Custodial and spiritual practices were disrupted.⁸¹

CITY OF MELBOURNE

Yoorrook heard that surveying, mapping, subdividing and auctioning land was central to the establishment of the early colony.⁸² Minister for Treaty and First Peoples the Hon Natalie Hutchins MP gave evidence about the impact of this for First Peoples:

[T]hrough a succession of Land Acts, the State sold First Peoples’ lands and waters to Europeans. This happened so swiftly that by 1884 all land in the Colony of Victoria had been divided and categorised and First Peoples had been progressively confined to smaller and smaller parcels of land through the Reserve system.⁸³

MINISTER NATALIE HUTCHINS MP

The State forcibly expelled First Peoples from their lands during this process. During the 1840s to 1860s, the Superintendent of Port Phillip District Charles La Trobe and others made sustained efforts to ban First Peoples from Naarm (Melbourne).⁸⁴ This included the council authorising police to kill Kulin Nation people’s dogs and offering rewards, as a method to try and keep First Peoples out of Naarm (Melbourne) in the 1840s.⁸⁵

The City of Melbourne told Yoorrook that in the 1840s, the council introduced *An Act for abating the nuisances occasioned by Dogs in the Streets of certain Towns and Highways in New South Wales*, known as ‘the Dog Act’:

During the 1840s the Council directed Town Police to enforce the Dog Act to kill Kulin nation people’s dogs. This resulted in the killing of Wurundjeri ngurungaeta Billibellary’s dog, among others. The Council believed the killing of dogs would keep Aboriginal people out of the streets of Melbourne.⁸⁶

CITY OF MELBOURNE

In the 1840s Melbourne city council used council by-laws to prevent First Peoples from bathing in the Birrarung (Yarra river),⁸⁷ and fenced areas of land, including the northern banks of the Birrarung, the Old Melbourne Cemetery and several parks, to stop First Peoples from using these spaces.⁸⁸ By 1849, First Peoples could also be accused of stealing for removing bark from trees, which was important for making shelter.⁸⁹

The Port Phillip Protectorate was established in 1838, with George Augustus Robinson appointed as ‘Chief Protector’ in 1839 and other ‘Assistant Protectors’ including William Thomas (see *Establishment of the Port Phillip Protectorate*).⁹⁰ Yoorrook was told that in September 1840, George Augustus Robinson wrote to William Thomas, stating, ‘His Excellency the Governor and His Honour the Superintendent [of Port Phillip District, the highest official in the colony] have directed that no Aboriginal Blacks of this District are to visit the Township of Melbourne under any pretext whatever, you will therefore adopt the requisite measures to prevent them so doing’.⁹¹ In October 1840, on the instructions of Governor George Gipps and Superintendent Charles La Trobe, Major Samuel Lettsom led police to capture and march hundreds of Aboriginal ‘men, women and children through Melbourne to lodge them at the prison barracks’.⁹²

Impact of the gold rush

Yoorrook heard that in 1851, the discovery of gold in Victoria triggered another rapid population influx, with devastating consequences for First Peoples and their lands and waters.⁹³ For example, Premier Jacinta Allan said:

First Peoples were pushed off their Country by the massive population influx that followed the discovery of gold. Victoria’s population increased five-fold in seven years and by 1858, half of Australia’s population resided in the Colony of Victoria.⁹⁴

PREMIER JACINTA ALLAN MP

The colony’s wealth grew at the expense of First Peoples:

By 1860, Victoria’s mining industry had made it one of the wealthiest colonies in the world. Many of Victoria’s major public institutions were built within a few short years of the gold rush, including Pentridge Prison (1851), the University of Melbourne (1853), the National Museum of Victoria (1854), Parliament House (1855) and the Melbourne Public Library (1855).⁹⁵

PREMIER JACINTA ALLAN MP

The theft of Country was violent

The theft of Country was characterised by violence and widespread atrocities. Dr Bill Pascoe⁹⁶ is a digital humanities specialist who worked on the University of Newcastle Centre for 21st Century Humanities, Colonial Frontier Massacres project.⁹⁷ He gave evidence to Yoorrook on massacres,⁹⁸ saying: ‘[S]ome of the things I’ve encountered in this research are the worst things I have ever heard of anyone ever doing to anyone in human history’.⁹⁹

Yoorrook heard substantial and repeated evidence that colonisers used violence to steal First Peoples’ lands and waters. Colonisers killed, maimed and raped First Peoples. They tore apart families and whole clan groups. Dr Bill Pascoe gave evidence of the extreme

level of violence in Victoria during the 1830s to 1850s. He referred to the Warrigal Creek cluster of massacres as examples:

[T]he Warrigal Creek massacres, that’s a collection of massacres where a group of colonists got together and called themselves the Highland Brigade. They weren’t actually the Highland Brigade, but that name indicates they saw themselves as being a war party on behalf of the empire. That’s ... their mindset. And they went around from camp site to camp site massacring anyone that they could find. Their intention was to wipe out everyone, which is an act of genocide. And it seems to be that, in the colony at the time, there were two sides or more to settler politics, but the prevailing and dominant side seems to have been the one in favour of violent empirical conquest, and squatters saw themselves playing their part in that ... some squatters had skulls mounted above their door as trophies ... not an uncommon view was that everyone should be exterminated.¹⁰⁰

DR BILL PASCOE

WARRIGAL CREEK MASSACRES

The Warrigal Creek massacres were a cluster of four massacres that occurred around Warrigal Creek on Gunaikurnai Country (Gippsland) in 1843.¹⁰¹ The massacres were said to be ‘in reprisal for a Brataulung warrior killing Donald Macalister, nephew of leading squatter [Captain] Lachlan Macalister’. The killing of Donald Macalister was in turn said to be a reprisal for the massacre of Gunaikurnai people by colonisers at Port Albert.¹⁰²

Angus McMillan (Lachlan Macalister’s former overseer) led the attacks, gathering a group of 20 men and horses known as the ‘Highland Brigade’, who attacked camps.¹⁰³ It is estimated that the colonisers killed at least 125 Brataulung/Gunaikurnai men, women and children in this massacre cluster.¹⁰⁴ They killed approximately 25 Brataulung people at Warrigal Creek,¹⁰⁵ 25 people at Warrigal Creek Mouth,¹⁰⁶ 25 people at Bruthen Creek,¹⁰⁷ 25 people at Freshwater Creek¹⁰⁸ and 25 people at Gammon Creek.¹⁰⁹

The clearest account of the events that followed comes from an account of Willy Hoddinott, also known as ‘Gippslander’ and published in *The Gap* magazine in 1925 and 1940:

The brigade coming up to the blacks camped around the waterhole at Warrigal Creek surrounded them and fired into them, killing a great number, some escaped into the scrub, others jumped into the waterhole, and, as fast as they put their heads up for breath, they were shot until the water was red with blood.

I knew two blacks, who though wounded came out of the hole alive. One was a boy at the time about 12 or 14 years old. He was hit in the eye by a slug, captured by the whites, and made to lead the ‘brigade’ from one camp to another.¹¹⁰

Yoorrook was told that Angus McMillan was also involved with the Ramahyuck mission.¹¹¹ He later held 150,000 acres of land along the Avon River and was a member of the Legislative Assembly for South Gippsland.¹¹² The Australian Electoral Division of McMillan was named after him, until it was replaced in 2019 (with the name ‘Monash’).¹¹³

The Victorian Government recognises the State’s role in perpetrating this violence. For example, Minister Gabrielle Williams said:

Dispossession occurred through a range of means, often violent. The Victorian Government acknowledges that the State’s active and tacit involvement in violence — including massacres, killings, rape and pillaging — are part of Victoria’s history.¹¹⁴

MINISTER GABRIELLE WILLIAMS MP

And Minister Natalie Hutchins, said:

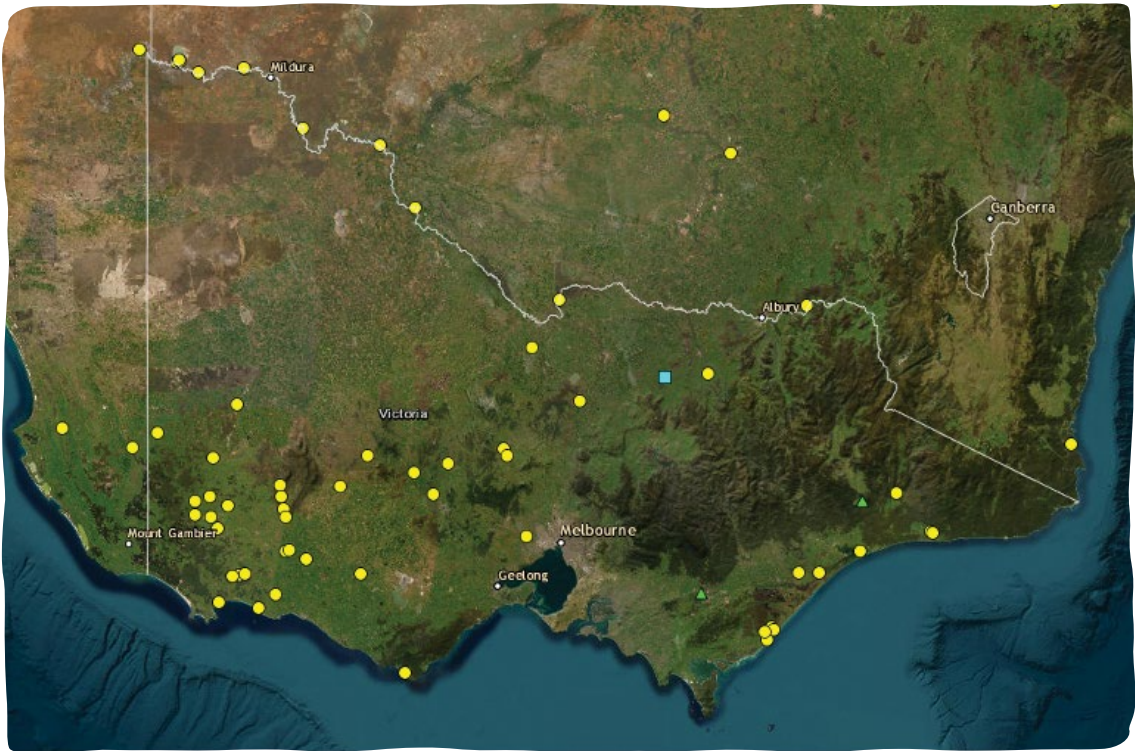
Private settlers and colonial authorities used violence to establish control over First Peoples’ lands and waters, forcibly removing First Peoples to make way for Europeans.¹¹⁵

MINISTER NATALIE HUTCHINS MP

Colonisers massacred First Peoples across Victoria

As of 11 March 2025, the Colonial Frontier Massacre project had evidence of 50 reported massacres in Victoria between 1831 and 1854, in which at least 978 Aboriginal people were killed.¹¹⁶ At least a further 258 First Nations people were killed in massacres in locations on or close to the present Victorian border.¹¹⁷

Figure 7.2: Colonial Frontier Massacres in Victoria, 1788 to 1930¹¹⁸



The University of Newcastle Colonial Frontier Massacre project defines a massacre as the murder of six or more undefended people in one operation, and only records massacres that are supported by verifiable evidence.¹¹⁹ Dr Bill Pascoe explained that these estimates are conservative: ‘[If historians] estimate perhaps 20 to 30 people were killed, we will use the number 20’.¹²⁰

Dr Pascoe and others said there was a ‘code of silence around massacres’.¹²¹ This occurred ‘where the settlers were doing this without government collaboration, or with a combined group of settlers and government forces, or whether it’s just government forces, that they commit these massacres and then attempt to cover them up’.¹²² Dr Pascoe acknowledged that the research does not capture the full extent of killings across Victoria:

Considering the code of silence around massacres, it’s reasonable to think that there are many more massacres occurred than this, and certainly many more killings of less than six people on the frontier.¹²³

DR BILL PASCOE

The prosecution and hanging of seven European men for murdering First Peoples at Myall Creek in New South Wales in 1838¹²⁴ contributed to the culture of silence among the colonisers who participated in or knew about massacres.¹²⁵ For example, Professor Henry Reynolds reflected on the code of silence around massacres:

[T]here was a code of silence on the frontier ... you didn’t have to necessarily take part in any of these — you know, these expeditions to kill people, but you couldn’t talk about it. You didn’t have to hold a gun but you had to hold your tongue.¹²⁶

PROFESSOR HENRY REYNOLDS

Inaugural Co-Chair of the First Peoples’ Assembly of Victoria, Marcus Stewart (Taungurung) said:

Massacres were often carried out in secret, and so the full story may never be known.¹²⁷

MARCUS STEWART, INAUGURAL CO-CHAIR OF FIRST PEOPLES’ ASSEMBLY OF VICTORIA

Despite this code of silence, some colonisers wrote about the killings in their private journals or correspondence. For example, Yoorrook heard about pastoralist Niel Black, who believed that in order to take land in the colony, a coloniser had to kill or be the beneficiary of killing:¹²⁸

The best way [to procure a run] is to go outside and take up a new run, provided the conscience of the party is sufficiently seared to enable him without remorse to slaughter natives right and left. It is universally and distinctly understood that the chances are very small indeed of a person taking up a new run being able to maintain possession of his place and property without having recourse to such means ...¹²⁹

NIEL BLACK

Gippsland squatter Henry Meyrick wrote to his family in 1846 of the killing of First Peoples and the secretive nature they were carried out:

The blacks are very quiet here now, poor wretches. No wild beast of the forest was ever hunted down with such unsparing perseverance as they are. Men, women and children are shot whenever they can be met with ... I have protested against it at every station I have been in Gippsland, in the strongest language, but these things are kept very secret as the penalty would certainly be hanging.¹³⁰

HENRY MEYRICK

As of 11 March 2025, the Colonial Frontier Massacre project had evidence of 50 reported massacres in Victoria between 1831 and 1854, in which at least 978 Aboriginal people were killed (see Table 7.1).¹³¹ Of the 50 recorded massacres, all but three were massacres of First Peoples by colonisers (one was a massacre of colonisers by First Peoples and two were massacres of First Peoples by First Peoples).¹³² The majority of massacres occurred in Victoria between 1834 and 1854, with the most intense period occurring in the 1840s.¹³³

Figure 7.3: Recorded massacres in Victoria (1830–1860) and estimated numbers killed (adapted from University of Newcastle)¹³⁴

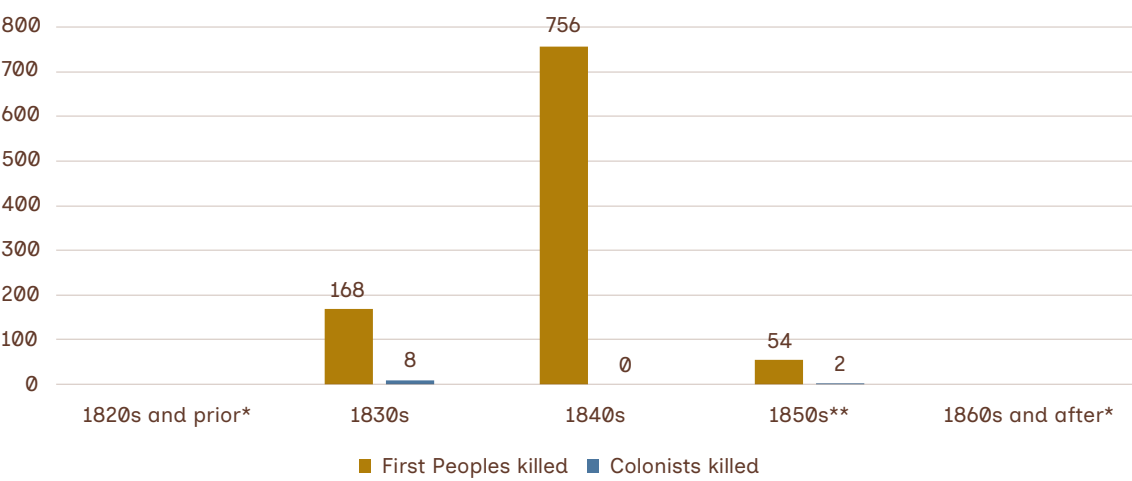


Table 7.1: Recorded massacres in Victoria (1830–1859) and estimated numbers killed (adapted from University of Newcastle)¹³⁵

Time	Massacres	First Peoples Killed	Colonists Killed
1829 and prior*	0	0	0
1830 to 1839	12	168	8
1841 to 1849	34	756	0
1850 to 1859**	4	54	2
1860 and after*	0	0	0
Total	50	978	10

These figures reflect data from the Colonial Frontier Massacre project site list, as of 11 March 2025. Yoorrook notes that the data is updated on a regular basis, which can lead to changes to the number of massacres and victims. The total number of massacres in Victoria recorded as of 11 March 2025 was 50, including 49 massacres where colonists were the aggressors, and one massacre where Aboriginal people were recorded as the aggressors against colonists, the ‘Faithfull Massacre, Benalla’ in 1838, and two recorded massacres of First Peoples by First Peoples: ‘LaTrobe Valley’ in 1840 and ‘Tambo Crossing’ in 1842.

The total number of Aboriginal people killed was 978, this includes one Aboriginal person who died at the ‘Faithfull Massacre, Benalla’, and 90 Aboriginal people who died at the ‘LaTrobe Valley’ 1840 and ‘Tambo

[Crossing](#)’ 1842 massacres. The total number of recorded colonists killed in massacres in Victoria was 10, including eight killed at the [‘Faithfull Massacre, Benalla’](#) and two killed at the [‘Apsley, Western Wimmera’](#) massacre in 1854.

Centre for 21st Century Humanities and University of Newcastle, Colonial Frontier Massacres in Australia, 1788–1930, [‘Site List Timeline’](#) (Webpage, Accessed 11 March 2025) <<https://c21ch.newcastle.edu.au/colonialmassacres/timeline.php>>.

*While there are no recorded massacres during these years, it is likely that massacres were also occurring during these times but were not recorded, or were disguised or hidden. **There are no recorded massacres after 1854.

Examples of massacres of First Peoples by colonists in Victoria include the [Convincing Ground](#) massacre in ‘Portland Bay’, in or around 1834, in which a significant number of Kilcarer Gundidj people were killed;¹³⁶ the Murdering Gully massacre (now Mount Emu Creek) in 1839, in which 35 First Nations people from three different clans were killed;¹³⁷ and the Warrigal Creek massacres in 1843, in which 125 Brataulung people were killed.¹³⁸

Yoorrook heard that mass killings wiped out whole First Nations clans.¹³⁹

At least 258 First Nations people were killed in massacres in locations on or close to the present Victorian border, that are not included in these figures.¹⁴⁰ These include the Moira Swamp massacre of 1843, in which colonists killed 26 Yorta Yorta and Bangerang people,¹⁴¹ the Mount Dispersion massacre in 1836 in which colonists killed 30 Kureinji or Dadi Dadi people,¹⁴² and a massacre at the junction of the Murray and Murrumbidgee rivers in 1846 in which colonists killed 70 Dadi Dadi or Weki Weki people.¹⁴³

CONVINCING GROUND MASSACRE

Yoorrook visited the site of the first recorded massacre in Victoria at Convincing Ground on Gunditjmara Country. Yoorrook heard about how whalers killed First Peoples and how the perpetrators went unpunished. Professor Richard Broome explained that the site may have been given the name ‘Convincing Ground’ as a warning to Aboriginal people not to fight or engage with the whalers there.¹⁴⁴

When Yoorrook visited the site, Aunty Denise Lovett (Gunditjmara) and Aunty Tina Saunders (Gunditjmara) explained:

‘... this is Traditional Lands of the Kilcarer Gunditj that — that lived and occupied this land. And Kilcarer was one of the 59 clans of the Gunditjmara nation. And they lived and occupied here, and that was a family, an extended family that lived here. And when Hentys had come through — when the whalers from Tasmania were coming up, they would come and they would stay, and they were stealing the women, but they would go and they would leave. So people’s life would be — come back to being normal.

But when the Hentys come through, it was a different story. The Hentys had come through and it was just the whole society was just shattered. But in this place here, Henty had established the whaling station, and during that time, one of the whales had beached here. And, of course, the Kilcarer mob come here to feast on the whale, and what the whalers have said was, no, that’s not your whale. And the mob said, no, well, it is. We’ve always done this. They would send up smoke signals for the broader mob to come in and have this big feast on whale and they would be here for days eating whale. And this time, yeah, the whalers went away and they got their guns and they shot them. And they shot them and there was only the two survivors. But run up to the hill behind us to the—’

AUNTY DENISE LOVETT

| ‘Mount Clay’.

AUNTY TINA SAUNDERS

| ‘Mount Clay, yes. Cart Gunditj mob lived up there’.

AUNTY DENISE LOVETT

| ‘Mount Clay’.

AUNTY TINA SAUNDERS

| ‘Yeah. So they were living up there. So they run up there and lived up there. And it was only when George Robinson, who was engaged as a—’

AUNTY DENISE LOVETT

| ‘Protector.’

AUNTY TINA SAUNDERS

‘Protector. Aboriginal Protector. They had told him the story of what happened here, and he recorded it. And it was the first Aboriginal massacre that was recorded in the history books. Yeah, in the journals of George Robinson’s, not that it was ever spoke about. They’d done a lot of stories to say what really happened here didn’t happen here. They’d say, oh, no, it was just the way — this is where they would fight out and call it the Convincing Grounds. But it was a massacre site. It was the massacre of the — a whole family group, except the two survivors that run up and lived with the Cart Gunditj mob on Mount Clay.’¹⁴⁵

AUNTY DENISE LOVETT

MURDERING GULLY MASSACRE

In 1839, the coloniser Frederick Taylor led a massacre of 35 First Nations people of Tarnbeere gundidj, other Djargurd wurrung and Gulidjan clans at Puuroyuup (‘Murdering Gully’ — later Mount Emu Creek).¹⁴⁶ The records for the massacre are based on survivors’ first-hand accounts and colonisers’ journal entries and correspondence. It is said that the motivation for the massacre was ‘retaliation for the [alleged] killing of sheep by two [Aboriginal people] on what is now Glenormiston station, near Lake Terang, managed by Taylor’.¹⁴⁷

Ian Clark has written that there were reports of around 45 to 52 men, women and children in the Mt Emu gully. On hearing of the women and children in the gully:

Taylor and associates, James Hamilton and Broomfield, headed a party of shepherds with the intention of attacking them ... As they approached the gully on horseback, the party formed an extended line with Taylor in the centre. They found the Aboriginal people asleep and advanced shouting and immediately fired upon them, killing the whole group except 12 people. They afterwards threw the bodies in a neighbouring waterhole.¹⁴⁸

Taylor and his associates later moved the bodies by cart and burned them.¹⁴⁹ Ian Clark has written that there were several survivors who escaped:

Two further survivors of the massacre, Bareetch Cuurneen — alias Queen Fanny, the ‘chiefess’ of the clan — and a child, were pursued to Wuurna Weewheetch ... a point of land on the west side of Lake Bullen Merri. With the child on her back she swam across to a point called Karm karm ... and escaped.¹⁵⁰

Another survivor, Wangegamon, a Djargurd wurrung man,

saw his wife and child killed. After the bodies had been thrown in the creek, the water became stained with blood. Grieving, he remained near the gully for two days ... two men named Anderson and Watson visited the site and, seeing the bodies, felt remorse and asked Taylor why he had killed so many women and children.¹⁵¹

The case was reviewed by Superintendent Charles La Trobe¹⁵² and Taylor was forbidden from owning land. He absconded to India. Nonetheless, Taylor later held land licences. In 1846, La Trobe informed the Colonial Secretary, Edward Deas Thomson, that all charges against him ‘ended in satisfactory disapproval’,¹⁵³ despite considerable credible information about the massacre from survivors, missionaries and protectors.

The year after the Murdering gully massacre, the property where the massacre occurred (Glenormiston station) was purchased by Niel Black who noted that the Aboriginal people there had been ‘cruelly dealt with’ and were ‘terror-stricken’ and therefore could be ‘easily managed’, stating in his journal, ‘It is the opinion of Blackie [the former overseer] that about 35–40 natives have been despatched on this establishment and that there is only two men left alive of the tribe’.¹⁵⁴

Dr Bill Pascoe told Yoorrook that eight massacres in Victoria are known to have involved ‘agents of the state’ (government employees or people acting on behalf of the government, such as police and government surveyors) (see Table 7.2).¹⁵⁵

Table 7.2: Massacres in Victoria involving (known) agents of the state¹⁵⁶

Site Name	Language Group	First Peoples killed	Agents of the State involved	Approximate Date
‘Restdown Plains Station, Campaspe River’	Djadjawurrung	40	Mounted Police	Between 1 and 5 June 1839
‘Victoria Range’	Djabwurrung or Nundadjali	20	Native Police	6 August 1843
‘Fitzroy River, Western District’ / ‘Budj Bim’ ¹⁵⁷	Dhauwurd wurrung, Gunditjmara	10	Native Police	Between 1 and 6 September 1843
‘Crawford River’ ¹⁵⁸	Dhauwurd wurrung or Wulluwurrung	9	Native Police	September 1843
‘Clunie, Glenelg River’	Nundadjali or Mardidjali	6	Native Police	Between 1 and 30 November 1843
‘Mt Arapiles / Dyurrite’	Mardidjali	6	Native Police	Between 1 and 31 July 1845
‘Snowy River’	Tatungalung or Krauatungalang	50	Native Police	20 December 1846
‘Aire River Estuary, Cape Otway’	Gadubanud	8	Government Officials (surveyors)	1 August 1846

Dr Pascoe provided evidence that police were often recruited from active or retired military, and they used violence to support coloniser expansion: ‘the police, on paper, they exist to protect everybody from violence, but in reality, what happens is that they massacre Aboriginal people’.¹⁵⁹

[T]he British were afraid of another American revolution. They did not want the squatters to organise and arm themselves as a military force. So I think what was happening is that, under the Gibbs government, the government was taking control of the killing. They're saying don't let the squatters kill people; we'll be the ones doing the killing. So these massacres occur. And there is plenty of letters and newspaper articles of squatters complaining the government is doing nothing, please send the native police, and the native police had a reputation for resolving the situation once and for all ... [by] killing people.¹⁶⁰

DR BILL PASCOE

Yoorrook also received evidence about the colonisers deploying Native Police to kill First Peoples. For example, Premier Jacinta Allan said:

In 1843 at Victoria Range, the killing of Aboriginal people by settlers and Native Police was recorded in the Port Phillip Gazette: 'Captain Dana's troop fired simultaneously upon the savages four or five times, seven or eight of whom were shot dead on the spot, and many wounded; the remainder retreated to the scrub and it is supposed about twenty of their number have been shot in the affray ... About eighty sheep out of the number that had escaped being slaughtered, were driven back to the owner'. The settlers were 'in perfect ecstasies' that 'real service has been done for them'. At Fitzroy River the Native Police shot and killed 10 Aboriginal people while searching for lost sheep. Near Portland at Crawford River in 1843, Native Police were 'in pursuit' of Aboriginal people in relation to alleged stealing of sheep and were reported to have shot 'at least nine'.¹⁶¹

PREMIER JACINTA ALLAN MP

Uncle Robbie Thorpe (Krauatungalung Gunaikurnai), who is also known as Djuran Bunjilinee spoke about the divisive impact of the Native Police:

[T]he first people who were employed, or deployed ... were the Mounted Native Police Force. The very first people who were part of the system. A very brutal ... force of people, who carry out some very heinous acts against the Aboriginal people, they were actually paid by the State to do these things ... it was one of the most divisive periods of time ... and the damage that they did, it needs to be looked at.¹⁶²

UNCLE ROBBIE THORPE / DJURAN BUNJILINEE

Yoorrook heard extensive accounts of First Peoples' oral histories documenting killings across the state. Uncle Brendan Kennedy reflected on the immense loss of life and ongoing trauma of frontier violence:

Imagine an hourglass, my family tree, and there's Grannie Farrant in the middle. In 1903, the police were on horseback and were chasing my grandmother Maggie, and her grandmother Sarah Randall ... They were being chased through the floodwaters by police on horseback and hid behind a fallen tree for days. My grandmother's grandmother died there. My grandmother was only three, and laid there with her deceased grandmother, hiding, and trying to wake her up. Her only living relative left at that time was ... her mother's brother. He was the only surviving Uncle.¹⁶³

UNCLE BRENDAN KENNEDY

There is a big grave in Balranald. We have all the death certificates — many of them died in their childhood and early adulthood. They were written up as having died for different [natural] reasons, but in our oral history we know the real reasons. Killings of Aboriginal people were still happening in those times. My mother was traumatised by sounds like thunderstorms and starting pistols in running races.¹⁶⁴

UNCLE BRENDAN KENNEDY

Uncle Brendan Kennedy told Yoorrook about Ancestors who were killed in massacres, and were buried near the centre of present-day Robinvale:

There's ancestors there who were massacred within a couple of hundred metres of that building ... This is oral history told from my father and his work colleagues when they were working there in the 1970s. They were digging and they found three ancestors buried there. Two adults and a baby. One adult had barbed wire around the neck and one had a bullet hole in the skull and then they had a tomahawk in the baby.¹⁶⁵

UNCLE BRENDAN KENNEDY

Uncle Dr Wayne Atkinson (Yorta Yorta, Dja Dja Wurrung) told Yoorrook about the impact of the Moira Swamp massacre in 1843:

One can only imagine how the massacre would have reverberated throughout Yorta Yorta minds and country. Attempts to accommodate the newcomers on their land were shattered. Now those white men who they thought were friendly, like [Edmund] Curr, had proved capable of extreme violence at the end of gun and sword. The survivors would have been deeply impacted by the loss of 20 of their men, as well as women and children. Many of the women lost their husbands, their sons, their fathers. These men were not only a loss to their families but were the keepers of the law, knowledge and cultural traditions. ... These same people are our ancestors who suffered the full brunt of Colonisation, invasion and crimes against humanity yet to be fully repaired.¹⁶⁶

UNCLE DR WAYNE ATKINSON

Massacres, murder and violence went unpunished

Yoorrook heard examples of 'Aboriginal Protectors' reporting violence to the police,¹⁶⁷ but colonisers were rarely held to account for their actions:

[I]n February 1842, six colonisers from Caramut Station shot and killed six Aboriginal people while they were sleeping with their families. Some survivors sought refuge at the nearby Mount Rouse Aboriginal station and reported the event to the Aboriginal Protector Charles Sievwright. The Protector found the dead bodies of three women, one of whom was pregnant, a child, and a wounded woman who later died of her injuries.

Six men were arrested, charged and brought to trial. The jury found the men not guilty.¹⁶⁸

PREMIER JACINTA ALLAN MP

[T]here's only one case of colonists being found guilty and punished for their crimes is the Myall Creek massacre [in New South Wales]. It's quite famous because of it. They were convicts, which matched the British people's view that convicts were responsible for the low levels of morality in the colony. They were the only ones found guilty and punished, and they were hung ... Some people sometimes were brought to court but they always got off ... Out of all of those 426 massacres [Australia-wide], that's the only one that ever resulted in a conviction of colonists.¹⁶⁹

DR BILL PASCOE

Yoorrook heard that there is a clear correlation between the locations of massacres and other violence against First Peoples between 1834 and 1851, and the density of pastoral land that colonisers stole during the same period. Referring to the Colonial Frontier Massacres project, Distinguished Professor Marcia Langton (Yiman, Bidjara) said:

I think there is a correlation between the squatters taking up their runs and the ... killings that this database refers to. But ... The massacre records are the tip of the iceberg. It is unlikely that most of the killing was recorded, because if the killings were executed by, say, shepherds and the workers for the squatters, then they likely couldn't read and write. So, we don't know what they did because they wouldn't have been able to write it down. So ... it must be an underestimate of the killings but there is clearly a correlation between the squatters' runs and the known killings.¹⁷⁰

PROFESSOR MARCIA LANGTON

Colonisers targeted women

Yoorrook heard that colonisers' sexual violence and dehumanisation of women was a trigger for broader frontier conflict.¹⁷¹ Yoorrook heard evidence of Europeans raping and exploiting Aboriginal women.¹⁷² Aboriginal women were abused by sealers and whalers, and often taken away from their families and held against their will.¹⁷³ Aunty Denise Lovett said 'when the whalers from Tasmania were coming up ... they were stealing the women'.¹⁷⁴ An anonymous submission to Yoorrook detailed how their Ancestor 'was stolen by sealers along with many other Boonwurrung people'.¹⁷⁵

Pastoralists and other colonisers also targeted women. In 1880, Alfred Howitt wrote of women of the Gunaikurnai falling 'into fatally vicious connections with the worst of the white men'.¹⁷⁶ Aunty Dr Alma Thorpe (Gunditjmara) described how her great grandmother and other women were subjected to sexual violence and slavery. As a result, some women became pregnant to the perpetrators, resulting in children with European features:

My great grandmother, Alice, was the daughter of a full-blooded Aboriginal woman who was raped by a white man. He was supposed to be a lieutenant in the army, or something like that. They raped the women. I was told there were slave camps. There were slave places where they put the women. They were hidden and my cousin used to show me that's where the slave places used to be. The women were gathered up and became slaves. You become the men's women. This was in the western districts, in Gunditjmara country.¹⁷⁷

AUNTY DR ALMA THORPE

Granny Clarke was born of the rape and the killing of the people; she was red-haired and green-eyed. And my Pa, George Clarke, he had red hair and green eyes. All through the family we have women with red hair.¹⁷⁸

AUNTY DR ALMA THORPE

Aunty Glenys Watts (Gunaikurnai) also detailed how colonisers subjected her grandmother to sexual violence, which led to European physical features in the family:

Granny Louisa, her journey started when the so-called big hunts were on for Aboriginal people. Her mother, Mercawan, was raped and that was where the [hair] colour changed, apparently, according to her grandson, Phillip Pepper.¹⁷⁹

AUNTY GLENYS WATTS

I felt it was important for it to be recorded that Granny Louisa's mother had been raped and that this is where the white blood had come in.¹⁸⁰

AUNTY GLENYS WATTS

Marcus Stewart explained that this history lives on 'in deep, intergenerational trauma that is experienced by First Peoples communities today'.¹⁸¹

Women experienced specific forms of normalised violence on a male-dominated colonial frontier, such as sexual and domestic servitude. Oral histories, as well as documentary evidence received by the Assembly, record European sealers raiding camps to kidnap women for their swimming and sealing skills, exacerbating conflict, and severing cultural and family connections by taking women to other locations far from Country. In later periods, our women faced attacks on their reproductive autonomy as part of genocidal assimilationist policies and practices.¹⁸²

MARCUS STEWART, INAUGURAL CO-CHAIR OF FIRST PEOPLES' ASSEMBLY OF VICTORIA

First Peoples' resistance

Yoorrook heard that in the face of overwhelming violence and destruction, First Peoples fiercely defended their lands, cultures and autonomy. Resistance efforts included guerilla tactics, ambushes and skirmishes aimed at protecting Country and disrupting European settlement.¹⁸³

In the late 1830s to 1850s (or possibly 1860s), a series of conflicts between colonists and Gunditjmara people occurred in the area of the Eumeralla river, these conflicts are now commonly referred to as the Eumeralla Wars.¹⁸⁴ Yoorrook heard multiple accounts of the Eumeralla Wars,¹⁸⁵ including the resistance of Gunditjmara people. For example Marcus Stewart said

A key example of resistance in the 19th Century is the Eumeralla Wars in the south-west of what we now call Victoria (approximately in the area between current day Port Fairy and Portland) between British colonists and Gunditjmara people. The conflicts occurred from the mid-1830s to the 1860s and were particularly intense between 1834 and 1844. The Gunditjmara employed guerrilla tactics and economic warfare against the livestock and property of the British colonists, occasionally killing colonists.¹⁸⁶

MARCUS STEWART, INAUGURAL CO-CHAIR OF FIRST PEOPLES' ASSEMBLY OF VICTORIA

Aunty Maude Alberts (Gilgar Gundidj Gunditjmara) reflected on the loss during, and since the Eumeralla Wars:

We have stone houses here that shows shotgun pellets and how they burnt the stones as they went into the huts to kill us. We were hunted up the lava flow. A lot of us found refuge. And the same guy that brought in, you know, the Eumeralla War, some say it went from 1832 to 1860, I reckon we are still fighting that Eumeralla War.¹⁸⁷

AUNTY MAUDE ALBERTS

The fierce resistance by Gunditjmara people, including during the Eumeralla Wars, has led to many Gunditjmara people today identifying proudly as the Fighting Gunditjmara. For example, Aunty Donna Wright (Kerrupjmara Gunditjmara) said:

... all of the massacres that occurred on our land, these were sustained attacks on our Country but they are a testament to the amazing strength of Gunditjmara people. Our warriors, our ancestors who fought — who fought those wars, Eumeralla War ... in this part of our Country there is the glorification of the colonisers who stole our land, the massacres, the murders, the frontier violence, violence against our women but our children as well. And it did not stop us. We are still here and we are still fighting. We are the proud Gunditjmara, the fighting Gunditjmara.¹⁸⁸

AUNTY DONNA WRIGHT

Uncle Johnny Lovett (Gunditjmara, Boandik) described the use of guerilla tactics by First Peoples, including the strategic use of fire.¹⁸⁹ Dr Bill Pascoe also provided evidence of the Gunditjmara resistance and strategic ingenuity during the Eumeralla Wars:

They knew the reason settlers were there was because of their sheep and other livestock, so they regularly attacked those, stealing a thousand at a time. Targeted killing of particular individuals who had broken their laws or were causing too much trouble. Strategic use of lands and waters ... Some of the hideouts ... were in very rocky Country because they knew horses couldn't go there. They were coordinating strategic actions across great distances. They had spies employed by colonists. And they had various tactical advantages like knowing the Country and how to get food and so on.¹⁹⁰

DR BILL PASCOE

State use of oppressive laws and practices

Yoorrook heard that in addition to violent dispossession, the State used oppressive laws and practices to force First Peoples from their lands.¹⁹¹ From the late 1800s, a series of 'Protection Acts' were enacted — ostensibly to protect First Peoples, but in practice they were used to move, segregate and control them.¹⁹² These laws led to the forcible removal of First Peoples from Country onto missions and reserves, between different missions and reserves, and later, off missions and reserves entirely.¹⁹³

Yoorrook heard that echoes of these early laws and practices continue to permeate government institutions and their interactions with First Peoples today.¹⁹⁴ For example, the *Aboriginal Protection Act 1869* (Vic) and its successor acts explicitly authorised the making of regulations that resulted in the removal of Aboriginal children.¹⁹⁵ The Stolen Generations followed, and today First Peoples continue to be over-represented among children removed from their families into child protection and out-of-home care.¹⁹⁶

Establishment of the Port Phillip Protectorate

The British House of Commons established the Port Phillip Protectorate in 1838 to 'protect' First Peoples¹⁹⁷ following a recommendation of an 1837 British Parliamentary inquiry that was concerned about reports of violence against First Peoples in the colonies.¹⁹⁸ In 1839, George Augustus Robinson was appointed Chief Protector.¹⁹⁹ Robinson had previously been the 'Protector of the Aborigines' during the 'Black War' in Lutruwita (Tasmania).²⁰⁰ He was responsible for expelling Palawa people to Wybalenna mission, resulting in the deaths of many Palawa people.²⁰¹ In the District of Port Phillip Robinson established four Protectorate Stations and attempted to convince First Peoples to stay on the stations.²⁰²

Professor Henry Reynolds described the purpose of the 'Protectors':

[T]he protectors, indeed, were seen as a way to try and at least control the amount of killing; that they would be there as witnesses, and this is the important thing. The important thing about squatting was there was no one there. There was no authority. There was no one to report. There was no one to even try and bring to justice people who were known as murderers. So, the protectors were at least some attempt to have witnesses there and to set up small stations where the local people could come and be protected from the squatters. So, they had — there were problems about them and their mission, but the protection was a serious protection of their life and limb.²⁰³

PROFESSOR HENRY REYNOLDS

Yoorrook heard that the Protectorates and Protectors were largely ineffective in fulfilling their stated purpose of protecting First Peoples. This was partly due to the fact that Protectorates were largely unsupported by the colonial government, and many colonists did not believe that the Protectorates were an efficient use of government funds.

[T]he small number of government-appointed 'protectors' of First Peoples were never equipped to adequately carry out their task, given the enormous amount of territory they were asked to administer, and the lawlessness of the time.²⁰⁴

PREMIER JACINTA ALLAN MP

[T]he colonial government really did not support that early Protectorate; ... those protectors were undermined at every moment by the colonial government and were unable to do the job of protecting for various reasons. But one of the reasons was ... [the colonial government withheld] the rations that they were supposed to be giving. They would give them orders that they couldn't fulfil. They would move people around. So, in a sense, those Protectors which were sent from Britain to do some protecting were not able to do that job because of the people like Charles La Trobe.²⁰⁵

ASSOCIATE PROFESSOR KATHERINE ELLINGHAUS

[T]he squatters and pastoralists absolutely hated them because sale of land was paying for the cost of the Protectorate. So they didn't agree with it and they didn't agree with the way it was funded. So they undermined it massively as well and were always on the governor's back 'Get rid of this mob. They're harbouring Aboriginal sheep stealers, et cetera'. So it was undermined from many quarters.²⁰⁶

PROFESSOR RICHARD BROOME

The colonial government eventually disbanded the Port Phillip Protectorate in 1849.²⁰⁷

The State forced First Peoples onto reserves and missions

Yoorrook heard evidence that colonial violence and disease drastically reduced the population of First Peoples in Victoria.²⁰⁸ An 1858 Victorian Parliamentary Committee recommended creating a system of state-run reserves to ‘protect’ First Peoples.²⁰⁹ As set out in the Premier’s evidence:

The 1858 Committee recommended establishing reserves on First Peoples’ traditional hunting grounds as the only option that would induce them to settle on the reserves and recommended that ‘ample supplies of provisions and blankets should be provided for these establishments until they could be made self-supporting’.²¹⁰

PREMIER JACINTA ALLAN MP

In 1860, a Central Board was appointed to administer the reserves.²¹¹ The Central Board — often in conjunction with church groups — established missions and reserves on Crown land.²¹² This led to the establishment of Anglican missions at Lake Condah (Tae Rak) and Lake Tyers (Bung Yarnda), and Moravian-Presbyterian missions at Ebenezer and Ramahyuck.²¹³ Government reserves were also opened at Coranderrk and Framlingham.²¹⁴ Figure 7.4 shows a map of the reserves in Victoria.

Premier Allan provided evidence about how the reserve sites were chosen due to land being perceived as undesirable by colonists for farming, and due to their distance from areas where settlers were living, she said:

Reserve sites were mostly chosen for their isolation from settlers, and the undesirability of the land to settlers, despite the efforts of First Peoples to choose sites that were significant to them and favourable for farming.²¹⁵

PREMIER JACINTA ALLAN MP

As set out in *Yoorrook for Justice*, the establishment of reserves and missions reinforced state control of First Peoples’ land, further enabling colonial expansion.²¹⁶

Figure 7.4: Indicative locations of Victorian Aboriginal mission stations, reserves and settlements (Source: PROV)²¹⁷



Yoorrook heard that government control over First Peoples’ lives intensified with the introduction of the *Aboriginal Protection Act 1869* (Vic) and its amendments and successor Acts, including the *Aborigines Protection Act 1886* (Vic) (‘Half-Caste Act’).²¹⁸ As articulated

by Premier Allan, the 1869 Act ‘gave the Central Board, renamed the “Board for the Protection of Aborigines”, extraordinary powers to control First Peoples’ lives’.²¹⁹ This included controlling First Peoples’ movement, housing, employment and income, and the care and education of their children.²²⁰

Minister Hutchins acknowledged that the operation of the *Aboriginal Protection Act* and its regulations meant that the reserves ‘became places where First Peoples were segregated, monitored, their labour exploited and made to conform to mission life’.²²¹ In effect, the Act operated to further confine First Peoples and, as articulated by the State of Victoria, enable ‘the allocation of stolen land to colonial pastoralists’.²²²

Yoorrook heard that for many First Peoples, missions and reserves were like prisons.²²³ The colonisers monitored, coerced and punished First Peoples.²²⁴ They prohibited First Peoples from practising culture and language, attending funerals and making financial decisions.²²⁵ The impacts of these restrictions are examined in Chapter 8: Impacts of Country being stolen. Aunty Dr Alma Thorpe, and Uncle Jim Berg (Gunditjmara) explained:

The missions were like prisons. They were only set up to gather up the blacks that were all around. At the mission they weren’t allowed to speak language or practice culture. Corroborees were very, very important. But I know in Condah, and probably in Framlingham too, they used to run away in the night in the bush and do a corroboree. But if they were caught you were punished. You weren’t allowed to do that and pass it on ... It was very secret. There were lots of secrets.²²⁶

AUNTY DR ALMA THORPE

And most of the people that was left after all the massacres was moved from one mission to another. Fram [Framlingham] down to Coranderrk. Coranderrk. Ramahyuck. Ramahyuck down to Lake Tyers. And one of the big issues, and that applied to every other mission and reserve in Victoria. People were removed like cattle. Had no choice.²²⁷

UNCLE JIM BERG

They just shuffled them off to other missions via Coranderrk down to Lake Tyers ... you will find that at Tyers [there are] people from all over Victoria — lost generation. And we talk about the Stolen Generation. We don’t talk about the ‘Lost Generation’. The missions and the reserves are nothing but prisons.²²⁸

UNCLE JIM BERG

Aunty Dr Jill Gallagher (Gunditjmara) and CEO of the Victorian Aboriginal Community Controlled Health Organisation (VACCHO) said:

Then there was the Mission era where our people were rounded up and put on Missions/Reserves and it was during these times that our people were forbidden to practise our cultures and speak our language. If you wanted to leave the Mission you needed a permission to do so, by way of a Permit system. Our people were totally controlled by Government. Every inch of their life was controlled.²²⁹

AUNTY DR JILL GALLAGHER

Overall, the practices of colonisation aim to deny Peoplehood, which in turn strips individuals of their right to belong to Country and legitimises dispossession (see Chapter 8: Impacts of Country being stolen). Sovereignty is inherently a characteristic of Peoplehood (see Chapter 2: Sovereignty), so when colonisers view First Peoples merely as individuals rather than as collectives, their sovereignty is undermined. This distinction is crucial in understanding the broader implications of colonisation and the ongoing struggle for recognition and rights.

‘AN UNBROKEN CONNECTION TO COUNTRY, AGAINST ALL ODDS’:²³⁰ THE STORY OF CORANDERRK

The story of Coranderrk is a story of injustice against First Peoples in Victoria and of their strength, resistance and survival in response. From 1835 onwards, when John Batman and John Pascoe Fawkner established the city of Melbourne on the lower reaches of the Birrarung (Yarra River) in an area the Wurundjeri people call Naarm, European colonisers took the lands of the Wurundjeri and neighbouring Kulin peoples. The Kulin consistently advocated for land back.²³¹ In 1863, Wurundjeri ngarangaeta (headman) Simon Wonga led Kulin people from the failed Mohican Station to a traditional gathering place on the Badger Creek near Healesville. They successfully advocated for the colonial government to reserve land there so they could settle and raise their families. The Wurundjeri named the reserve Coranderrk, after a local flowering bush.²³² Coranderrk was controlled by the colonial government but had a respectful manager, John Green, who wrote ‘My method of managing the blacks is to allow them to rule themselves as much as possible’.²³³

For many years the reserve prospered, the Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation said:

Coranderrk became a thriving settlement. Cattle were raised and crops grown. The people lived in cottages and grew and harvested award-winning hops. They welcomed visitors with displays of cultural practices and sold handicrafts and artefacts.²³⁴

WURUNDJERI WOI-WURRUNG CULTURAL HERITAGE ABORIGINAL CORPORATION

Local squatters, however, campaigned for Coranderrk’s closure and sale. Members of the Board for the Protection of Aborigines (the Protection Board) also disagreed with Green’s approach and had him removed in 1874. The Protection Board sought to close the reserve and move the First Peoples living there to a new reserve on the Murray river.²³⁵ The Protection Board appointed harsh managers and conditions deteriorated.

William Barak became ngarangaeta after Wonga passed away. In response to advocacy led by Barak, in 1881, the Victorian Parliament held an inquiry into conditions on Coranderrk. First Peoples gave evidence and their advocacy helped to stop the closure of the station. In 1884, Premier Berry directed that the reserve, which had been expanded to 1963 hectares, be made permanent,²³⁶ meaning it could only be reversed through legislation.

Greed, mismanagement and the impact of the *Half-Caste Act* introduced by Alfred Deakin had an enormous impact on the Coranderrk community.²³⁷ From the 1890s, the Central Board, under pressure from settlers, gradually revoked, sold or leased Coranderrk land to others, including 78 acres to Colin MacKenzie in 1920 for a fauna research centre, now known as Healesville Sanctuary.²³⁸

The Protection Board officially closed Coranderrk in 1924. Many of the First Peoples families were sent to the Lake Tyers (Bung Yarnda) mission although some Wurundjeri continued to live at Healesville.²³⁹ In 1948, the government divided up the remaining reserve for soldier settlement.²⁴⁰ None of the land at Coranderrk went to First Peoples returned soldiers.²⁴¹

The Wurundjeri People have successfully advocated for the return of some of the Coranderrk land.²⁴² So far less than 10 per cent of the original reserve has been returned to First Peoples ownership.²⁴³

THE PREMIER OF VICTORIA REFLECTS ON THE HISTORY OF CORANDERRK

I had the immense privilege of visiting another part of our State that holds distinct importance. Located on Wurundjeri land, Coranderrk was the home to the former Coranderrk Aboriginal Station ...

It was established under the auspices of the so-called protection policies. In reality it is a place where First Peoples’ lives were dictated and controlled. And despite this and, indeed, in the face of this, Coranderrk’s residents resisted. One of the many acts of resistance that speak to Aboriginal people’s enduring strength and survival.

Today Coranderrk has become a site of cultural revival, babies are welcomed to Country and coming of age ceremonies have been reawakened after more than 180 years of colonial suppression ... speaking to some of the young women there, they told me what it means to be able to practice their culture on Country again, what it means to be able to pass that on to their babies and children. I wanted to make special mention of Coranderrk and those women because I think it says something powerful about First Peoples’ resistance, but also about the purpose of Treaty and Truth in Victoria.²⁴⁴

PREMIER JACINTA ALLAN MP

The State forced First Peoples off reserves through the ‘Half-Caste Act’

Yoorrook heard that government control over First Peoples’ lives further intensified when Alfred Deakin introduced the *Aborigines Protection Act 1886* (Vic)²⁴⁵ known as the ‘Half-Caste Act’.²⁴⁶ The Half-Caste Act forced First Peoples of ‘mixed descent’ off reserves, depriving them of access to their land and government support and disrupting connections to family, culture and community.²⁴⁷ The Victorian Aboriginal Child and Community Agency (VACCA) explained the operation of the Act:

[I]n the early 1880s the Aborigines’ Protection Board, in response to a lack of resources decided to focus on ‘full bloods’ and ‘merge’ those of mixed heritage into the non-Indigenous community leaving them to their own devices to survive. As a consequence, the Aborigines Protection Act 1886 extended the powers of the Board and provided that at the age of 13 years mixed heritage boys were to be apprenticed or sent to work on farms and girls were to work as servants. They would then require permission to visit their families. ‘Orphaned’ children were to be transferred to the care of the Department for Neglected Children or an institution for neglected children. Mixed heritage First Nations people aged 34 and younger were to leave the reserves, and therefore their families.²⁴⁸

VICTORIAN ABORIGINAL CHILD AND COMMUNITY AGENCY

The Half-Caste Act gave powers to colonial administrators to tear children from their families and enabled the State to take away reserved Aboriginal land and provide it to colonisers to use,²⁴⁹ significantly contributing to the cultural and social marginalisation of First Peoples. In the First Peoples’ Assembly of Victoria’s submission on land injustice to Yoorrook, Alister Thorpe (Gunai, Yorta Yorta, Gunditjmara, Wurundjeri Woi Wurrung) said:

I think it’s really important that the Half-Caste Act is scrutinized as a policy that had a significant intergenerational impact on our Aboriginal people, families and communities. It stopped us from being able to practice our culture, our language, and our cultural protocols and ceremonies. It stopped us from gathering at important cultural sites and disconnected us from our family clans and kinship structures. Although our people were placed on Aboriginal Missions and Reserves, they were places where our people were able to nurture and grow a strong sense of community. They became places of strength and resilience.²⁵⁰

ALISTER THORPE, FIRST PEOPLES’ ASSEMBLY OF VICTORIA

Yoorrook heard extensive evidence about the damaging impacts of the Half-Caste Act for First Peoples (see Chapter 8: Impacts of Country being stolen).²⁵¹ Minister Hutchins provided evidence about the devastating implications of the Act:

Under the ‘Half-caste Act’ the State, through the Board exercised increasing control of Aboriginal peoples’ marriages and families and in 1899, regulations removed the ground of ‘neglect’ previously needed to remove Aboriginal children. Instead, any Aboriginal child could be removed for their ‘better care, custody and education’ meaning children could be removed at the State’s discretion for any reason and many were removed to Industrial homes or orphanages.²⁵²

MINISTER NATALIE HUTCHINS MP

In evidence, Professor Langton described the oppressive nature of the Act:

By the time that they get around to classifying Aboriginal people by the colour of their skin, by racial classifications such as half-caste, and cut off the right of so-called half-castes to the benefits that the State is distributing to Aborigines. They expel them completely from the reserves in Victoria. They’re not entitled to any assistance, and they have to, you know, fend for themselves in the general population. And, again, it is very obvious that that is another pathway to destruction of Aboriginal people.²⁵³

PROFESSOR MARCIA LANGTON

In a 1979 report, Diane Barwick described the effects of eviction from the reserves:

The forced dispersal had catastrophic effects as the exiled half castes, many in poor health, had to house and feed up to twelve dependent children on the meagre and intermittent wages paid for seasonal rural labour. Public prejudice worsened, and the homeless exiles were refused jobs and housing, and their children were excluded (informally) from State schools.²⁵⁴

The closure of reserves

The State used a decrease in reserve populations – caused by the removal of children and the expulsion of people deemed ‘half-caste’ – to close reserves that had been specifically set aside for First Peoples.²⁵⁵ The State used this as an impetus to once again take First Peoples’ land and claim it for Crown use, sale and redistribution. Premier Allan provided the following example in evidence: ‘[I]n 1893, 2,400 acres of the Coranderrk Reserve land was cancelled and transferred to the Lands Department under the Crown Lands Reserves Act 1893’.²⁵⁶

Premier Allan provided evidence about the State’s justification for closing reserves:

Reserve populations declined because of the State’s continued redefinitions of Aboriginality and restrictions on Aboriginal people with European ancestry in subsequent legislation. This continued to be used by the State to justify closing the reserves, despite staunch opposition from Aboriginal people who called the reserves home.²⁵⁷

PREMIER JACINTA ALLAN MP

As outlined by the Premier in evidence, closures began with ‘the removal of staff from Framlingham in 1890, followed by Lake Hindmarsh (Ebenezer) in 1904, Ramahyuck in 1908, Lake Condah in 1918, and Coranderrk in 1924. The process was completed in 1970, with Lake Tyers and Framlingham handed over as Trusts to particular residents of those former Reserves’.²⁵⁸

Premier Allan and Minister Hutchins recognised the impact of the closures on First Peoples:

People forced off the Reserves were given very little means of supporting themselves, having lived their whole lives on Reserves without the ability to amass belongings, or wealth, being paid only in rations or in low wages and housed in Government housing.²⁵⁹

PREMIER JACINTA ALLAN MP

By this time, residents at Framlingham, Coranderrk and Lake Tyers had already successfully resisted multiple State attempts to remove them from their land. Such State acts included removing all stock and farming implements that were being used by residents, selling off and denying access to housing, the sale of land despite its reservation as an Aboriginal reserve and the expulsion of Aboriginal residents of mixed descent. Despite community efforts, however, Coranderrk was closed in 1924, and in 1948 former Coranderrk and Lake Condah land was redistributed to non-Aboriginal returned soldiers.²⁶⁰

MINISTER NATALIE HUTCHINS MP

Soldier settlement schemes were used to take First Peoples’ land

A lot of people don’t realise our mob, men and women fought in the Boer War, First World War, Second World War, Korea and Vietnam as noncitizens. Once they got out of uniform they was blacks again.²⁶¹

UNCLE JIM BERG

[T]he returned servicemen from the First and Second World Wars did not receive the favours of a grateful country like their white counterparts did with the soldier resettlement blocks to restart their lives. Our people were decamped and told to return to the Mission. They had to find their own way home.²⁶²

UNCLE ANDREW GARDINER

The schemes provided returned soldiers with housing and employment

The soldier settlement schemes were joint federal and state schemes that were established to recognise and reward the efforts of Australians who fought in the First and Second World Wars.²⁶³ The Office for Veterans in the Victorian Department of Families, Fairness and Housing told Yoorrook that the schemes were implemented ‘to increase settler populations in rural areas, and support returned servicemen to transition back to civilian life through ownership of farmland’.²⁶⁴

Under the First World War scheme, the government provided Crown land to eligible returned soldiers under a lease agreement (though no payments were required for the first three years).²⁶⁵ The scheme specified that soldiers who received land had to ‘improve’ the land by fencing it and building stockyards.²⁶⁶ Once the loan was repaid, the veterans owned the land as freehold title.²⁶⁷ If veterans could not meet the repayments, leases were cancelled and the land was re-sold.²⁶⁸

The Commonwealth and state governments collaborated in designing and delivering the schemes. The Commonwealth Government provided financial support for the schemes and the Victorian Government was closely involved in their day-to-day administration in Victoria.²⁶⁹ In Victoria, the First World War scheme was initially administered by the Victorian Lands Purchase and Administration Board and from 1918 the Closer Settlement Board of Victoria under the *Closer Settlement Act 1915* (Vic) and the *Discharged Soldiers Settlement Act 1917* (Vic).²⁷⁰ By 1930, the Victorian Government had acquired 2.5 million acres of land for the First World War scheme.²⁷¹

The State’s powers to administer the scheme were clearly set out in the Victorian legislation identified above. However, the State told Yoorrook in correspondence that ‘it is difficult to determine with certainty the discharge of responsibilities’ between Commonwealth and State governments in administering the First World War scheme due to conflicting historical records, and that the specifics of their respective roles remain unclear and should be approached with caution.²⁷² In any event, Yoorrook received evidence that the Victorian Government designated the land areas for selection by

soldiers under the scheme. Yoorrook heard that after Lake Condah Mission was closed, the land was allocated for returned soldiers under the First World War scheme.²⁷³

The Second World War scheme was administered within Victoria by the Soldier Settlement Commission, established under the *Soldier Settlement Act 1945* (Vic). It implemented a 1945 intergovernmental agreement within Victoria, which provided that:

- the State would select land that is potentially suitable for soldier settlements.
- the Commonwealth and State would confer on the State’s land selection proposals and consider whether they should be accepted.
- the State would then set aside or compulsorily acquire the identified land for selection in the scheme (as relevant) and sub-divide, develop and improve the land to a stage where it can be brought into production by a settler within a reasonable time.
- soldiers would then apply to the appropriate State authority, which would ‘on behalf of the Commonwealth’ decide eligibility and classify applicants as suitable.²⁷⁴

The Soldier Settlement Commission was at all times subject to the oversight and direction from the Victorian Minister responsible for the scheme.²⁷⁵

First Peoples were excluded from the schemes

First Peoples were initially prohibited from enrolling in the war. The *Federal Defence Act 1910* (Cth) exempted First Peoples from services as only people of ‘substantial European origin’ were eligible.²⁷⁶ Many First Nations men hid their Indigenous heritage to enlist.²⁷⁷ The regulations were modified in May 1917 to allow ‘half-caste’ Aboriginal men to enlist.²⁷⁸

Yoorrook heard that the government designed and operated the schemes in a way that meant they almost entirely excluded returning Aboriginal soldiers.²⁷⁹ Soldiers did not automatically qualify for land under the First World War scheme. Instead, the government required that returned soldiers make an application to the Closer Settlement Board, which demonstrated their farming experience.²⁸⁰ While the schemes themselves did not explicitly exclude First Peoples from applying, the fact that only two First Peoples are recorded as receiving land suggests the administration of these schemes excluded First Peoples.

The Kaiela Institute told Yoorrook how Aboriginal soldiers who returned after the First World War and applied for the scheme were often not even provided with a reply:

These returned soldiers submitted their paperwork, the applications were delegated by the commonwealth bureaucracy to the relevant local government, and files disclose they never received even the courtesy of a reply.²⁸¹

KAIELA INSTITUTE

Co-Chair of the First Peoples’ Assembly of Victoria, Ngarra Murray (Wamba Wamba, Yorta Yorta, Dhudhuroa, Jupagulk, Baraparapa, Wiradjuri, Dja Dja Wurrung) provided an excerpt from her grandfather Stewart Murray’s unpublished manuscript detailing his experience:

I had made a number of applications for soldier settlement land in NSW and Victoria. I was after a sheep farm or mixed farming. I finished third at a ballot at Wagga, the closest I ever got to a soldier settlement farm. I was married and had two children and was hoping to get something for them to live on and feel secure in owning a piece of my ancestors land that was stolen and exploited from my grandfathers tribes.²⁸²

NGARRA MURRAY QUOTING STEWART MURRAY

In the First Peoples’ Assembly Victoria submission to Yoorrook, Barry Firebrace-Briggs (Yorta Yorta, Ulupna) described the discrimination against his grandfather who served for Australia, at a time when Aboriginal people were still not considered Australian citizens:

My Grandfather was a proud Aboriginal man, who was not classified as a citizen in his own Country. He enlisted and fought for Australia in Borneo ... On his return, he wasn’t allowed into the Return and Serviceman League (RSL) ... He was denied entry at the door, even when invited by his fellow white servicemen. Pop was denied the opportunity to seek and assist in supporting those very people he shared the battlefield with.²⁸³

BARRY FIREBRACE-BRIGGS, FIRST PEOPLES’ ASSEMBLY OF VICTORIA

The discrimination against returned Aboriginal soldiers extended beyond exclusion from the schemes. Yoorrook received a submission from the City of Melbourne that outlined the pervasive discrimination faced by Aboriginal soldiers returning from the Second World War:

Aboriginal people returned from armed service to challenges in getting employment and housing, with little to no support from Federal or State Governments. If they could get pensions, they suffered having those quarantined and they were denied access to military funerals, marching on Anzac Day and membership of the RSL.²⁸⁴

CITY OF MELBOURNE

Minister Hutchins told Yoorrook that First Peoples were ‘deliberately excluded from Soldier Settlement Schemes because of their Aboriginality’²⁸⁵ and acknowledged ‘it is devastating this injustice occurred and remains unresolved. I recognise this is a wound in Victoria’s history that requires healing’.²⁸⁶

UNCLE JOHNNY LOVETT AND THE STORY OF HIS FAMILY’S MILITARY PARTICIPATION AND EXCLUSION FROM SOLDIER SETTLEMENT SCHEMES²⁸⁷

Uncle Johnny Lovett (Gunditjmara, Boandik) told Yoorrook:

My father was a Gunditjmara and Bunganditj man. He was one of the thirteen children of Hannah and James Lovett.

My father and four of his brothers, Alfred, Leonard, Edward and Frederick, were the only brothers, black or white ... to serve together in both World Wars ... Many members of the next generation of my family also served in World War II, including the first female family members to serve, Alice Lovett and Pearl Lovett. Since then, 21 members of the Lovett family have now served in the Australian military forces. All have survived.

My father enlisted in World War I in 1917. He was 19 years old at the time, and he had to get his parents to give signed permission for him to go. Australia had an ‘all-white’ policy, and Aboriginal people were unable to sign on to fight in the war. They later changed the laws so that Aboriginal soldiers who had white blood in them could sign up, and my father and his brothers enlisted.

In 1916, there were 11 Aboriginal men who marched up to Hamilton from the Lake Condah Mission to sign up to the army to enlist. Some of them were signed up on the day, but within two weeks after signing up, some were dismissed as being ‘unfit’, even though they were physically some of the fittest men in the district. It had nothing to do with being unfit, it was because they were too black. They all played football, and they ran a lot, so it was very hard to believe that they were unfit. There was a lot of racism in that area, and they were very dark skinned. My father and his brothers were allowed to enlist because the recruitment officers deemed that they had enough white blood in them, because there were white people on both parents’ sides.

When my father returned from his service in World War I, he came home to find that the Lake Condah Mission had been closed. The Mission was closed so that the land could be allocated to returned soldiers. Despite the fact that my dad had fought in the war, he was not allocated a parcel of land, because he was Aboriginal. He was denied a life simply because someone thought he didn’t matter, and other Aboriginals didn’t matter.

In around 1946, after his service in World War II, my father wrote a letter to the government making an application to receive a block of land at the Lake Condah Mission that was being cut up into blocks under the Soldier Settlement Act.

He never received a reply to that letter. There were 37,000 soldiers that returned from the war and were given settlement blocks, but not my father or uncles.

My father was very proud to be a soldier and he had a lot of good mates who he fought in the wars with. They were comrades in arms, and the distinction between white and black didn’t matter. It wasn’t an issue between them, but it was an issue created by the government. They came home from the war and were back to being black.²⁸⁸

THE LATE UNCLE KEVIN COOMBS’ STORY OF MILITARY PARTICIPATION²⁸⁹

The late respected Elder Uncle Kevin Coombs (Wotjobaluk, Wemba Wemba, Wiradjuri) told Yoorrook:

[M]y grandfather and his brother fought in World War I, in Fromelles on the Western Front, for six years. Aboriginal people were not allowed to enlist. My grandfather went to sign up in Horsham and was knocked back, so he travelled down to Bendigo and changed his name to sign up the second time. He enlisted under Alfred Jackson Coombs, and not Albert Wallace, which was his birth name.

... When my grandfather’s brother came back from war, he actually had severe post-traumatic stress. He was gassed. He didn’t want to be around people. He didn’t want to mix with people. My grandfather was awarded the Victory medal and the British War Medal.

... Even though my grandfather and his brother served in World War I like other Australian men at the time, they were treated pretty poorly when they got back. People that went to the First World War were told that they would get a block of land, a soldier settlement. And I’m still waiting for ours. Other soldiers got land when they came back from the war, but not Aboriginal soldiers.²⁹⁰

Only two First Nations people are known to have received land under the First World War scheme

First Peoples in Victoria have served in every overseas and armed conflict since Federation.²⁹¹ However, the exact number of First Nations people that served in the First and Second World Wars is unknown.²⁹² This is largely due to the paucity of records. The Office of Veterans in the Victorian Department of Families, Fairness and Housing told Yoorrook, ‘it is generally agreed there were no official records kept of First Peoples servicemen’.²⁹³ Before 1980, those enlisting in the Australian Defence Force were not asked whether they were First Peoples.²⁹⁴ In addition, many First Peoples in Victoria hid their identity to avoid discrimination.²⁹⁵

The latest figures estimate that across Australia more than 1000 First Nations people served in the First World War and over 4000²⁹⁶ and possibly 6500 to 7000²⁹⁷ served in the Second World War. In Victoria, an estimated 90 First Nations people served in the First World War and 150 First Nations people served in the Second World War.²⁹⁸

Approximately 12,000 Victorian soldiers from the First World War received land under the scheme.²⁹⁹ Only two First Peoples men, Private Percy Pepper (Gunaikurnai) and Private George Winter McDonald (Gunditjmara) are known to have received soldier settlement land in Victoria.³⁰⁰ The State was unable to confirm how many returned soldiers received land following the Second World War but said that overall the Second World War scheme was on a smaller scale than the First World War scheme, with a total of about 12,000 returned soldiers Australia-wide receiving land (compared to more than 37,000 people after the First World War).³⁰¹

Yoorrook received evidence from descendants of Private Percy Pepper and Private George Winter McDonald. This evidence details how the land the government provided under the scheme to Private Pepper and Private McDonald was unproductive and not suitable for farming. In both cases the land was ultimately returned to the State.³⁰²

After returning from service, Percy had to provide a lot more information and have support from other people to obtain a soldier settlement block, because he was Aboriginal. The land that Percy was allocated was known as the ‘swamps’. It wasn’t proper land. It was lower quality land, which I believe he was given because he was Aboriginal. Other white people that returned from service got soldier settlement blocks that was really good quality land, which they were able to pass on to their families ... [Percy’s land was] taken off him because it was unproductive, often flooded, and he couldn’t make repayments.³⁰³

AUNTY GLENYS WATTS

Private George McDonald faced challenges due to the poor quality of the land and the fact he suffered from a physical disability.³⁰⁴ Yoorrook received a submission from the McDonald family, the descendants of George McDonald, outlining his experience of the soldier settlement scheme. George McDonald was granted about 95 acres of land but ‘the quality of the land was poor by any standards’ and ‘full of rocks’.³⁰⁵ The lease over the land (2000 pounds per year) was also considered ‘over the market value’.³⁰⁶ Aunty Evon Barker (Gunditjmara), granddaughter of George McDonald, told Yoorrook how George only had one leg, which made working the already poor quality land even harder: ‘[H]ow could a one-legged man run a farm with no ground that was capable of running sheep or cattle ... and George did pay [to lease the farm]’.³⁰⁷ Ultimately George McDonald and his family relocated.³⁰⁸

A second dispossession

The soldier settlement schemes have been described as enacting a ‘second dispossession’ of First Peoples.³⁰⁹ Not only were returned soldiers discriminated against and denied access to the schemes, but despite First Peoples’ protests, reserved Aboriginal land at Coranderrk and Lake Condah (Tae Rak) was taken for the First World War scheme.³¹⁰ No First Peoples returned service men or women received land at either Coranderrk or Lake Condah (Tae Rak),³¹¹ and as highlighted (See box: Uncle Johnny Lovett and the story of his family’s military participation and box: The late Uncle Kevin Coombs’ story of military participation), only two First Nations men in Victoria received a soldier settlement scheme for their services in the First World War.

As discussed above, this was land that had been home for First Peoples for generations before colonisers forced them off Country. Dr Jessica Horton wrote: ‘In Victoria, local branches of the Returned Sailors and Soldiers Imperial League of Australia put significant pressure on the [Protection] Board to make Aboriginal reserve land available to them’.³¹²

The McDonald family submission included an excerpt from the Portland Guardian in 1921 that illustrates the racist attitudes of the time:

Messrs W. E. Thomas (Glenelg), Bailey (Port Fairy) and W.H . Everard (Evelyn). M.L.A, members of the Aboriginal Board, visited Condah Mission Station on Friday. Although nothing official has been announced, it is understood that in keeping with the policy decided upon this land will be throw open for soldier settlement, and the natives removed and concentrated at Lake Tyers. Deputations of blacks and half castes met the Board and asked not to be driven from home; but, as one Member stated, the time of sentimentality in matters leading to the development of the State has passed, and it is considered that better use can be made of the land, which is now practically lying idle, by throwing it open to returned soldiers. Other areas for the exclusive use of aborigines, such as Antwerp, and Coranderrk, will be taken over in the same way, and the natives concentrated at Lake Tyers, an ideal place for such a purpose.³¹³

MCDONALD FAMILY OF TAE RAK (LAKE CONDAH), CITING THE PORTLAND GUARDIAN

Minister Hutchins acknowledged the deep injustice of this double dispossession and how it compounded injustice for First Peoples:

When I reflect on this, I think about the terrible experience of persistent, compounding injustice for Aboriginal veterans and their families this has been. Knowing how hard residents had fought to stay on the Aboriginal reserve land, and how much it means to their descendants today, to think that the Parliament of which I am a member of, once introduced, voted on and passed laws to transfer significant land at Coranderrk to non-Aboriginal people while Aboriginal veterans were not given access to the same Scheme after fighting the same war is difficult to comprehend.³¹⁴

MINISTER NATALIE HUTCHINS MP

The State acknowledges this injustice is a shameful part of Victoria’s history

The Victorian Government has acknowledged that the exclusion of First Peoples from the soldier settlement schemes was discriminatory and unjust. Minister Hutchins told Yoorrook that ‘First Peoples served their country overseas but returned home to unjust discrimination and a lack of opportunity’.³¹⁵ During hearings, Minister Hutchins said that the treatment of First Peoples and soldiers during that time was ‘disgraceful’.³¹⁶

I am deeply saddened by the experiences of Aboriginal returned soldiers, veterans, their families and descendants who were deliberately excluded from Soldier Settlement Schemes because of their Aboriginality. Aboriginal veterans fought for this country and returned home with the hope they could build a new life and foundation for their families — just like the peers they fought alongside. I acknowledge it is devastating this injustice occurred and remains unresolved. I recognise this is a wound in Victoria’s history that requires healing.³¹⁷

MINISTER NATALIE HUTCHINS MP

In reflecting on the injustices of the soldier settlement schemes, Minister Gabrielle Williams told Yoorrook ‘the injustice that is experienced through the soldier settlement scheme cannot be denied’.³¹⁸

[It] should be considered a great shame of this nation that we felt it appropriate and fit to have Aboriginal people fight and die for our nation, but we couldn’t afford them the recognition when they got home and, more than that, carved up land that they were living on and gave it to others. It is an incredible injustice.³¹⁹

MINISTER GABRIELLE WILLIAMS MP

Premier Jacinta Allan described the exclusion of First Peoples from soldier settlement schemes as ‘shockingly wrong and unfair’.³²⁰

Despite acknowledging the inequitable way the soldier settlement schemes were implemented, the Victorian and Commonwealth governments have so far failed to provide redress. Uncle Johnny Lovett told Yoorrook how his family was impacted by their exclusion from the soldier settlement schemes (see box: Uncle Johnny Lovett and the story of his family’s military participation). Uncle Johnny brought these issues to the attention of the State of Victoria in 2013.³²¹ Uncle Johnny would like to see his father and others recognised for their service:

I would like them to recognise what he did. I want them to recognise every Aboriginal that ever put on a uniform for this country ... recognised for what they did ... I think that it’s long and well and truly overdue. And it needs to be — it needs to be addressed and it needs to be done before I die.³²²

UNCLE JOHNNY LOVETT

Minister Hutchins told Yoorrook that she has written to and met with the Commonwealth about the need for a joint response to the soldier settlement schemes.³²³ However, no progress has been made. Who bears the responsibility of addressing this injustice must be resolved and not used as an excuse to obfuscate and delay redress. The Commonwealth and State governments must work together to address this issue and accept shared responsibility. If the Commonwealth is unwilling or unable to work with the State to redress this injustice, then the Victorian Government must do it alone. In addition, addressing injustice should not be hampered by poor record keeping and the difficulty identifying eligible soldiers.³²⁴ Finally, redress is a matter that must be addressed urgently and does not require waiting for treaty (see also Recommendations and Chapter 39: Redress).

The way forward

It is time to reckon with the brutal history of how Country was stolen in Victoria.

Colonisers came for the land. They used violence and supported oppressive laws and practices to steal Country and generate wealth at the expense of First Peoples. Yoorrook heard that at every step of the way, these actions were enabled and justified by racist ideology with the explicit and complicit support of politicians, colonial authorities and the State. When the Europeans arrived, they brought with them an imperialist worldview that cast First Peoples as ‘inferior’. Successive governments adopted this flawed ideology and embedded it into legislation and policy. The governments designed the legislation and policies to create and perpetuate ideas of racial differentiation that further robbed First Peoples of their Country, culture and community. This legacy of ideologies of racial inferiority remains active and negatively impacts the lives of First Peoples in Victoria today.

Yoorrook heard a strong desire for these truths to be shared and for this past to be recognised and widely understood. For example, Marcus Stewart said

By sharing our history and our truths, the Assembly hopes that they will become everybody’s history and everybody’s truths.³²⁵

MARCUS STEWART, INAUGURAL CO-CHAIR OF FIRST PEOPLES’ ASSEMBLY OF VICTORIA

The way forward lies in a shared commitment to continuing to uncover these truths, right the wrongs and make space for healing.

Recommendation

RECOMMENDATION 14

The Victorian Government must provide redress to First Peoples and their families affected by Soldier Settlement Schemes, including:

- a. An acknowledgment and apology by the Victorian Government to First Peoples affected by Soldier Settlement Schemes and their families;
- b. Appropriate support for First Peoples affected by Soldier Settlement Schemes and their families; and
- c. Redress including land grants and/or compensation.

Endnotes

1. Transcript of Aunty Dr Jill Gallagher, 28 March 2024, 50 [10]–[15].

2. Witness Statement of Marcus Stewart, inaugural Co-Chair of the First Peoples’ Assembly of Victoria, 29 April 2022, 17 [50]; Transcript of Professor Henry Reynolds, 27 March 2024, 7 [42]–[47].

3. See Transcript of Professor Henry Reynolds, 27 March 2024, 30 [13]–[14]; Transcript of Professor Richard Broome, 26 March 2024, 19 [14]–[21]; Witness Statement of Premier Jacinta Allan MP, 18 March 2024, 9 [76]; Transcript of Uncle Robbie Thorpe (Djuran Bunjilinee), 27 March 2024, 74 [37]–[39].

4. Witness Statement of Premier Jacinta Allan MP, 18 March 2024, 9 [76]; Victorian Aboriginal Child and Community Agency, Submission 77 (Child Protection), 47; Richard Broome, *Aboriginal Victorians: A History Since 1800* (La Trobe University, 2005), xxi.

5. See, e.g., Witness Statement of Marcus Stewart, inaugural Co-Chair of the First Peoples’ Assembly of Victoria, 29 April 2022, 18–19 [52]–[54], citing Judy Atkinson who contends that colonisation goes through various stages, including physical violence, structural violence and psycho-social dominance. Judy Atkinson, *Trauma Trails, Recreating Song Lines: The Transgenerational Effects of Trauma in Indigenous Australia* (Spinifex, 2002), 58–59. See also Witness Statement of Premier Jacinta Allan MP, 18 March 2024, 21 [151]; Transcript of Minister Lily D’Ambrosio MP, 22 April 2024, 6 [24]–[31], 10 [14]–[18]; Transcript of Minister Harriet Shing MP, 24 April 2024, 38 [15]–[26], 39 [39]–[44].

6. Associate Professor Nikki Moodie, Submission 526, 2.

7. Transcript of Dr Jacynta Krakouer, 8 December 2022, 241 [9]–[34].

8. Transcript of Professor Henry Reynolds, 27 March 2024, 12 [19]–[21].

9. Previous temporary incursions included Lieutenant John Murray’s claim of possession for Britain in 1802, Sullivan Bay in 1803, Hume and Hovell’s expedition in 1824 and Corinella in 1826 as well as seasonal whalers’ camps.

10. Yoorrook Justice Commission, *Yoorrook for Justice: Report into Victoria’s Child Protection and Criminal Justice Systems* (Report, 31 August 2023), 49.

11. Associate Professor Nikki Moodie, Submission 526, 2–5.

12. Associate Professor Nikki Moodie, Submission 526, 2.

13. Transcript of Professor Henry Reynolds, 27 March 2024, 6 [26]–[31].

14. Witness Statement of Premier Jacinta Allan MP, 18 March 2024, 10 [87].

15. In 1829 New South Wales Governor Ralph Darling declared that no Europeans could graze animals beyond the ‘limits of location’, an a few hundred kilometres from Warrane/Sydney: Transcript of Professor Henry Reynolds, 27 March 2024, 6 [26]–[31]; Museum of History NSW, ‘[Limits of location](#)’ (Webpage, 5 July 2017). See also generally Gretchen Poiner and Sybil Jack (eds), *Limits of Location: Creating a Colony* (Sydney University Press, 2007).

16. Transcript of Suzannah Henty, 28 March 2024, 4 [38]–[40].

17. Transcript of Professor Henry Reynolds, 27 March 2024, 8 [35]–[39].

18. Transcript of Keicha Day, 25 March 2024, 58 [30]–[41].

19. Transcript of Braydon Saunders, 25 March 2024, 54 [38]–[47].

20. Transcript of Suzannah Henty, 28 March 2024, 5 [13]–[25], quoting Ian D Clark, Scars in the Landscape: A Register of Massacre Sites in Western Victoria, 1803–1859 (Australian Institute of Aboriginal and Torres Strait Islander Studies, 1995).

21. Grenville Henty Silvester, Submission 553. See also Hamilton Spectator, ‘Henty family rejects massacre claims’ (18 May 2024).

22. Grenville Henty Silvester, Submission 553, 17.

23. Grenville Henty Silvester, Submission 553, 10.

24. Transcript of Suzannah Henty, 28 March 2024, 5 [45]–6 [8]. *See also Witness Outline of Suzannah Henty*, 27 March 2024, 1–2; *Witness Exhibit of Suzannah Henty. Colonial impact register: Suzannah Henty. ‘In the Soil that Nurtures Us: A Certain Death to the Colonial Myth’ (2021) Index Journal* 5.

25. Transcript of Associate Professor Katherine Ellinghaus, 26 March 2024, 35 [21]–[40].

26. Transcript of Associate Professor Katherine Ellinghaus, 26 March 2024, 36 [31]–[33].

27. Transcript of Professor Richard Broome, 26 March 2024, 34 [44]–35 [9].

28. Yoorrook notes at the time she gave evidence in March 2024, Katherine Ellinghaus was an Associate Professor, but in January 2025 she became a Professor.

29. Transcript of Associate Professor Katherine Ellinghaus, 26 March 2024, 36 [43]–[47].

30. Transcript of Associate Professor Katherine Ellinghaus, 26 March 2024, 35 [30]–[34].

31. Transcript of Associate Professor Katherine Ellinghaus, 26 March 2024, 35 [30]–[34].

32. Transcript of Professor Richard Broome, 26 March 2024, 37 [45]–38 [4].

33. Witness Statement of Premier Jacinta Allan MP, 18 March 2024, 10–11 [87]–[88]; Transcript of Associate Professor Katherine Ellinghaus and Professor Richard Broome, 26 March 2024, 34 [40]–35 [34], 36 [35]–38 [43]; First Peoples’ Assembly of Victoria, Submission 378 (Land, Sky, Waters), 24.

34. Transcript of Uncle Andrew Gardiner, 29 April 2024, 3 [1]–[10].

35. Transcript of Professor Richard Broome, 26 March 2024, 38 [42]–[47].

36. Transcript of Associate Professor Katherine Ellinghaus, 26 March 2024, 39 [2]–[11].

37. Transcript of Associate Professor Katherine Ellinghaus, 26 March 2024, 39 [13]–[19].

38. Transcript of Associate Professor Katherine Ellinghaus, 26 March 2024, 39 [2]–[11].

39. Professor Libby Porter, Submission 335, 1.

40. Transcript of Professor Henry Reynolds, 27 March 2024, 6 [34]–[44].

41. Transcript of Professor Henry Reynolds, 27 March 2024, 6 [23]–[24].

42. Transcript of Professor Henry Reynolds, 27 March 2024, 6 [34]–[37].

43. Transcript of Professor Henry Reynolds, 27 March 2024, 6 [39]–[44].

44. Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation, Submission 344 (‘Summary of Past and Ongoing Land Injustice’), 1.

45. Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation, Submission 344 (‘Summary of Past and Ongoing Land Injustice’), 1.

46. The Australian, ‘“[Vox Populi Vox Dei](#)”: Expedition of Discovery’ (8 November 1836). See also Major TL Mitchell, *Three Expeditions into the Interior of Eastern Australia: With Descriptions of the Recently Explored Region of Australia Felix, and of the Present Colony of New South Wales* (T & W Boone, 1838).

47. Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation, Submission 344 (‘Summary of Past and Ongoing Land Injustice’), 1.

48. Transcript of Uncle Brendan Kennedy, 24 April 2024 (Part 1), 22 [22]–[25]. See also Centre for 21st Century Humanities and University of Newcastle, ‘[Colonial Frontier Massacres in Australia: 1788–1930](#)’ (Webpage, 2024).

49. Witness Outline of Uncle Brendan Kennedy, 23 April 2024, 4 [37].

50. Yoorrook acknowledges *The Australian* was a newspaper founded in 1824 and ran until about 1848. This is not the same as the current-day newspaper by the same title (*The Australian*) which was founded by NewsCorp in 1964.

51. The Australian, ‘“[Vox Populi Vox Dei](#)”: Expedition of Discovery’ (8 November 1836).

52. Some watercourses pass through the Country of multiple nations and groups that have different terms for them. The river now often known as the Murray is the largest river in Australia and passes through New South Wales, Victoria and South Australia. The river has been known by many names among various First Peoples groups. In Victoria, common known names for the river include Dhungala / Dughala / Tongala and Millewa / Milawa / Mirri / Mile. Due to the variation in names, and the lack of documentation of other names, in this chapter Yoorrook refers to the river simply as ‘Murray’

53. The Australian, ‘“[Vox Populi Vox Dei](#)”: Expedition of Discovery’ (8 November 1836). See also Centre for 21st Century Humanities and University of Newcastle, Colonial Frontier Massacres in Australia, 1788–1930, ‘[Mt Dispersion, Murray River](#)’ (Webpage, 2024).

54. The Australian, ‘“[Vox Populi Vox Dei](#)”: Expedition of Discovery’ (8 November 1836).

55. Centre for 21st Century Humanities and University of Newcastle, Colonial Frontier Massacres in Australia, 1788–1930, ‘[Mt Dispersion, Murray River](#)’ (Webpage, 2024), citing Mitchell to Colonial Secretary McLeay in Roger Milliss, *Waterloo Creek: The Australia Day Massacre of 1838* (McPhee Gribble, 1992), 130.

56. The Australian, ‘“[Vox Populi Vox Dei](#)”: Expedition of Discovery’ (8 November 1836).

57. Witness Statement of Suzannah Henty, 28 March 2024, 6, referencing Monument Australia, ‘[First Inland Settlement](#)’ (Webpage), which provides a photograph of the memorial that commemorates Mitchell and the Henty Brothers (Casterton Road, Portland). *See also Witness Exhibit of Suzannah Henty, Colonial impact register*.

58. Witness Statement of Suzannah Henty, 28 March 2024, 6, referencing Monument Australia, ‘[First Inland Settlement](#)’ (Webpage), which provides a photograph of the memorial that commemorates Mitchell and the Henty Brothers (Casterton Road, Portland).

59. Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation, Submission 344 (‘Summary of Past and Ongoing Land Injustice’), 1; Transcript of Professor Richard Broome, 26 March 2024, 32 [35]–[41].

60. Australian Dictionary of Biography, ‘[Angus McMillan \(1810–1865\)](#)’ (Webpage, 2023).; See also The Guardian, ‘[The Scottish explorer who became the butcher of Gippsland](#)’ (Webpage, 8 March 2019).

61. Australian Dictionary of Biography, ‘[Angus McMillan \(1810–1865\)](#)’ (Webpage, 2023). See also The Guardian, ‘[The Scottish explorer who became the butcher of Gippsland](#)’ (Webpage, 8 March 2019). See generally Don Watson, *Caledonia Australis* (Vintage Australia, 2009).

62. Lorimer Fison and AW Howitt, *Kamilaroi and Kurnai* (George Robertson, 1880) 182.

63. Lorimer Fison and AW Howitt, *Kamilaroi and Kurnai* (George Robertson, 1880) 183–184.

64. Transcript of Professor Henry Reynolds, 27 March 2024, 8 [37]–[41].

65. Transcript of Dr Erin O’Donnell, 15 April 2024, 75 [44]–[45].

66. The Hon Gabrielle Williams was Minister for Aboriginal Affairs from March 2020 until June 2022, when this became known as Minister for Treaty and First Peoples (she held this Ministership from June 2022 to October 2023). The Hon Natalie Hutchins has been Minister for Treaty and First Peoples since October 2023. Natalie Hutchins was also the Minister for Aboriginal Affairs from December 2014 to December 2018. See Parliament of Victoria, ‘[The Hon. Gabrielle Williams](#)’ (Webpage); See Parliament of Victoria, ‘[The Hon. Natalie Hutchins](#)’ (Webpage); *Department of Premier and Cabinet Annual Report 2018–19*.

67. Witness Statement of Minister Gabrielle Williams MP, 3 May 2022, 6 [50].

68. Colonial Secretary’s Office, *Statistics of the Port Phillip District (now the colony of Victoria), for the year 1850* (Government Printing Office, 1852) 8.

69. Richard Broome, *Aboriginal Victorians: A History Since 1800* (Allen & Unwin, 2nd ed, 2024), 54.

70. Richard Broome, *Aboriginal Victorians: A History Since 1800* (Allen & Unwin, 2nd ed, 2024), 20.

71. Transcript of Professor Henry Reynolds, 27 March 2024, 7 [32]–[38].

72. Witness Statement of Premier Jacinta Allan MP, 18 March 2024, 11 [92].

Note – present-day Victoria was part of the colony of New South Wales until 1851, following the passing of the *Australian Constitutions Act 1850* (UK) that created the colony of Victoria.

73. Transcript of Professor Henry Reynolds, 27 March 2024, 7 [14]–[17].

74. Dr Ed Wensing, Submission, 590, 19.

75. Professor Libby Porter, Submission 335, 2–3. See also Associate Professor Nikki Moodie, Submission 335, 6.

76. Transcript of Surveyor-General Craig Sandy, 15 April 2024, 40 [10]–[25].

77. Professor Libby Porter, Submission 335, 2.

78. Professor Libby Porter, Submission 335, 2.

79. City of Melbourne, Submission 952, 17.

80. City of Melbourne, Submission 952, 17.

81. City of Melbourne, Submission 952, 17.

82. Professor Libby Porter, Submission 335, 2.

83. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 7 [28], citing *Sale of Crown Lands Act 1860* (Vic); *Land Act 1862* (Vic); *Land Act 1869* (Vic); *Land Act 1884* (Vic); *Aboriginal Protection Act 1869* (Vic).

84. City of Melbourne, Submission 952, 8–13, 19–20; Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 7 [25].

85. City of Melbourne, Submission 952, 8–12.

Known as ‘the Dog Act’, *An Act for abating the nuisances occasioned by Dogs in the Streets of certain Towns and Highways in New South Wales* (25 August 1835). See also Port Phillip Gazette, ‘*Dog Nuisance*’ (14 May 1845), 2. Similar Acts were in force in Sydney for example, the *Dog Nuisance Act 1832 No 6a* and *An Act for abating the Nuisance occasioned by the great number of Dogs which are loose in the Streets of the Towns of Sydney Parramatta Liverpool and Windsor in the Colony of New South Wales* (14 April 1830).

86. City of Melbourne, Submission 952, 8.

87. City of Melbourne, Submission 952, 12–13.

88. City of Melbourne, Submission 952, 19–20.

89. City of Melbourne, Submission 952, 18, citing Entry, 2nd November 1843, William Thomas Journal, 1st September 1843–29th January 1844, SLNSW.

90. See PROV, ‘[Chief Protector of Aborigines records \(1839–1851\)](#)’ (Webpage); Marguerita Stephens, ‘[The journal of William Thomas : assistant protector of the Aborigines of Port Phillip & guardian of the Aborigines of Victoria 1839 to 1843](#)’, National Library of Australia.

91. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 7 [26], citing letter from George Augustus Robinson (Chief Protector of Aborigines) to William Thomas (Assistant Protector of Aborigines), 12 September 1840, Public Record Office Victoria, enclosure to VPRS 10, Unit 2, 1840/931.

92. Major Lettsom, ‘Lettsom to the Colonial Secretary, 23 October 1841’, Appendix F in Despatch Number 354 to Lord John Russell ML Microfilm A1224, 210–211, in Rachel Standfield, ‘[Protection, Settler Politics and Indigenous Politics in the work of William Thomas](#)’ (2012) 13(1) *Journal of Colonialism & Colonial History*, 210–211.

93. Witness Statement of Premier Jacinta Allan MP, 18 March 2024, 20 [149]–[150] (citations omitted).

94. Witness Statement of Premier Jacinta Allan MP, 18 March 2024, 20 [150], citing Department of Transport and Planning ‘Victoria’s Historic Population Growth: European Settlement to Present 1836–2011’.

95. Witness Statement of Premier Jacinta Allan MP, 18 March 2024, 21 [151], citing Resources Victoria, ‘History of Gold Mining in Victoria’ (Webpage).

96. Dr Bill Pascoe said of his identity: ‘I’m a whitefella. My great grandmother is Murri. Our best guess is she was Kabi Kabi because my grandmother grew up in that country and often used to talk to people in a fringe camp by the railway track in the Maroochydhore hinterland: See Dr Bill Pascoe, Submission 1517, 2.

97. Centre for 21st Century Humanities and University of Newcastle, Colonial Frontier Massacres in Australia, 1788–1930, ‘[Introduction](#)’ (Webpage, 2024).

98. Transcript of Dr Bill Pascoe, 26 March 2024. See also Witness Exhibit of Dr Bill Pascoe, ‘[Colonial Violence in Victoria](#)’; Dr Bill Pascoe, Submission 1517.

99. Transcript of Dr Bill Pascoe, 26 March 2024, 50 [15]–[16].

100. Transcript of Dr Bill Pascoe, 26 March 2024, 53 [14]–[29].

101. Centre for 21st Century Humanities and University of Newcastle, Colonial Frontier Massacres in Australia, 1788–1930, ‘[Colonial Frontier Massacre Groups](#)’ (Webpage, 2024); Centre for 21st Century Humanities and University of Newcastle, Colonial Frontier Massacres in Australia, 1788–1930, ‘[Warrigal Creek, Gippsland](#)’ ; [Warrigal Creek Mouth](#)’ ; [Bruthen Creek, Gippsland](#)’ ; [Freshwater Creek, Gippsland](#)’ ; [Gammon Creek, Gippsland](#)’ (Webpages, 2024).

102. Centre for 21st Century Humanities and University of Newcastle, Colonial Frontier Massacres in Australia, 1788–1930, ‘[Colonial Frontier Massacre Groups](#)’ (Webpage, 2024); Centre for 21st Century Humanities and University of Newcastle, Colonial Frontier Massacres in Australia, 1788–1930, ‘[Warrigal Creek, Gippsland](#)’ (Webpage, 2024).

103. Centre for 21st Century Humanities and The University of Newcastle, Colonial Frontier Massacres in Australia, 1788–1930, ‘[Colonial Frontier Massacre Groups](#)’ (Webpage, 2024); Centre for 21st Century Humanities and University of Newcastle, Colonial Frontier Massacres in Australia, 1788–1930, ‘[Warrigal Creek, Gippsland](#)’ ; [Warrigal Creek Mouth](#)’; [Bruthen Creek, Gippsland](#)’; [Freshwater Creek, Gippsland](#)’; [Gammon Creek, Gippsland](#)’ (Webpages, 2024).

104. Centre for 21st Century Humanities and The University of Newcastle, Colonial Frontier Massacres in Australia, 1788–1930, ‘[Colonial Frontier Massacre Groups](#)’ (Webpage, 2024); Centre for 21st Century Humanities and University of Newcastle, Colonial Frontier Massacres in Australia, 1788–1930, ‘[Warrigal Creek, Gippsland](#)’; [Warrigal Creek Mouth](#)’; [Bruthen Creek, Gippsland](#)’; [Freshwater Creek, Gippsland](#)’ ; [Gammon Creek, Gippsland](#)’ (Webpages, 2024). See also Peter D. Gardner, *Gippsland massacres: The destruction of the Kurnai tribes, 1800–1860* (Ngarak Press, 3rd edition, 2001), 55.

105. Centre for 21st Century Humanities and University of Newcastle, Colonial Frontier Massacres in Australia, 1788–1930, ‘[Warrigal Creek, Gippsland](#)’ (Webpage, 2024).

106. Centre for 21st Century Humanities and University of Newcastle, Colonial Frontier Massacres in Australia, 1788–1930, ‘[Warrigal Creek Mouth](#)’ (Webpage, 2024).

107. Centre for 21st Century Humanities and University of Newcastle, Colonial Frontier Massacres in Australia, 1788–1930, ‘[Bruthen Creek, Gippsland](#)’ (Webpage, 2024).

108. Centre for 21st Century Humanities and University of Newcastle, Colonial Frontier Massacres in Australia, 1788–1930, ‘[Freshwater Creek, Gippsland](#)’ (Webpage, 2024).

109. Centre for 21st Century Humanities and University of Newcastle, Colonial Frontier Massacres in Australia, 1788–1930, ‘[Gammon Creek, Gippsland](#)’, (Webpage, 202).

110. The Guardian, ‘[Living on a massacre site: home truths and trauma at Warrigal Creek](#)’ (Webpage, 6 March 2019). See also Centre for 21st Century Humanities and University of Newcastle, Colonial Frontier Massacres in Australia, 1788–1930, ‘[Warrigal Creek, Gippsland](#)’ (Webpage, 2024), citing The Gap, Gippslander [Willy Hoddinott], ‘Experiences with Gippsland Blacks’ (1925).

111. Uncle Jim Berg, Submission 10; Uncle Jim Berg, Submission 464.

112. Peter D. Gardner, *Our Founding Murdering Father* (Ngarak Press, 3rd Edition, 1990); Cal Flynn, *Thicker than Water* (Harper Collins, 2016).

113. Australian Electoral Commission, ‘[Profile of the electoral division of McMillan \(Vic\)](#)’ (Webpage, 19 November 2019); LaTrobe Valley Express, ‘[McMillan ditched](#)’ (Webpage, 21 June 2018).

114. Witness Statement of Minister Gabrielle Williams MP, 3 May 2022, 6 [47].

115. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 6 [21].

116. These figures reflect data from the Colonial Frontier Massacre project site list, as of 11 March 2025. Yoorrook notes that the data is updated on a regular basis, which can lead to changes to the number of massacres and victims. The total number of massacres in Victoria recorded as of 11 March 2025 was 50, including 49 massacres where colonists were the aggressors, and 1 massacre where Aboriginal people were recorded as the aggressors against colonists, the ‘[Faithfull Massacre, Benalla](#)’ in 1838. There were also two recorded massacres of First Peoples by First Peoples: ‘[LaTrobe Valley](#)’ in 1840 and ‘[Tambo Crossing](#)’ in 1842.

The total number of Aboriginal people killed was 978, this includes 1 Aboriginal person who died at the ‘[Faithfull Massacre, Benalla](#)’, and 90 Aboriginal people who died at the ‘[LaTrobe Valley](#)’ 1840 and ‘[Tambo Crossing](#)’ 1842 massacres.

The total number of recorded colonists killed in massacres in Victoria was 10, including 8 killed at the ‘[Faithfull Massacre, Benalla](#)’ and 2 killed at the ‘[Apsley, Western Wimmera](#)’ massacre in 1854.

Centre for 21st Century Humanities and University of Newcastle, Colonial Frontier Massacres in Australia, 1788–1930, ‘[Site List Timeline](#)’ (Webpage, Accessed 11 March 2025) <<https://c21ch.newcastle.edu.au/colonialmassacres/timeline.php>>.

117. These figures reflect data on the online massacre map, as of 11 March 2025. Yoorrook notes that the data is updated on a regular basis, which can lead to a change to the number of massacres and victims. There were 11 massacres that were located on the NSW/VIC border along or very close to the Murray river, resulting in the deaths of approximately 244 Aboriginal people. There were 2 massacres located near to the South Australia/ Victoria border (noting this border has also changed several times since Federation), resulting in the deaths of at least 14 Aboriginal people.

Centre for 21st Century Humanities and University of Newcastle, Colonial Frontier Massacres in Australia, 1788–1930, ‘[Site List Timeline](#)’ (Webpage, accessed 11 March 2025) <<https://c21ch.newcastle.edu.au/colonialmassacres/timeline.php>>.

118. Centre for 21st Century Humanities and University of Newcastle, ‘[Colonial Frontier Massacres in Australia, 1788–1930](#)’ (Webpage, 2024).

119. Centre for 21st Century Humanities and University of Newcastle, Colonial Frontier Massacres in Australia, 1788–1930, ‘[Introduction](#)’ (Webpage, 2024).

120. Transcript of Dr Bill Pascoe, 26 March 2024, 43 [12]–[13].

121. Transcript of Dr Bill Pascoe, 26 March 2024, 27 [33]–[36], 42 [42]–[47], 53 [41]–54 [9]; Transcript of Professor Henry Reynolds, 27 March 2024, 23 [17]–[26]; Transcript of Katrina Kell, 4 September 2024, 45 [17]–[22].

122. Transcript of Dr Bill Pascoe, 26 March 2024, 27 [33]–[36].

123. Transcript of Dr Bill Pascoe, 26 March 2024, 42 [42]–[44].

124. National Museum of Australia, ‘[Myall Creek Massacre](#)’ (Webpage).

125. Transcript of Professor Henry Reynolds, 27 March 2024, 23 [17]–[22].

126. Transcript of Professor Henry Reynolds, 27 March 2024, 23 [17]–[22].

127. Witness Statement of Marcus Stewart, inaugural Co–Chair of the First Peoples’ Assembly of Victoria, 29 April 2022, 20 [58].

128. See Transcript of Professor Richard Broome, 26 March 2024, 54 [11]–[23].

129. The Guardian, ‘[How we heal as a nation: the replanting and return of the forests of Tower Hill](#)’ (Webpage, 16 April 2023). See also Ian D Clark, ‘Squatters’ Journals’ (1989) 43 *La Trobe Journal* 16.

130. The Guardian, ‘[The killing times: the massacres of Aboriginal people Australia must confront](#)’ (Webpage, 4 March 2029). See also Ian D Clark, ‘Squatters’ Journals’ (1989) 43 *La Trobe Journal* 16.

131. These figures reflect data from the Colonial Frontier Massacre project site list, as of 11 March 2025. Yoorrook notes that the data is updated on a regular basis, which can lead to changes to the number of massacres and victims. The total number of massacres in Victoria recorded as of 11 March 2025 was 50, including 49 massacres where colonists were the aggressors, and one massacre where Aboriginal people were recorded as the aggressors against colonists, the ‘[Faithfull Massacre, Benalla](#)’ in 1838, and two recorded massacres of First Peoples by First Peoples: ‘[LaTrobe Valley](#)’ in 1840 and ‘[Tambo Crossing](#)’ in 1842.

The total number of Aboriginal people killed was 978, this includes one Aboriginal person who died at the ‘[Faithfull Massacre, Benalla](#)’, and 90 Aboriginal people who died at the ‘[LaTrobe Valley](#)’ 1840 and ‘[Tambo Crossing](#)’ 1842 massacres.

The total number of recorded colonists killed in massacres in Victoria was 10, including eight killed at the ‘[Faithfull Massacre, Benalla](#)’ and two killed at the ‘[Apsley, Western Wimmera](#)’ massacre in 1854.

Centre for 21st Century Humanities and University of Newcastle, Colonial Frontier Massacres in Australia, 1788–1930, ‘[Site List Timeline](#)’ (Webpage, Accessed 11 March 2025) <<https://c21ch.newcastle.edu.au/colonialmassacres/timeline.php>>.

132. Transcript of Dr Bill Pascoe, 26 March 2024, 43 [29]–[35]; Centre for 21st Century Humanities and University of Newcastle, Colonial Frontier Massacres in Australia, 1788–1930, ‘[Site List Timeline](#)’ (Webpage, accessed 11 March 2025) <<https://c21ch.newcastle.edu.au/colonialmassacres/timeline.php>>.

133. Transcript of Dr Bill Pascoe, 26 March 2024, 43 [22]–[27]. Centre for 21st Century Humanities and University of Newcastle, Colonial Frontier Massacres in Australia, 1788–1930, ‘[Site List Timeline](#)’ (Webpage, accessed 11 March 2025) <<https://c21ch.newcastle.edu.au/colonialmassacres/timeline.php>>.

134. These figures reflect data from the Colonial Frontier Massacre project site list, as of 11 March 2025. Yoorrook notes that the data is updated on a regular basis, which can lead to changes to the number of massacres and victims. The total number of massacres in Victoria recorded as of 11 March 2025 was 50, including 49 massacres where colonists were the aggressors, and one massacre where Aboriginal people were recorded as the aggressors against colonists, the ‘[Faithfull Massacre, Benalla](#)’ in 1838, and two recorded massacres of First Peoples by First Peoples: ‘[LaTrobe Valley](#)’ in 1840 and ‘[Tambo Crossing](#)’ in 1842.

The total number of Aboriginal people killed was 978, this includes one Aboriginal person who died at the ‘[Faithfull Massacre, Benalla](#)’, and 90 Aboriginal people who died at the ‘[LaTrobe Valley](#)’ 1840 and ‘[Tambo Crossing](#)’ 1842 massacres. The total number of recorded colonists killed in massacres in Victoria was 10, including eight killed at the ‘[Faithfull Massacre, Benalla](#)’ and two killed at the ‘[Apsley, Western Wimmera](#)’ massacre in 1854.

Centre for 21st Century Humanities and University of Newcastle, Colonial Frontier Massacres in Australia, 1788–1930, ‘[Site List Timeline](#)’ (Webpage, Accessed 11 March 2025) <<https://c21ch.newcastle.edu.au/colonialmassacres/timeline.php>>.

*While there are no recorded massacres during these years, it is likely that massacres were also occurring during these times but were not recorded, or were disguised or hidden. **There are no recorded massacres after 1854.

135. Data in this table is drawn from the Colonial Frontier Massacre project site list, as of 11 March 2025. Yoorrook notes that the data is updated on a regular basis, which can lead to changes to the number of massacres and victims. The total number of massacres in Victoria recorded as of 11 March 2025 was 50, including 49 massacres where colonists were the aggressors, and one massacre where Aboriginal people were recorded as the aggressors against colonists, the ‘[Faithfull Massacre, Benalla](#)’ in 1838, and two recorded massacres of First Peoples by First Peoples: ‘[LaTrobe Valley](#)’ in 1840 and ‘[Tambo Crossing](#)’ in 1842.

The total number of Aboriginal people killed was 978, this includes one Aboriginal person who died at the ‘[Faithfull Massacre, Benalla](#)’, and 90 Aboriginal people who died at the ‘[LaTrobe Valley](#)’ 1840 and ‘[Tambo Crossing](#)’ 1842 massacres.

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Centre for 21st Century Humanities and University of Newcastle, Colonial Frontier Massacres in Australia, 1788–1930, ‘[Site List Timeline](#)’ (Webpage, Accessed 11 March 2025) <<https://c21ch.newcastle.edu.au/colonialmassacres/timeline.php>>.

136. Centre for 21st Century Humanities and University of Newcastle, Colonial Frontier Massacres in Australia, 1788–1930, ‘[Convincing Ground, Portland Bay](#)’ (Webpage, accessed 4 April 2025) <<https://c21ch.newcastle.edu.au/colonialmassacres/detail.php?r=503>>. See also Centre for 21st Century Humanities and University of Newcastle, Colonial Frontier Massacres in Australia, 1788–1930, ‘[Site List Timeline](#)’ (Webpage, accessed 11 March 2025) <<https://c21ch.newcastle.edu.au/colonialmassacres/timeline.php>>.

137. Centre for 21st Century Humanities and University of Newcastle, Colonial Frontier Massacres in Australia, 1788–1930, ‘[Mt Emu Creek](#)’ (Webpage, accessed 11 March 2025) <<https://c21ch.newcastle.edu.au/colonialmassacres/detail.php?r=514>>. See also Centre for 21st Century Humanities and University of Newcastle, Colonial Frontier Massacres in Australia, 1788–1930, ‘[Site List Timeline](#)’ (Webpage, accessed 11 March 2025) <<https://c21ch.newcastle.edu.au/colonialmassacres/timeline.php>>.

138. Centre for 21st Century Humanities and University of Newcastle, Colonial Frontier Massacres in Australia, 1788–1930, ‘[Colonial Frontier Massacre Groups](#)’ (Webpage, accessed 11 March 2025) <<https://c21ch.newcastle.edu.au/colonialmassacres/groups.php>> ; Centre for 21st Century Humanities and University of Newcastle, Colonial Frontier Massacres in Australia, 1788–1930, ‘[Warrigal Creek, Gippsland](#)’ (Webpage, accessed 11 March 2025) <<https://c21ch.newcastle.edu.au/colonialmassacres/detail.php?r=537>> ;

Centre for 21st Century Humanities and University of Newcastle, Colonial Frontier Massacres in Australia, 1788–1930, ‘[Warrigal Creek Mouth](#)’ (Webpage, accessed 11 March 2025) <<https://c21ch.newcastle.edu.au/colonialmassacres/detail.php?r=538>> ;

Centre for 21st Century Humanities and University of Newcastle, Colonial Frontier Massacres in Australia, 1788–1930, ‘[Bruthen Creek, Gippsland](#)’ (Webpage, accessed 11 March 2025) <<https://c21ch.newcastle.edu.au/colonialmassacres/detail.php?r=1121>> ; Centre for 21st Century Humanities and University of Newcastle, Colonial Frontier Massacres in Australia, 1788–1930, ‘[Freshwater Creek, Gippsland](#)’ (Webpage, accessed 11 March 2025) <<https://c21ch.newcastle.edu.au/colonialmassacres/detail.php?r=539>>;

Centre for 21st Century Humanities and University of Newcastle, Colonial Frontier Massacres in Australia, 1788–1930, ‘[Gammon Creek, Gippsland](#)’ (Webpage, accessed 11 March 2025) <<https://c21ch.newcastle.edu.au/colonialmassacres/detail.php?r=540>> .

139. Transcript of Aunty Denise Lovett, 25 March 2024, 59 [9]–[47]; Transcript of Aunty Muriel Bamblett, 24 June 2024, 51 [37]–[44]; Witness Statement of Uncle Johnny Lovett, 27 April 2022, 3 [12]; Anonymous 934, Submission 934, 1.

140. These figures reflect data on the online massacre map, as of 11 March 2025. Yoorrook notes that the data is updated on a regular basis, which can lead to a change to the number of massacres and victims. There were 11 massacres that were located on the NSW/VIC border along or very close to the Murray river, resulting in the deaths of approximately 244 Aboriginal people. There were 2 massacres located near to the South Australia/ Victoria border (noting this border has also changed several times since Federation), resulting in the deaths of at least 14 Aboriginal people.

Centre for 21st Century Humanities and University of Newcastle, Colonial Frontier Massacres in Australia, 1788–1930, ‘[Site List Timeline](#)’ (Webpage, accessed 11 March 2025) <<https://c21ch.newcastle.edu.au/colonialmassacres/timeline.php>>.

141. Uncle Dr Wayne Atkinson, Submission 574, 6; Centre for 21st Century Humanities and University of Newcastle, Colonial Frontier Massacres in Australia, 1788–1930, ‘[Moir](#)[a Swamp](#)’ (Webpage, accessed 11 March 2025) <<https://c21ch.newcastle.edu.au/colonialmassacres/detail.php?r=1081>>.

The Moira Swamp massacre is not included in the 48 recorded massacres in Victoria as it likely occurred in NSW.

142. Centre for 21st Century Humanities and University of Newcastle, Colonial Frontier Massacres in Australia, 1788–1930, ‘[Mt Dispersion, Murray River](#)’ (Webpage, accessed 4 April 2025) <<https://c21ch.newcastle.edu.au/colonialmassacres/detail.php?r=575>>. See also University of Newcastle, Colonial Frontier Massacres in Australia, 1788–1930, ‘[Site List Timeline](#)’ (Webpage, accessed 11 March 2025) <<https://c21ch.newcastle.edu.au/colonialmassacres/timeline.php>>;

143. Centre for 21st Century Humanities and University of Newcastle, Colonial Frontier Massacres in Australia, 1788–1930, ‘[Junction of Murray and Murrumbidgee Rivers](#)’ (Webpage, accessed 4 April 2025) <<https://c21ch.newcastle.edu.au/colonialmassacres/detail.php?r=599>>. See also Centre for 21st Century Humanities and University of Newcastle, Colonial Frontier Massacres in Australia, 1788–1930, ‘[Site List Timeline](#)’ (Webpage, accessed 11 March 2025) <<https://c21ch.newcastle.edu.au/colonialmassacres/timeline.php>>;

144. Transcript of Professor Richard Broome, 26 March 2024, 31 [35]–[43].

145. Transcript of Aunty Denise Lovett, 25 March 2024, 39 [9]–[46].

146. Centre for 21st Century Humanities and University of Newcastle, Colonial Frontier Massacres in Australia, 1788–1930, ‘[Mt Emu Creek](#)’ (Webpage, accessed 11 March 2025) <<https://c21ch.newcastle.edu.au/colonialmassacres/detail.php?r=514>> .

147. Centre for 21st Century Humanities and University of Newcastle, Colonial Frontier Massacres in Australia, 1788–1930, ‘[Mt Emu Creek](#)’ (Webpage, accessed 11 March 2025) <<https://c21ch.newcastle.edu.au/colonialmassacres/detail.php?r=514>> .

148. Ian D. Clark, *Scars in the Landscape: a register of massacre sites in western Victoria, 1803–1859* (Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS), 1995), 107. See also Centre for 21st Century Humanities and University of Newcastle, Colonial Frontier Massacres in Australia, 1788–1930, ‘[Mt Emu Creek](#)’ (Webpage, accessed 11 March 2025) <<https://c21ch.newcastle.edu.au/colonialmassacres/detail.php?r=514>> .

149. Ian D. Clark, *Scars in the Landscape: a register of massacre sites in western Victoria, 1803–1859* (Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS), 1995), 108.

150. Ian D. Clark, *Scars in the Landscape: a register of massacre sites in western Victoria, 1803–1859* (Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS), 1995), 107–108.

151. Ian D. Clark, *Scars in the Landscape: a register of massacre sites in western Victoria, 1803–1859* (Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS), 1995), 108.

152. Ian D. Clark, *Scars in the Landscape: a register of massacre sites in western Victoria, 1803–1859* (Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS), 1995), 116.

153. Ian D. Clark, *Scars in the Landscape: a register of massacre sites in western Victoria, 1803–1859* (Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS), 1995), 117.

154. Ian D. Clark, *Scars in the Landscape: a register of massacre sites in western Victoria, 1803–1859* (Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS), 1995), 111, citing Niel Black’s journal. See also Centre for 21st Century Humanities and University of Newcastle, Colonial Frontier Massacres in Australia, 1788–1930, ‘[Mt Emu Creek](#)’ (Webpage, accessed 11 March 2025) <<https://c21ch.newcastle.edu.au/colonialmassacres/detail.php?r=514>> .

155. Agents of the state refer to government employees or people acting on behalf of the government, such as police and government surveyors: Transcript of Dr Bill Pascoe, 26 March 2024, 43 [9]–[20].

156. Dr Bill Pascoe presentation to Yoorrook in hearings on 28 March 2024, ‘Colonial Violence in Victoria’, 10. See also Transcript of Dr Bill Pascoe, 26 March 2024, 43 [29]–[35].

Please note this table is based on the information provided by Dr Pascoe in his presentation to Yoorrook in March 2024. The data on the Colonial Frontier Massacres project is updated on a regular basis, which can lead to a change to the number of massacres and victims.

Centre for 21st Century Humanities and University of Newcastle, Colonial Frontier Massacres in Australia, 1788–1930, ‘[Site List Timeline](#)’ (Webpage, accessed 11 March 2025) <<https://c21ch.newcastle.edu.au/colonialmassacres/timeline.php>>.

157. Please note this table is based on the information provided by Dr Pascoe in his presentation to Yoorrook in March 2024. The data on the Colonial Frontier Massacres project is updated on a regular basis, which can lead to a change to the number of massacres and victims. As of April 2025, the Colonial Frontier Massacres appears to list this massacre as the ‘[Budj Bim](#)’ massacre and records that 9 Aboriginal people were killed.

Centre for 21st Century Humanities and University of Newcastle, Colonial Frontier Massacres in Australia, 1788–1930, ‘[Budj Bim](#)’ (Webpage, accessed 4 April 2025) <<https://c21ch.newcastle.edu.au/colonialmassacres/detail.php?r=543>> .

158. Please note this table is based on the information provided by Dr Pascoe in his presentation to Yoorrook in March 2024. The data on the Colonial Frontier Massacres project is updated on a regular basis, which can lead to a change to the number of massacres and victims. Dr Pascoe provided a hyperlink to the record of the massacre on the Colonial Frontier Massacres project (<https://c21ch.newcastle.edu.au/colonialmassacres/detail.php?r=544>). As of April 2025, the hyperlink is broken and the Colonial Frontier Massacres project does not appear to list this massacre anymore.

159. Transcript of Dr Bill Pascoe, 26 March 2024, 47 [14]–[16].

160. Transcript of Dr Bill Pascoe, 26 March 2024, 47 [32]–[42].

161. Witness Statement of Premier Jacinta Allan MP, 18 March 2024, 13 [103]–[105], quoting from Port Phillip Gazette, 26 August 1843; Centre for 21st Century Humanities and University of Newcastle, ‘Colonial Frontier Massacres in Australia, 1788–1930’.

162. Transcript of Uncle Robbie Thorpe (Djuran Bunjilinee), 27 March 2024, 58 [23]–[27], 58 [46]–59 [1].

163. Witness Outline of Uncle Brendan Kennedy, 23 April 2024, 1 [9]–[10].

164. Witness Outline of Uncle Brendan Kennedy, 23 April 2024, 2 [17].

165. Transcript of Uncle Brendan Kennedy, 24 April 2024 (Part 1), 21 [29]–[39].

166. Uncle Dr Wayne Atkinson, Submission 574 (Moira Swamp Massacre), 7–8. See also Centre for 21st Century Humanities and University of Newcastle, Colonial Frontier Massacres in Australia, 1788–1930, ‘[Moira Swamp](#)’ (Webpage, 2024).

167. Witness Statement of Premier Jacinta Allan MP, 18 March 2024, 13 [100]–[101].

168. Witness Statement of Premier Jacinta Allan MP, 18 March 2024, 13 [100]–[101] (citations omitted).

169. Transcript of Dr Bill Pascoe, 26 March 2024, 53 [42]–[47]–54 [1]–[9].

170. Transcript of Professor Marcia Langton, 27 March 2024, 22 [35]–23 [2], citing Comparison of Extract from Colonial Frontier Massacre Map, [South-West Victoria](#) and ‘[Map Showing the Pastoral Holdings of the Port Phillip District: 1835–51](#)’.

171. Witness Statement of Marcus Stewart, inaugural Co-Chair of the First Peoples’ Assembly of Victoria, 29 April 2022, 26–27 [73] (citations omitted).

172. Transcript of Aunty Muriel Bamblett, 6 December 2022, 103 [16]–[26]; Transcript of Professor Julie Andrews, 26 March 2024, 23; Transcript of Nerita Waight, 13 June 2024, 5; Transcript of Aunty Denise Lovett, 25 March 2024, 39 [9]–[15].

173. Anonymous 11, Submission 11, 2; Dyan Summers, Submission 488, 1; Aunty N’arweet Carolyn Briggs, Submission 402, 9. See also Australian Dictionary of Biography ‘[Louisa Briggs \(1836–1925\)](#)’; Installation film ‘First Peoples’ permanent exhibition Bunjilaka, Melbourne Museum, ‘[The Story of Louisa Briggs](#)’; Marie Fels, ‘[I Succeeded Once’: The Aboriginal Protectorate on the Mornington Peninsula, 1839–1840](#)’ (ANU E Press, 2011), 9–10, 135, 325–392.

174. Transcript of Aunty Denise Lovett, 25 March 2024, 39 [9]–[15].

175. Anonymous 11, Submission 11, 2.

176. Alfred Howitt, ‘Introduction’, in Lorimer Fison and Alfred W Howitt, *Kamilaroi and Kurnai* (George Robertson, 1880), 184.

177. Witness Statement of Aunty Dr Alma Thorpe, 3 May 2022, 18 [107].

178. Witness Statement of Aunty Dr Alma Thorpe, 3 May 2022, 12 [64].

179. Transcript of Aunty Glenys Watts, 6 December 2022, 77 [39]–[42].

180. Witness Outline of Aunty Glenys Watts, 6 December 2022, 2 [19].

181. Witness Statement of Marcus Stewart, inaugural Co-Chair of the First Peoples’ Assembly of Victoria, 29 April 2022, 26–27 [73] (citations omitted).

182. Witness Statement of Marcus Stewart, inaugural Co-Chair of the First Peoples’ Assembly of Victoria, 29 April 2022, 26–27 [73] (citations omitted).

183. Transcript of Dr Bill Pascoe, 26 March 2024, 49 [6]–[16].

184. Witness Statement of Minister Gabrielle Williams MP, 3 May 2022, 8 [71]; McDonald Family of Tae Rak (Lake Condah), Submission 202, 16–18; Witness Exhibit of Dr Bill Pascoe, ‘[Colonial Violence in Victoria](#)’; Dr Bill Pascoe, Submission 1517 (‘Colonial Violence In Victoria Presentation for Yoorrook Justice Commission’), 7, 10. See also Jan Critchett, *A Distant Field of Murder, Western District Frontiers 1834–1848* (1990), 110.

185. For example, Transcript of Uncle Johnny Lovett, 28 April 2022, 76 [20]–[25], 90 [49]–92 [10]; Witness Statement of Uncle Johnny Lovett, 27 April 2022, 3 [12], 10–11 [62]–[64]; Witness Statement of Minister Gabrielle Williams MP, 3 May 2022, 8 [71]; Witness Outline of Donna, Tina, Joanne and Sonny Wright, 1 March 2023, 3–4 [21]; McDonald Family of Tae Rak (Lake Condah), Submission 202, 16–18; Witness Exhibit of Dr Bill Pascoe, ‘[Colonial Violence in Victoria](#)’; Dr Bill Pascoe, Submission 1517 (‘Colonial Violence In Victoria Presentation for Yoorrook Justice Commission’), 7, 10.

186. Witness Statement of Marcus Stewart, inaugural Co-Chair of the First Peoples’ Assembly of Victoria, 29 April 2022, 20 [60].

187. Transcript of Aunty Maude Alberts, 25 March 2024, 2 [35].

188. Transcript of Aunty Donna Wright, 25 March 2024, 4 [25]–[40].

189. Transcript of Uncle Johnny Lovett, 28 April 2022, 90 [49]–92 [10].

190. Transcript of Dr Bill Pascoe, 26 March 2024, 49 [6]–[16]. See also Uncle Dr Wayne Atkinson, Submission 406 (‘Truth Justice Submission’), 6.

191. First Peoples’ Assembly of Victoria, Submission 378 (Land, Sky, Waters), 24.

192. First Peoples’ Assembly of Victoria, Submission 378 (Land, Sky, Waters), 24–5. See also Uncle Dr Wayne Atkinson, Submission 406 (‘Truth Justice Submission’), 6.

193. Transcript of Uncle Jim Berg, 27 March 2024, 47 [25]–[27], 47 [45]–48 [3]; Zoe Laidlaw, ‘Settler-Colonial Philanthropy and Indigenous Dispossession’ in Ross L Jones, James Waghorne and Marcia Langton (eds), *Dhoombak Goobgoowana: A History of Indigenous Australia and the University of Melbourne* (Melbourne University Press, 2024) vol 1, 22, 43, citing Jan Critchett, *Untold Stories: Memories and Lives of Victorian Kooris* (Melbourne University Press, 1998), 122–49.

194. Judy Atkinson, *Trauma Trails, Recreating Song Lines: The Transgenerational Effects of Trauma in Indigenous Australia* (Spinifex Press, 2002), 64–5.

195. Yoorrook Justice Commission, *Yoorrook for Justice: Report into Victoria’s Child Protection and Criminal Justice Systems* (Report, 31 August 2023), 51.

196. See e.g. Yoorrook Justice Commission, *Yoorrook for Justice: Report into Victoria’s Child Protection and Criminal Justice Systems* (Report, 31 August 2023), 51.

197. Witness Statement of Premier Jacinta Allan MP, 18 March 2024, 15 [112]–[116].

198. ‘[T]he British Parliament, concerned with reports of violence against First Peoples in the colonies, produced a report concluding that during British colonisation, “[e]very law of humanity and injustice has been forgotten and disregarded” in the treatment of “uncivilised fellow men” and recommended: “the adoption of immediate measures for their protection and preservation”’. Witness Statement of Premier Jacinta Allan MP, 18 March 2024, 14–15 [112], citing Aborigines Protection Society, *Report of the Parliamentary Select Committee on Aboriginal Tribes (British Settlements)* (London: William Ball, Aldine Chambers, Paternoster Row, and Hatchard & Son Piccadilly, 1837) xi.

199. Robinson came from Van Diemen’s Land (Lutruwita/Tasmania) to Victoria to oversee four Assistant Protectors who had sailed from England: Witness Statement of Premier Jacinta Allan MP, 18 March 2024, 15 [113].

200. Clare Land, *The Haunting Story of Tunnerminnerwait and Maulboyheenner* (2018) 17(1) *La Trobeana*, 57

201. Clare Land, *The Haunting Story of Tunnerminnerwait and Maulboyheenner* (2018) 17(1) *La Trobeana*, 56–57

202. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 12 [50].

203. Transcript of Professor Henry Reynolds, 27 March 2024, 15 [30]–[39].

204. Witness Statement of Premier Jacinta Allan MP, 18 March 2024, 14 [11].

205. Transcript of Associate Professor Katherine Ellinghaus, 26 March 2024, 59 [27]–[34].

206. Transcript of Professor Richard Broome, 26 March 2024, 59 [36]–[41].

207. State Library of Victoria, ‘[Victoria’s early history, 1803–1851](#)’ (Webpage).

208. Transcript of Professor Richard Broome, 26 March 2024, 20 [26]–[47]–21 [1]–[26].

209. Victorian Aboriginal Child and Community Agency, Submission 77 (Child Protection, Criminal Injustice), 49.

210. Witness Statement of Premier Jacinta Allan MP, 18 March 2024, 16 [122], quoting Select Committee Upon Protection to the Aborigines, Report from the Select Committee of the Legislative Council on the Aborigines, Victorian Parliamentary Papers, iv, (Melbourne: Government Printer, 1859)

211. ‘The Central Board Appointed to Watch Over the Interests of the Aborigines (Central Board) was established to administer the system’: Witness Statement of Premier Jacinta Allan MP, 18 March 2024, 16 [123].

212. Yoorrook Justice Commission, *Yoorrook for Justice: Report into Victoria’s Child Protection and Criminal Justice Systems* (Report, 31 August 2023), 51; Elizabeth Nelson, Sandra Smith and Patricia Grimshaw (eds), *Letters from Aboriginal Women of Victoria, 1867–1926* (The University of Melbourne, 2002), 14.

213. Elizabeth Nelson, Sandra Smith and Patricia Grimshaw (eds), *Letters from Aboriginal Women of Victoria, 1867–1926* (The University of Melbourne, 2002), 14.

214. Elizabeth Nelson, Sandra Smith and Patricia Grimshaw (eds), *Letters from Aboriginal Women of Victoria, 1867–1926* (The University of Melbourne, 2002), 14. See also Witness Statement of Premier Jacinta Allan MP, 18 March 2024, 16 [124], citing regulations issued in 1871 that listed the six stations the reserve system was organised around as Coranderrk, Lake Wellington (Ramahyuck), Lake Tyers, Lake Condah, Framlingham and Lake Hindmarsh.

215. Witness Statement of Premier Jacinta Allan MP, 18 March 2024, 16 [124], citing Royal Commission on the Aborigines, [Report of the Commissioners Appointed to Inquire into the Present Condition of the Aborigines of This Colony and to Advise as to the Best Means of Caring for and Dealing With Them in the Future](#) (Melbourne: Government Printer, 1877), vii–xv.

216. Yoorrook Justice Commission, *Yoorrook for Justice: Report into Victoria’s Child Protection and Criminal Justice Systems* (Report, 31 August 2023), 51.

217. PROV, ‘[Aboriginal mission stations and reserves](#)’ (Webpage, 20 June 2024). See also Uncle Dr Wayne Atkinson, Submission 406 (‘Truth Justice Submission’), 5; Elizabeth Nelson, Sandra Smith and Patricia Grimshaw (eds), *Letters from Aboriginal Women of Victoria, 1867–1926* (The University of Melbourne, 2002), 9.

218. First Peoples’ Assembly of Victoria, Submission 378 (Land, Sky, Waters), 25.

219. Witness Statement of Premier Jacinta Allan MP, 18 March 2024, 17 [126], citing *Aborigines Protection Act 1869* (Vic).

220. First Peoples’ Assembly of Victoria, Submission 378 (Land, Sky, Waters), 25.

221. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 13 [53], citing Royal Commission on the Aborigines, [Report of the Commissioners Appointed to Inquire into the Present Condition of the Aborigines of This Colony and to Advise as to the Best Means of Caring for and Dealing With Them in the Future](#) (Melbourne: Government Printer, 1877), vii–xv.

222. Victorian State Government, Response to Issues Paper on Systemic Injustice in the Criminal Justice System, 7.

223. Witness Statement of Aunty Dr Alma Thorpe, 3 May 2022, 16–17 [95].

224. Elizabeth Nelson, Sandra Smith and Patricia Grimshaw (eds), *Letters from Aboriginal Women of Victoria, 1867–1926* (The University of Melbourne, 2002), 12.

225. Transcript of Uncle Jim Berg, 27 March 2024, 49 [1]–[20].

226. Witness Statement of Aunty Dr Alma Thorpe, 3 May 2022, 16–17 [95].

227. Transcript of Uncle Jim Berg, 27 March 2024, 47 [25]–[27].

228. Transcript of Uncle Jim Berg, 27 March 2024, 47 [45]–48 [3].

229. Witness Outline of Aunty Dr Jill Gallagher, 28 March 2024, 2 [21]–[22].

230. Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation, Submission 344 (‘A Summary of Past and Ongoing Land Injustice’), 3.

231. Richard Broome, *Aboriginal Victorians: A History Since 1800* (Allen & Unwin, 2nd ed, 2024), 122–125.

232. Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation, Submission 661 (Economic Prosperity), 5; Wandoon Estate Aboriginal Corporation, ‘[Coranderrk – Our History pre- and post-colonisation](#)’ (Webpage).

233. Richard Broome, *Aboriginal Victorians: A History Since 1800* (Allen & Unwin, 2nd ed, 2024), 167.

234. Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation, Submission 344 (‘Summary of Past and Ongoing Land Injustice’), 2.

235. Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation, Submission 344 (‘Summary of Past and Ongoing Land Injustice’), 2–3.

236. Wandoon Estate Aboriginal Corporation, ‘[Coranderrk – Significant Historical Events](#)’ (Webpage).

237. Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation, Submission 661 (Economic Prosperity), 5; Wandoon Estate Aboriginal Corporation, ‘[Coranderrk – Significant Historical Events](#)’ (Webpage).

238. Wandoon Estate Aboriginal Corporation, ‘[Coranderrk – Significant Historical Events](#)’ (Webpage).

239. Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation, Submission 344 (‘Summary of Past and Ongoing Land Injustice’), 3.

240. Wandoon Estate Aboriginal Corporation, ‘[Coranderrk – Our History pre- and post-colonisation](#)’ (Webpage), citing *Corranderk Lands Act 1948* (Vic); See also Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation, Submission 344 (‘Summary of Past and Ongoing Land Injustice’), 3.

241. Wandoon Estate Aboriginal Corporation, ‘[Coranderrk – Our History pre- and post-colonisation](#)’ (Webpage).

242. Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation, Submission 661 (Economic Prosperity), 5; National Museum of Australia, ‘[Coranderrk](#)’ (Webpage).

243. Wandoon Estate Aboriginal Corporation, ‘[Coranderrk – Our History pre- and post-colonisation](#)’ (Webpage).

244. Transcript of Premier Jacinta Allan MP, 29 April 2024, 9 [20]–[36].

245. As detailed in *Yoorrook for Justice*, the 1886 amendment was introduced to the Legislative Assembly on 15 December 1886 by Alfred Deakin, who would go on to become the second Prime Minister of Australia: *Yoorrook for Justice: Report into Victoria’s Child Protection and Criminal Justice Systems* (Report, 31 August 2023), 53, citing Victoria, Parliamentary Debates, Legislative Assembly, 15 December 1886, 2912 (Mr Alfred Deakin, Chief Secretary and Minister of Water Supply).

246. Victorian Aboriginal Child and Community Agency, Submission 77 (Child Protection), 50; First Peoples’ Assembly of Victoria, Submission 378 (Land, Sky, Waters), 25.

247. Victorian Aboriginal Child and Community Agency, Submission 77 (Child Protection), 50; First Peoples’ Assembly of Victoria, Submission 378 (Land, Sky, Waters), 25.

248. Victorian Aboriginal Child and Community Agency, Submission 77 (Child Protection), 50.

249. Witness Statement of Premier Jacinta Allan MP, 18 March 2024, 18 [132]–[133], citing *Aborigines Protection Act 1886* (Vic), sections 6 and 8.

250. Alister Thorpe in First Peoples’ Assembly of Victoria, Submission 378 (Land, Sky, Waters), 13.

251. See also Yoorrook Justice Commission, *Yoorrook for Justice: Report into Victoria’s Child Protection and Criminal Justice Systems* (Report, 31 August 2023), 52–56.

252. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 14 [59] (citations omitted).

253. Transcript of Professor Marcia Langton, 27 March 2024, 33 [44]–34 [4].

254. Anonymous 586, Submission 586, Attachment 1, 3, citing Diane Barwick, *An Assessment of the Cultural and Historical Significance to the Present Aboriginal Community of the Land Reserved at Framlingham in 1861* (Report, 1979).

255. Witness Statement of Premier Jacinta Allan MP, 18 March 2024, 18 [133]–[134].

256. Witness Statement of Premier Jacinta Allan MP, 18 March 2024, 18 [133], citing *Crown Lands Reserves Act 1893* (Vic).

257. Witness Statement of Premier Jacinta Allan MP, 18 March 2024, 18 [134].

258. Witness Statement of Premier Jacinta Allan MP, 18 March 2024, 18–19 [136], citing Board for the Protection of Aborigines meeting, 5 November 1890, cited in Jan Critchett, *The History of Framlingham and Lake Condah Stations* (University of Melbourne, 1980), 171.

259. Witness Statement of Premier Jacinta Allan MP, 18 March 2024, 19 [137], citing Victoria, Parliamentary Debates, 15 December 1886, 2912–13 (Alfred Deakin).

260. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 14–15 [62], citing National Museum Australia, “Campaign to save Lake Tyers”; Board for the Protection of the Aborigines in the Colony of Victoria, *Twenty-Sixth Report*” (Melbourne: Government Printer, 1890); Board for the Protection of Aborigines, *Fifty-First Report* (Melbourne: Government Printer, 1925), 3; *Coranderrk Lands Act 1948* (Vic).

261. Uncle Jim Berg, Submission 10, 18.

262. Transcript of Uncle Andrew Gardiner, 29 April 2024, 4 [4]–[8].

263. Old Treasury Building, ‘[On the land: The Soldier Settlement Scheme](#)’ (Webpage).

In Victoria, the scheme operated under various historical legislation, including the *Land Act 1915* (Vic), *Closer Settlement Act 1915* (Vic) and subsequent iterations of this legislation.

264. Department of Families, Fairness and Housing, Response to NTP-003-005 – ‘*Soldier Settlement Scheme; Office for Veterans, Department of Families, Fairness and Housing*’, 1, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 8 November 2023.

265. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 9 [39]; Department of Families, Fairness and Housing, Response to NTP-003-005 – ‘*Soldier Settlement Scheme; Office for Veterans, Department of Families, Fairness and Housing*’, 5, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 8 November 2023.

266. Department of Premier and Cabinet, Response to NTP-003-030 – ‘*DPC Land Injustice RFI Response*’, 16, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 19 February 2024.

267. Department of Premier and Cabinet, Response to NTP-003-030 – ‘*DPC Land Injustice RFI Response*’, 16, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 19 February 2024.

268. Department of Premier and Cabinet, Response to NTP-003-030 – ‘*DPC Land Injustice RFI Response*’, 16, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 19 February 2024.

269. Department of Families, Fairness and Housing, Response to NTP-003-005 – ‘*Soldier Settlement Scheme; Office for Veterans, Department of Families, Fairness and Housing*’, 3, 7, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 8 November 2023; Department of Premier and Cabinet, Response to NTP-003-030 – ‘*DPC Land Injustice RFI Response*’, 16, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 19 February 2024.

270. Department of Families, Fairness and Housing, Response to NTP-003-005 – ‘*Soldier Settlement Scheme; Office for Veterans, Department of Families, Fairness and Housing*’, 3, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 8 November 2023. See also *Closer Settlement Act 1915* (Vic) pt III Div 1. Section 75 of the Act provided the Board with a power to dispose of land acquired for the purpose of closer settlement.

271. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 9–10 [40].

272. Department of Families, Fairness and Housing, Response to NTP-003-005 – ‘*Soldier Settlement Scheme; Office for Veterans, Department of Families, Fairness and Housing*’, 4, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 8 November 2023.

273. Witness Statement of Uncle Johnny Lovett, 27 April 2022, 4–6.

274. *Soldier Settlement Act 1945* (Vic) Schedule cl 10, 11, 12(a).

275. *Soldier Settlement Act 1945* (Vic) s 41(1).

276. Jessica Horton, “Willing to fight to a man’: The First World War and Aboriginal activism in the Western District of Victoria’ (2015) 39 *Aboriginal History* 203, 203.

277. Jessica Horton, “Willing to fight to a man’: The First World War and Aboriginal activism in the Western District of Victoria’ (2015) 39 *Aboriginal History* 203, 205.

278. Jessica Horton, “Willing to fight to a man’: The First World War and Aboriginal activism in the Western District of Victoria’ (2015) 39 *Aboriginal History* 203, 203.

279. Kaiela Institute, Submission 467 (Land, Sky, Waters), 4; Victorian Aboriginal Legal Service, Submission 339 (Land, Sky, Waters), 12.

280. Department of Families, Fairness and Housing, Response to NTP-003-005 – ‘*Soldier Settlement Scheme; Office for Veterans, Department of Families, Fairness and Housing*’, 5–6, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 8 November 2023.

281. Kaiela Institute, Submission 467, 4.

282. Witness Outline of Ngarra Murray, Co-Chair of First Peoples’ Assembly of Victoria, 11 April 2024, 20 [59], citing her grandfather Stewart Murray.

283. Barry Firebrace-Briggs in First Peoples’ Assembly of Victoria, Submission 378 (Land, Sky, Waters), 12.

284. City of Melbourne, Submission 952, 7.

285. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 11 [47].

286. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 11 [47].

287. Witness Statement of Uncle Johnny Lovett, 27 April 2022, 4–6.

288. Witness Statement of Uncle Johnny Lovett, 27 April 2022, 4–6.

289. Witness Statement of Uncle Kevin Coombs, 24 May 2022, 5 [11]–[13].

290. Witness Statement of Uncle Kevin Coombs, 24 May 2022, 5 [11]–[13].

291. Witness Statement of Premier Jacinta Allan MP, 18 March 2024, 23 [165].

292. Department of Families, Fairness and Housing, Response to NTP-003-005 – ‘*Soldier Settlement Scheme; Office for Veterans, Department of Families, Fairness and Housing*’, 1, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 8 November 2023.

293. Department of Families, Fairness and Housing, Response to NTP-003-005 – ‘*Soldier Settlement Scheme; Office for Veterans, Department of Families, Fairness and Housing*’, 7, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 8 November 2023.

294. Department of Families, Fairness and Housing, Response to NTP-003-005 – ‘*Soldier Settlement Scheme; Office for Veterans, Department of Families, Fairness and Housing*’, 1, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 8 November 2023.

295. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 11 [46].

296. Department of Families, Fairness and Housing, Response to NTP-003-005 – ‘*Soldier Settlement Scheme; Office for Veterans, Department of Families, Fairness and Housing*’, 1, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 8 November 2023, citing Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS), ‘[Serving their country](#)’ (Webpage).

297. Australian War Memorial, ‘[Indigenous service in Australia’s armed forces in peace and war](#)’ (Webpage).

298. Witness Statement of Premier Jacinta Allan MP, 18 March 2024, 22 [160].

299. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 10 [40].

300. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 9–10 [40]; Witness Statement of Premier Jacinta Allan MP, 18 March 2024, 23 [165]; Department of Families, Fairness and Housing, Response to NTP-003-005 – ‘*Soldier Settlement Scheme; Office for Veterans, Department of Families, Fairness and Housing*’, 8, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 8 November 2023.

301. Department of Families, Fairness and Housing, Response to NTP-003-005 – ‘*Soldier Settlement Scheme; Office for Veterans, Department of Families, Fairness and Housing*’, 7, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 8 November 2023; Department of Premier and Cabinet, Response to NTP-003-030 – ‘*DPC Land Injustice RFI Response*’, 17, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 19 February 2024.

302. Witness Outline of Aunty Glenys Watts, 5 December 2022, 3 [33]–[43]; McDonald Family of Tae Rak (Lake Condah), Submission 202, 182.

303. Witness Outline of Aunty Glenys Watts, 5 December 2022, 3 [35]–[38].

304. Department of Families, Fairness and Housing, Response to NTP-003-005 – ‘*Soldier Settlement Scheme; Office for Veterans, Department of Families, Fairness and Housing*’, 8, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 8 November 2023.

305. Aunty Evon Barker, Submission 403 ([Video Submission](#)).

306. McDonald Family of Tae Rak (Lake Condah), Submission 202, 182.

307. Aunty Evon Barker, Submission 403 ([Video Submission](#)).

308. McDonald Family of Tae Rak (Lake Condah), Submission 202, 61.

309. Jessica Horton, “Willing to fight to a man’: The First World War and Aboriginal activism in the Western District of Victoria’ (2015) 39 *Aboriginal History* 203, 205.

310. Department of Premier and Cabinet, Response to NTP-003-030 – ‘*DPC Land Injustice RFI Response*’, 17, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 19 February 2024.

311. Department of Premier and Cabinet, Response to NTP-003-030 – ‘*DPC Land Injustice RFI Response*’, 17, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 19 February 2024.

312. Jessica Horton, “Willing to fight to a man’: The First World War and Aboriginal activism in the Western District of Victoria’ (2015) 39 *Aboriginal History* 203, 213.

313. McDonald Family of Tae Rak (Lake Condah), Submission 202, 182, citing Portland Guardian, ‘[Condah Mission Station](#)’ (30 May 1921).

314. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 10–11 [43].

315. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 10 [41].

316. Transcript of the Minister Natalie Hutchins MP, 18 April 2024, 41 [1]–[11].

317. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 11 [47].

318. Transcript of Minister Gabrielle Williams MP, 6 May 2022, 321 [4]–[5].

319. Transcript of Minister Gabrielle Williams MP, 6 May 2022, 318 [33]– [36].

320. Transcript of Premier Jacinta Allan MP, 29 April 2024, 26 [30]–[31].

321. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 11 [44].

322. Transcript of Uncle Johnny Lovett, 28 April 2022, 109 [5]–[8].

323. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 11 [44]–[45].

324. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 11 [46].

325. Witness Statement of Marcus Stewart, inaugural Co-Chair of the First Peoples’ Assembly of Victoria, 29 April 2022, 14 [42].

Chapter 8: Impacts of Country being stolen

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Content warning

Please be aware that this chapter discusses material that may be distressing. It discusses the devastation of Country, and systemic injustices against First Peoples including assimilation and protectionist policies, and the separation of families.

It also draws on historical sources which use antiquated racist language to refer to First Peoples and racist depictions of First Peoples.

This chapter contains stories and mention of First Peoples who have passed away.

We suggest readers consider their wellbeing before, during and after reading. If you are distressed by material in this report, or if you or a loved one require support, there are services to support you. Please see the support resources at [Keeping You Safe & Strong – Yoorrook Justice Commission](#).

**These invaders bring
with them diseases,
the common Cold,
small pox in blankets,
rifles, bullets, bayonets,
the Sword, the Bible
And Genocide.
We were forced off our Land.
Destruction of our
Culture, Language, Identity,
Spirituality, Dignity
and Pride
and Stolen Generations
They destroyed and Wiped
out whole Koorie Nations.
Open your Eyes.
Can you imagine that this
took place in this country
Now called Australia?¹**

UNCLE JIM BERG

Introduction

The harm caused by our dispossession cannot be understated, and while the theft may have commenced 200 years ago, the negative effects have rippled down generations and compounded the unfairness. Despite everything that has been inflicted on us, we have survived and our connection to Country remains strong and our story is in this land.²

NGARRA MURRAY, CO-CHAIR OF FIRST PEOPLES' ASSEMBLY OF VICTORIA

The British colonisers' invasion of what is now known as the State of Victoria produced catastrophic outcomes for First Peoples that continue to resound through generations. The violent dispossession of First Peoples from their lands, waters and resources fundamentally disrupted societies that had thrived for millennia. As outlined in Chapter 7: How colonisers stole Country, the British systematically stole First Peoples' lands, massacred First Peoples and deliberately suppressed their knowledge, economies, culture and language.

The theft of Country stands as the foundational source of all historical and ongoing systemic injustice towards First Peoples in Victoria. Associate Professor Nikki Moodie (Gomeri) emphasised this to Yoorrook:

The primary cause of all Historical Systemic Injustice and Ongoing Systemic Injustice towards Indigenous people is colonial land theft. All historical injustice stems from the State's possession of Indigenous land or authorisation of settlers to take possession of land, and all ongoing injustice stems from the State's refusal to allow First Nations rights to land to be exercised by First Nations land-based groups.³

ASSOCIATE PROFESSOR NIKKI MOODIE

The Victorian Aboriginal Community Controlled Health Organisation (VACCHO) and the Federation of Victorian Traditional Owner Corporations told Yoorrook about the complete devastation wrought by invasion and land theft:

The British invasion and dispossession of Aboriginal land, violence and killing, disruption of kinship systems, attempted eradication of Aboriginal and Torres Strait Islander culture and knowledge systems, societal exclusion, imprisonment, slavery, removal of men, women and children from communities, extreme racism and forced poverty have led to intergenerational trauma and persistent social inequities. It was not just a violation of human rights, it was a belief that Aboriginal people did not even have to be treated as human, and indeed were not counted as human until 1967.⁴

VICTORIAN ABORIGINAL COMMUNITY CONTROLLED HEALTH ORGANISATION

European colonisation had a devastating impact upon our people and Country and continues to do so today. Our families were removed from Country and dispossessed from their homelands in an attempt to destroy our societies and culture ... Our custodial relationship with Country was forced by Europeans to end and made way for the destruction of our homes, our food sources, our ceremony sites and trade routes making up the Cultural Landscapes forged over millennia.⁵

FEDERATION OF VICTORIAN TRADITIONAL OWNER CORPORATIONS

Historical injustice caused today’s inequities. As outlined in Chapter 1: The past is the present, there is an unbroken line of injustice from the British invasion of what is now known as the State of Victoria and dispossession of First Peoples to present-day land injustice and inequalities. The ongoing systemic injustices experienced by First Peoples derive from past injustices, colonial practices and State acts.

Representatives of the Victorian Government accepted the State’s responsibility for the theft of First Peoples’ Country, its destructive impacts and its ongoing effects.⁶ Minister for Treaty and First Peoples the Hon Natalie Hutchins MP said:

It is devastating to reflect on the hurt, cultural disruption and indignity the State has inflicted on First Peoples through its acts of dispossession of lands and waters that led to destruction and disturbance to First Peoples’ cultural heritage, significant places and Ancestors.⁷

MINISTER NATALIE HUTCHINS MP

Multiple inquiries and reports ... have confirmed that generations of First Peoples have experienced the dispossession of their lands and waters and the suppression of cultural practices by State and non-State actors who killed, oppressed, and denied First Peoples’ basic rights. We cannot change this history. But we can accept its truth and seek to understand its enduring impacts.⁸

MINISTER NATALIE HUTCHINS MP

Since British colonisation, the State has enabled and encouraged land use and development that has resulted in the dispossession of Traditional Owners’ lands, waters and resources. This dispossession has led to the disruption of speaking of languages, singing of songs, teaching of traditional knowledges, and practice of art, dance and culture.⁹

MINISTER NATALIE HUTCHINS MP

First Peoples have resisted these impacts for nearly 200 years — fighting for their lives, for recognition as human beings and for the return of their lands, waters and homes. Despite the harms of colonisation, First Peoples have survived.¹⁰ First Peoples reflected on the resilience and resistance of First Peoples. For example, participants at a roundtable with Gunditj Mirring Traditional Owners Aboriginal Corporation said: ‘Through that oppression we have survived.’¹¹

Participants at a roundtable with Nindi-Ngujarn Ngarigo Monero said:

[D]espite this country’s history ... we’re still here. We’re still present. We’re still black ... We’re fortunate to be able to have these strong cultural ties that — that we do despite the world being against us.¹²

PARTICIPANT, NINDI-NGUJARN NGARIGO MONERO ROUNDTABLE

Participants at a roundtable with the Millewa Mallee Aboriginal Corporation also said:

[W]e do get knocked down but we keep getting up. That’s the beauty about Indigenous people. You’re knocked down, you get up again, go again.¹³

PARTICIPANT, FIRST PEOPLE OF MILLEWA MALLEE ABORIGINAL CORPORATION ROUNDTABLE

First Peoples have continually fought for recognition of sovereignty, land rights and self-determination (see Chapter 9: How we got here — overview of recognition systems).¹⁴ As the Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation said ‘Wurundjeri Woi-wurrung will continue to fight against land injustice, past and ongoing’.¹⁵

This chapter examines the key impacts resulting from Country being stolen, demonstrating how historical injustice created and continues to perpetuate systemic inequities experienced by First Peoples today. The devastating consequences include the deliberate severing of First Peoples’ relationships with Country and cultural practices, and the systematic suppression and destruction of First Peoples’ languages. The chapter documents the devastation of landscapes and ecosystems managed by First Peoples for millennia, alongside the colonisers’ catastrophic reduction of Victoria’s First Peoples through violence, disease and displacement. It explores the ongoing psychological and social impacts transmitted through generations as intergenerational trauma and examines the entrenched poverty of First Peoples, while the State, churches and landowners continue to profit from stolen lands. This chapter also addresses the deliberate erasure of First Peoples through coloniser-focused memorialisation and place names, and the ongoing difficulties First Peoples face in establishing recognition of their Country.

The evidence presented demonstrates how the violent dispossession of First Peoples continues to shape present-day systemic injustice in Victoria, requiring fundamental change to address these enduring impacts.

What Yoorrook heard

We felt the impacts of colonisation and dispossession physically, culturally, spiritually, economically and legally. These impacts continue today.¹⁶

NGARRA MURRAY, CO-CHAIR OF FIRST PEOPLES’ ASSEMBLY OF VICTORIA

Loss of land, culture and connection

Chapter 7: How colonisers stole Country charts the swift and brutal invasion and theft of First Peoples’ Country and the destruction of First Nations sovereignty, groups, clan structures, cultures and customs. As early as 1837, a Select Committee of the British Parliament reported on the impacts of colonisation on First Peoples:

In the formation of these settlements it does not appear that the territorial rights of the natives were considered, and very little care has since been taken to protect them from the violence or the contamination of the dregs of our countrymen.

The effects have consequently been dreadful beyond example, both in the diminution of their numbers and in their demoralisation.¹⁷

PARLIAMENTARY SELECT COMMITTEE ON ABORIGINAL TRIBES

By 1845, fewer than 240 wealthy Europeans held all the pastoral licences then issued in Victoria,¹⁸ establishing themselves as the ‘patriarchs ... that were to wield so much political and economic power in Victoria for generations to come’.¹⁹ The colonisers killed First Nations people, separated them from kin, Country and people, and forcibly relocated them to missions and reserves across what is now called Victoria (see Chapter 7: How colonisers stole Country).

The Victorian Government acknowledged to Yoorrook that the colonisation of Victoria was fundamentally based on the exclusion of First Peoples and their laws, cultures, customs and traditions.²⁰ Historically, Victorian laws, policies, systems and structures — some of which continue to operate today — were developed in this context.²¹

The Victorian Aboriginal Legal Service also explained how loss of land and denying access to land continues to impact on knowledge systems:

Aboriginal knowledge is multi-disciplinary and intertwined — not compartmentalised like Western knowledge systems. The land, the water, the sky, the flora and fauna, the storytelling — all work together to create and embed knowledge. Denying Aboriginal people access to Country undermines their entire knowledge system.²²

VICTORIAN ABORIGINAL LEGAL SERVICE

As explained by Paul Paton (Gunnai, Monaro, Gunditjmara), CEO of the Federation of Victorian Traditional Owner Corporations, colonisation and dispossession is not confined to the past:

Colonisation and the dispossession of land and natural resources is not only in the past. This is not purely an historic legacy underpinning dispossession and socioeconomic disadvantage. There are active forms of dispossession that are continuing to be systematically applied by the State of Victoria through public land management and administration. Contemporary acts of colonisation continue to entrench dispossession and reinforce the advantage and privileges of the dominant settler culture.²³

PAUL PATON

The Victorian Government accepted that ‘the forcible removal of First Peoples from their lands and waters’, which the State then sold off, ‘disrupted First Peoples’ stewardship of their lands which they had managed sustainably through 3000 generations’.²⁴ First Peoples were excluded from pastoral, mining and other sources of wealth. First Peoples were instead forced to take unpaid work on farms and in domestic labour on their stolen lands, now held by colonisers, in exchange for food, clothing and shelter.²⁵

According to the Victorian Government, ‘there has not yet been a comprehensive and systematic attempt to address this dispossession through reform of laws and policies’.²⁶ As discussed in subsequent chapters, there have been attempts in recent years to increase the recognition of Traditional Owners’ rights over their land, but this has largely been reactive, piecemeal and inadequate.

Minister Hutchins acknowledged that the theft of Country also entailed the destruction of First Peoples’ culture, spirituality and heritage:

These actions also included the destruction of places and objects intrinsically linked to First Peoples’ culture and history. The State desecrated the resting places of Ancestors and disrupted links to spirituality and Country. The State’s actions have contributed not only to the disempowerment, dispossession, and dislocation of First Peoples, but also to the loss of Aboriginal cultural heritage. The construction of buildings and infrastructure has destroyed thousands of years of evidence of Aboriginal life and living culture — connections to culture that are now irretrievable.²⁷

MINISTER NATALIE HUTCHINS MP

Yoorrook heard how the State took steps to suppress First Nations culture and ways of living, breaking First Peoples’ connection with Country and each other. For example CEO of VACCHO Aunty Dr Jill Gallagher (Gunditjmara), and Tanaya Edwards (Ngarigo, Yuin) said:

So once society back then decided, ‘Well, we better not slaughter the Blacks no more’, they decided to set up missions and reserves and round us up and put us on these missions and reserves. Some of them were set up with the view that they were protecting us, protecting our ancestors. But the majority was set up to absolutely destroy us. During these times ... our people were forbidden — it was illegal to practise our culture and speak our languages.²⁸

AUNTY DR JILL GALLAGHER

For our family it can feel like we are holding on to a thread because of how much we have lost.²⁹

TANAYA EDWARDS

Yoorrook heard numerous examples of how First Peoples have had to practise their culture in secret because it was forbidden to pass on First Peoples’ knowledge and language. For example, Aunty Dr Jill Gallagher explained how the State did not allow her grandmother to practise her culture or own land and the generational impacts of this prohibition:

My mother couldn’t tell me about her culture, because her mother was not able to pass on her culture to her. She could not pass on how to dance and why. She could not pass onto me our knowledge of bush medicines. She could not pass onto me how to birth on Country. She could not pass onto me their knowledge of our family connections to other clans. She could not pass on Basket Weaving ... [I]t was forbidden to pass on our knowledge and our Language.³⁰

AUNTY DR JILL GALLAGHER

Aunty Maude Alberts (Gilgar Gundidj Gunditjmara) told Yoorrook that to keep culture alive, First Peoples had to carry on their cultural practices and share stories and knowledge in secret, due to fear of the authorities:

Nan was born and raised on the mission. So, you know, she was taught ... don’t tell the stories, don’t sing the songs ... So we were so lucky ... because [Pop] continued to tell us the stories. Even though Nan would be yelling at him to stop ... because she was scared the police would come and take us away. And the same with Aunty Con when she was teaching us how to weave baskets. You know, it took me three months to convince her, but still when she taught us the blinds had to be down and the doors locked so no one could see what we were doing ... I still continue to teach basket weaving ... If Aunty Con had not have shown us we would have lost that part of our culture completely. So ... my daughters weave, my grand-daughters weave, and you can be damn sure that my great grand-daughters are going to learn to weave as well.³¹

AUNTY MAUDE ALBERTS

Uncle Graham Atkinson (Yorta Yorta, Dja Dja Wurrung) told Yoorrook that the State punished First Peoples if they were found practising their culture:

My ancestors ... were not allowed to practice their culture. They weren’t allowed to speak their language; in fact, they were punished, rations held back. And if you look around some of the missions throughout Victoria, it was a common practice that the — and it was referred to as mission management, and most people who found themselves living in those missions or reserves, they became very discontented and dissatisfied and wanted to look at better alternatives. So it was an oppressive regime.³²

UNCLE GRAHAM ATKINSON

This was part of the policy to assimilate First Peoples, described by Uncle Andrew Gardiner (Wurundjeri):

Our people were herded on to missions to be totally controlled. Our people had to ask permission from the Aborigines Protection Board whether they could marry, where they could build a hut, what skills they could learn, whether they could leave the mission to find work or even travel to visit sick relatives. But they had to dress like Europeans and attend church on Sundays to listen to Christian sermons.³³

UNCLE ANDREW GARDINER

The State acknowledged the ongoing impacts of colonisation and the enduring effects on Country and culture. Minister for Environment the Hon Steve Dimopoulos MP told Yoorrook that dispossession is at the root of the injustices that First Peoples experience today and current laws and policies continue to enable this dispossession:

I understand and acknowledge that the legal frameworks that enabled land to be taken from First Peoples and then sold, leased or licensed and reserved for purposes determined by the government also excluded First Peoples from the economic benefits of Victoria’s land, waters and other natural resources.

I acknowledge that the dispossession of Country and culture has been identified by successive inquiries and commissions as a matter at the heart of the myriad injustices which are still being suffered by First Peoples in Victoria. I recognise that the true nature of the dispossession of land in Victoria, and the legal and policy frameworks that enabled it, and that enabled the sale of and other dealings in it by the State have not been fully acknowledged or addressed by the State to date. The existence of ongoing systemic injustice in relation to land has also not been fully addressed.³⁴

MINISTER STEVE DIMOPOULOS MP

Loss of language

Colonisation destroyed language

Language is a central element of Peoplehood and sovereignty. Suppression of and attempts to eradicate the languages of First Peoples is a standard practice of colonisation. The colonisers practised language suppression at multiple levels during the early phases of Victorian colonisation. Yoorrook heard evidence of a lack of enduring financial support from the State for First Peoples and Traditional Owner-led revitalisation of First Peoples’ languages. This lack of support reinforces the past practices of suppression.³⁵

The dispossession of land is the number one contributing factor to the loss of language, cultural practices, song, dance, and cultural identity.³⁶

BARRY FIREBRACE-BRIGGS, FIRST PEOPLES’ ASSEMBLY OF VICTORIA

Across Australia there are over 250 Aboriginal languages including 800 dialects, with each language specific to a certain region and people. Aboriginal peoples were forbidden to speak their traditional languages on missions and reserves, as a result of this many Aboriginal languages across Australia, but particularly in Victoria are now lying dormant. This was part of the genocidal approach of colonisation.³⁷

VICTORIAN ABORIGINAL LEGAL SERVICE

In Victoria, the colonisers’ theft of First Peoples’ land is a major cause of loss of language and culture.³⁸ Frontier violence, perpetrated to take land, fractured and decimated First Nations societies, which were organised around distinct language groups (see Chapter 6: Country and Chapter 7: How colonisers stole Country). British colonisers forcibly removed people from their Country and moved them on to missions and reserves, banned them from speaking language and disrupted their identities, sense of belonging and cultural practices.³⁹

Data from the Australian Bureau of Statistics show that in Victoria there are now very few speakers left in a handful of language groups.⁴⁰ Australia has one of the highest language extinction rates in the world.⁴¹ The 2020 *National Indigenous Languages Report* found

that every Indigenous language in Australia is under threat and less than 10 per cent of Aboriginal and Torres Strait Islander people speak language at home.⁴² In the words of Uncle Johnny Lovett (Gunditjmara, Boandik):

[Language] ... It's part of their lives that's been taken, and it will be forever a — a gap in their life. Connection to country, connection to song, dance, language, spiritualism, lore, religion and its gone.⁴³

UNCLE JOHNNY LOVETT

Then Minister for Treaty and First Peoples (previously Minister for Aboriginal Affairs) the Hon Gabrielle Williams MP⁴⁴ acknowledged the destructive impacts of colonisation on language:

Through deliberate government policies aimed at eradicating First Peoples language and culture, the rich linguistic traditions of First Peoples were close to decimated. It is estimated that more than 350 First Nations languages were spoken across Australia prior to the arrival of Europeans. Fewer than 50 of these remain in wide usage. In Victoria, more than 40 First Nations languages were spoken prior to 1835. Today, none of these are considered to be in wide, everyday use. Despite this, there is a language revival and revitalisation movement underway at a community level across Victoria.⁴⁵

MINISTER GABRIELLE WILLIAMS MP

On missions and reserves, some Protectors prohibited the practice of culture and speaking language,⁴⁶ punishing those who disobeyed by withholding rations.⁴⁷ Yoorrook heard repeated accounts of First Peoples being too fearful to speak their languages or teach them to their children.⁴⁸ For example, Uncle Johnny Lovett, the late respected Elder Aunty Fay Carter (Yorta Yorta, Dja Dja Wurrung), and Joshua Struthers (Palawa) said:

We don't speak language today. When my dad and his brothers were sitting at the woodheap, I didn't hear them speak language. I believe that this is because of the way of the old days, when their mothers and fathers saw the change coming. They had started taking Aboriginal children on Lake Condah Mission and putting them in dormitories and they were not given back to their parents or given any rations until they promised they would not teach their children song, dance and language.⁴⁹

UNCLE JOHNNY LOVETT

Our people were not allowed to practise any of their culture or speak their language at Cummeragunja. If they were caught practising their culture or speaking their language, our people would be penalised, by having their rations reduced or having things that they valued taken away from them.⁵⁰

AUNTY FAY CARTER

It was sort of a struggle growing up because so much of language that was lost ... [a]nd so much of it was intentionally suppressed and it was very hard to even learn about it.⁵¹

JOSHUA STRUTHERS

On missions and reserves, Protectors and managers told First Peoples that their culture and language was inferior to European culture, leading some to feel ashamed about speaking language. Aunty Glenys Watts (Gunaikurnai) explained:

Aboriginal people in Victoria have bits and pieces of traditional language now, but were generally not allowed to use it growing up. When I was growing up, my relatives would sometimes dance around the kitchen, dress up and talk in language, but they would then feel shame and become shy, because they were not meant to speak language.⁵²

AUNTY GLENYS WATTS

Yoorrook heard that the intentional destruction of language through colonisation and assimilation was a manifestation of genocide and a method of eradicating identity, culture and knowledge of Aboriginal people (see Chapter 7: How colonisers stole Country). Uncle Johnny Lovett and Claudette Lovett, and Dr Aunty Vicki Couzens (Keerray Wooroong Gunditjmara) respectively said

And you know, they took us away — the missions, they took away our language. That's why we don't speak today. So, we lost our language and that's a form of genocide.⁵³

UNCLE JOHNNY LOVETT AND CLAUDETTE LOVETT

[O]ur loss of language is linguicide. It is very much one of the first strategies to genocide. Stop people talking their language, stop people practising, rid of them.⁵⁴

DR AUNTY VICKI COUZENS

Churches' key role in the destruction of First Peoples' languages and cultures

Yoorrook also heard that churches played a large role in the suppression of languages. Some church authorities saw Aboriginal language as a 'heathen tongue'⁵⁵ and enforced English-only policies on missions and at schools. For example, Uncle Jim Berg (Gunditjmara), the late respected Elder Aunty Fay Carter, the late respected Elder Uncle Kevin Coombs (Wotjobaluk, Wemba Wemba, Wiradjuri), and the Wamba Wemba Aboriginal Corporation said:

I have strong views about the role of the churches in their religious attempts in destroying the spirituality, dignity, language and culture of our Ancestors when they assisted the governments in establishing the missions and Aboriginal settlements.⁵⁶

UNCLE JIM BERG

Our people were forced to believe that practising culture was a sinful thing. They were told, 'You've got to read the bible, you've got to practise the white man's religion, all that other stuff's just pagan stuff'.⁵⁷

AUNTY FAY CARTER

[T]he church had a lot to do with that. They said, 'You're not allowed to speak that heathen language. You've got to speak English.' And I look back in sorrow now that we don't.⁵⁸

UNCLE KEVIN COOMBS

We were mute, it was dictated that no language was spoken.⁵⁹

WAMBA WEMBA ABORIGINAL CORPORATION

Yoorrook heard evidence from representatives from the Anglican Church, the Catholic Church and the Uniting Church in Australia. In their opening statements, representatives from the Anglican Church and Uniting Church publicly acknowledged the role of churches in suppressing language and culture. Bishop Richard Treloar of the Anglican Church described what occurred as ‘cultural genocide’⁶⁰ — the deliberate and intentional destruction of language and culture by the State and churches.

Gippsland Anglicans lament that our colonial history includes atrocities committed against First Peoples ... We recognise with sorrow the forced relocation of First Peoples from Country to and from missions at Lake Tyers and Ramahyuck caused separation from family, language and culture and has led to intergenerational trauma.⁶¹

BISHOP RICHARD TRELOAR

We acknowledge that churches that came to form the Uniting Church were involved in missions in ways that harmed or rejected First Peoples’ culture, language, spiritual wisdom and connection with Country.⁶²

REVEREND DAVID FOTHERINGHAM

Historians and anthropologists explained to Yoorrook that in the 1830s, an evangelical movement had taken hold of the government in Britain. There was a deep concern about the ‘un-Christian’ acts of settlers in Victoria but also a desire to protect Aboriginal populations by converting them to Christianity. Bishop Treloar reflected on this ‘Christianising’ mission:

[T]he enterprise itself I would want to say is just fundamentally flawed and is just built on completely erroneous premises ... [Uncle] Jim Berg reflected on this irony of a kind of a combination of a protective ideology in terms of those reserves and missions coexisting with this loss of identity and language, and lore and kinship in precisely in that context ... there is this sort of, you know, protection going on ... at one level and cultural genocide at another level ... it is a really debilitating paradox ... And there is no question that, you know, our church partnered with the colonial government to implement policies and practices that were and continue to be profoundly harmful to First Nations people in Victoria ... [T]hose policies were grounded in a deep seated and pervasive racism from which our church is far from immune.⁶³

BISHOP RICHARD TRELOAR

Reflecting on the significance of denying First Peoples their languages, Bishop Treloar said:

[I]t is a terrible injustice and one of the worst legacies of the ... whole mission enterprise ... it is a way of disempowering people to take their language.⁶⁴

BISHOP RICHARD TRELOAR

In July 2022, the fifth Plenary Council of Australia in the Catholic Church acknowledged that the Catholic Church in Australia ‘has been caught up in the history of dispossession, Stolen Generations, racism and the undermining of language and culture’.⁶⁵ The Catholic Archbishop of Melbourne, Peter Comensoli clarified that while the Catholic Church ‘was not involved in the missions in Victoria’,⁶⁶ he acknowledged that to ‘strip language ... has been a deeply damaging reality in the past, in the history of Indigenous people here in our own country’.⁶⁷

Archbishop Comensoli referred to ‘two paths ... within the life of Indigenous people in relation to the Catholic Church’:⁶⁸ ‘the path of always dignifying and seeking to find ways of enabling the Indigenous people to flourish’⁶⁹ and ‘individuals and perhaps localised communities that have not followed that way’.⁷⁰ In his opening statement, Archbishop Comensoli noted that the Catholic Church is ‘comprised of many religious organisations or institutes’⁷¹ not ‘reducible to a single entity’.⁷² Archbishop Comensoli was asked to speak in his capacity as Archbishop of Melbourne and he did not have authority to speak for the Catholic Church more broadly.⁷³

The Victorian Government addressed the churches’ role in the suppression of First Peoples more directly:

[T]he State’s establishment of missions and reserves at Coranderrk, Lake Tyers, Framlingham, Lake Condah, Ramahyuck and Ebenezer was driven by the paternalistic and racist attitudes of the time, including the idea that Christianity was the only means of assisting Aboriginal people. The reserve system aimed to change Aboriginal people and to make them more like white, European people by removing children, discouraging the speaking of Aboriginal languages and the practice of Aboriginal culture.⁷⁴

MINISTER NATALIE HUTCHINS MP

Language is fundamental to First Peoples’ identity

Yoorrook heard about the fundamental importance of language to First Peoples today. Language instils a deep sense of pride, national and cultural identity and connection to Country.⁷⁵ Language is described as the thread that links people, place and culture, while also providing identity and strength.⁷⁶ Language also serves as a repository of knowledge that holds First Peoples’ laws and lore, customs and kinship systems.⁷⁷ Speaking language has been demonstrated to benefit individual wellbeing and health, particularly mental health.⁷⁸ Despite this, as VACCHO explained:

Aboriginal people have been denied the opportunity to learn, study, live and work in their own language.⁷⁹

VICTORIAN ABORIGINAL COMMUNITY CONTROLLED HEALTH ORGANISATION

Language is derived from and connected with land. Dr Aunty Vicki Couzens, Chairperson of the Victorian Aboriginal Corporation for Languages (VACL), told Yoorrook that languages are developed from place, from being and living in a certain area.⁸⁰ That is why there are so many different First Peoples languages.⁸¹ The Victorian Aboriginal Legal Service reflected on the importance of language for social and emotional wellbeing:

For Aboriginal people, speaking in your traditional language is [an] integral part of being strong in your identity, connected to your culture, Country and community, and in turn improves social and emotional wellbeing.⁸²

VICTORIAN ABORIGINAL LEGAL SERVICE

Revitalising language is therefore also revitalising those aspects of Aboriginal society and culture.⁸³ Dr Aunty Vicki Couzens explained:

Language revitalisation, it’s our birthright ... language is culture, language is family, language is land, and they are inseparable.⁸⁴

DR AUNTY VICKI COUZENS

The protection of language is urgent and requires State support

First Peoples want to see languages being taught in schools and forming part of the curriculum.⁸⁵ There were repeated calls for language to be revived so that future generations can maintain connection to Country, sing songs and tell stories in language and keep culture alive and strong. Yoorrook emphasises that this must be done in a culturally sensitive way, being taught to First Peoples as a priority, and in schools with the permission of Traditional Owners and language holders.

For First Peoples, language reclamation is broader than bilingual education.⁸⁶ Dr Aunty Vicki Couzens gave evidence that language reclamation is about reawakening language in the community and having languages spoken as part of everyday life,⁸⁷ including encouraging family clans to use language to build a language community.⁸⁸

Today, First Peoples and Traditional Owners are working to reclaim and rebuild their languages and the knowledge contained in them, but they are having to do so without direct financial support from the Victorian State.⁸⁹

The State of Victoria does not fund Aboriginal languages in a sustainable and self-determining manner.⁹⁰

DR AUNTY VICKI COUZENS

VACL is the peak body for Aboriginal languages revitalisation in Victoria. It is also a peak body in the Closing the Gap Partnership Forum, which provides a platform to represent and advocate for the protection of language.⁹¹ VACL was established in 1994 in response to a growing First Peoples-led grassroots movement seeking to revitalise Victorian languages.⁹² Much of their work has been performed by a small group of passionate volunteers.⁹³

Yoorrook heard that VACL currently receives limited funding from the Commonwealth Government. That funding is roughly \$600,000 to \$650,000 per year, which goes towards operational costs.⁹⁴ In her evidence, Dr Aunty Vicki Couzens described the current financial position of VACL as ‘stark’.⁹⁵ The available funding for VACL is insufficient and project-based, making it very difficult for VACL to source and retain staff. Dr Aunty Vicki Couzens stated that ‘no one is paid very much or at all’.⁹⁶ VACL has been unable to maintain its library, which means the largest collection of Victorian Aboriginal language resources in the world is sitting in boxes because there are not sufficient resources to unpack it.⁹⁷

The protection of culture and language is urgent. Elders and older Aboriginal people are dying, and with them centuries of knowledge and wisdom are being lost.⁹⁸ If the government does not provide proper support for revitalisation, empowering First Peoples to be self-determining and autonomous, languages and cultural practices will face extinction.

The Victorian Government is a signatory to Australia’s National Agreement on Closing the Gap, which commits the government to the maintenance and revitalisation of Aboriginal languages in recognition of the importance of language and culture to the health and wellbeing of First Peoples.⁹⁹ Target 16 of the National Agreement is: ‘By 2031, there is a sustained increase in number and strength of Aboriginal and Torres Strait Islander

languages being spoken’.¹⁰⁰ This is reflected in the *Victorian Aboriginal Affairs Framework 2018–2023*, which includes a commitment to ‘[s]upport the preservation, promotion and practice of culture and languages’.¹⁰¹ Yet there is no evidence that Target 16 is on track in Victoria.¹⁰² In 2018–19, the baseline data year, there were no First Peoples languages considered ‘strong’ in Victoria.¹⁰³ The National Indigenous Languages Survey was completed in June 2024 but the results have not been published.

In correspondence, the State told Yoorrook that it currently provides some funding to VACL and has done so in the past. Yoorrook sought further detail but at the time of writing, the State did not confirm specific amounts. VACL noted that the limited funding it receives is not sufficient to deliver language revitalisation programs directly with Traditional Owner groups in Victoria: ‘[N]one of it hits the ground in communities for the language work’.¹⁰⁴

This lack of support is out of step with international standards. The United Nations General Assembly proclaimed the decade between 2022 and 2032 as the International Decade of Indigenous Languages to draw global attention to the critical situation for many Indigenous languages.¹⁰⁵ In response, the Commonwealth Government developed the *Voices of Country* action plan¹⁰⁶ to guide Australia’s participation. *Voices of Country* is designed to support all jurisdictions and to provide guidance to corporations and the community on how they can support language.¹⁰⁷ Yoorrook heard that the Commonwealth Government has not delivered on its commitment to the actions in the plan, including making a budget bid to support the plan’s implementation.¹⁰⁸

The Victorian and Commonwealth governments’ approaches are both inconsistent with Article 13 of the *United Nations Declaration on the Rights of Indigenous Peoples*.¹⁰⁹ Article 13 requires States to take effective measures to protect Indigenous rights and to ‘revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures’.¹¹⁰

Upside-down Country; broken Country

Country has been turned upside down

Yoorrook was told about how colonisation irreparably changed Victorian landscapes and ecology. The Dja Dja Wurrung people use the term ‘upside-down Country’ to describe the impacts of colonisation on Country through practices such as land clearing and gold mining (see further Chapter 15: Earth, sea and living things).¹¹¹

Colonisers and their descendants have cleared the land to make way for farming, mining and development. In doing so they damaged the land and waters and destroyed cultural heritage and other sacred sites. Non-First Peoples farming practices, the prevention of firestick farming and the neglect of ecosystems and waterways increased the risk of bushfires, flood and environmental degradation.¹¹²

As noted in Chapter 7: How colonisers stole Country, Yoorrook heard that British colonisers’ introduction of foreign flora and fauna, including sheep, cattle and rabbits, caused and continues to cause destruction to the environment and native species cared for by First Peoples.¹¹³ The McDonald Family of Tae Rak (Lake Condah), Uncle Brendan Kennedy (Tati Tati), Uncle Johnny Lovett, Uncle Colin Walker (Yorta Yorta) said:

Along with the dispossession of traditional lands by the invaders, came the clearing of these newly acquired lands for farming. Much of the land had been managed by Aboriginal people for millennia, creating grasslands for native animals like kangaroo, wallaby and emu to thrive ... As land clearing commenced and new stock were introduced, native plants and animals that were traditionally ‘harvested’ or foraged disappeared. This terraforming by settlers greatly impacted on traditional cultural practices ... Significant sites were also demolished in this process; sometimes intentionally by settlers, and sometimes less intentionally by their livestock. Fences were erected to limit access to important sites on Country, and simultaneously impacting the natural patterns and habitats of native fauna.¹¹⁴

MCDONALD FAMILY OF TAE RAK (LAKE CONDAH)

Farms come first — our biodiversity is being destroyed.¹¹⁵

UNCLE BRENDAN KENNEDY

[T]he bush tucker plants ... Water Ribbon ... Yam Daisy flower and the Yam Daisy root ... in those days it was plentiful, because there was no — no cloven hoof animals to destroy it. The kangaroo was soft pawed and the emu. So, you know, it was — it grew pretty plentiful. And, of course, it was not only the cloven hoof animals. It’s when they started ploughing the paddocks and things like that, the land and that, and then, you know, that would have done a lot of damage to all those things as well.¹¹⁶

UNCLE JOHNNY LOVETT

We have a beautiful country. I don’t understand why people want to wreck it. Things are changing. The forest is deteriorating. Many of the animals are now confused. Emus used to lay eggs once a year. Now they lay eggs three to four times a year.¹¹⁷

UNCLE COLIN WALKER

Bill Gammage has said: ‘Australia is a world leader in animal and plant extinctions ... We see extinctions, pollution, erosion, salinity, bushfire and exotic pests and diseases, but argue over who should pay.’¹¹⁸

One of the most significant changes to the landscape resulted from the colonisers suppressing First Peoples’ fire management practices which were planned, intentional and highly localised. Instead, pastoralists and landowners randomly burned off large areas, before the State eventually stopped the use of fire.¹¹⁹ This has led to unchecked re-forestation of native tree species, loss of lush grasslands, explosion of the insect populations and more catastrophic bushfires and floods.¹²⁰ Cultural Fire Practitioner at the Dja Dja Wurrung Clans Aboriginal Corporation, Mick Bourke (Yorta Yorta, Dja Dja Wurrung, Ngurai illam, Barrapa Barrapa, Taungarong) told Yoorrook:

[W]hen Victoria was heavily colonised and land stolen from us ... them practices slowly stopped and then, you know, 30, 40 years later you are getting Black Thursdays and things like that that abolished half the Country. Like, I’m talking thousands and thousands of hectares being burnt down and, you know, things from not being able to manage Country for 40 years ... When the first squatters come to this country, they have seen some of the biggest parks and estates in the world. Bill Gammage and other fellas, they talk ... the wide open grassy woodlands from up from where I am from, now you are looking at over-grown bushland people think is beautiful. But it was through the fire mechanisms looking after the Country the right way, and mob in the landscape.¹²¹

MICK BOURKE

The State accepted the ruinous impacts of colonisers’ land use on Country, food and water sources and biodiversity:

Dispossession by the State has included acts of environmental degradation by European land uses, including the introduction of exotic flora and fauna. Traditional Owners have observed significant biodiversity decline. Food and water sources and sites of significance to First Peoples have been damaged or destroyed. The effects of a violent colonial history have curtailed the ability of First Peoples to utilise traditional ecological knowledge to protect and promote biodiversity. Rather than working with First Peoples to sustainably manage Victoria’s lands and waters, the State imposed processes of land and water management derived from foreign lands and climates.¹²²

MINISTER GABRIELLE WILLIAMS MP

Yoorrook also heard that colonisers and State authorities have mismanaged waterways to the point of ecological collapse.¹²³ First Nations have borne some of the worst impacts of that environmental degradation.¹²⁴ Uncle Brendan Kennedy said:

Lots of rivers, creeks, lakes, lagoons, wetlands and aquifers around here — all of our ancient waterways — are nearly dead, they are being killed off. That kills our spirit. We have been born into this, we and our Country are under constant strain and duress, from the Colonial Project.¹²⁵

UNCLE BRENDAN KENNEDY

For First Peoples, this destruction causes grief, trauma and loss of culture and identity associated with that Country.¹²⁶

Many Traditional Owners will testify to the loss of control and autonomy, the inability to access and holistically manage customary estates, to exercise custodial authority and to prevent further ecological degradation and economic impoverishment.¹²⁷

UNIVERSITY OF MELBOURNE LAW SCHOOL

The destruction of the environment has been described by Uncle Robbie Thorpe (Krauatungalung Gunaikurnai), also known by Djuran Bunjilinee as ‘ecocide’, and ‘[d]isrespect for the law of the land’.¹²⁸ Uncle Brendan Kennedy explained:

[W]e feel pain for Country. So when Country is in pain we feel that pain. So when Country is — when the Europeans are cutting down the trees and digging up our mother earth and — and killing our kangaroos and killing our water here ... We are dying the death of a million cuts. It is just continually cutting into our souls and our spirit and our wellbeing.¹²⁹

UNCLE BRENDAN KENNEDY

Returns of broken Country

Yoorrook heard a pattern of evidence about the State returning upside-down or ‘broken’ Country to First Peoples. Country — sick, contaminated and ‘past the point of repair’¹³⁰ from decades of colonial land use and degradation — is handed back under land recognition regimes (see Chapter 9: How we got here — overview of recognition systems, Chapter 10: Native title, Chapter 11: Traditional Owner settlements and Chapter 12: Cultural heritage) with the expectation that First Peoples will take on the responsibility of healing it with no resources to do so.¹³¹ Participants at a roundtable with Barengi Gadjin Land Council explained:

[S]itting right there next to you, a pile of ... asbestos ... they’ve just dumped there ... There’s handback, and this story seems to be true across other mobs as well, you get given back land ... but it’s broken. And it’s so broken and the time and the effort to heal it is just huge ... The dump out there ... the worst toxic dump in Australia, it’s 36 dump sites, it covers over 30 hectares of dump land ... And they’re saying oh, we’ll just cover it up, it’ll be fine, we’ll hand it back to you. No. Hand us back the rest. You keep this shit. And hand us back the healthy, good Country that we can heal quicker.¹³²

PARTICIPANT, BARENGI GADJIN LAND COUNCIL ROUNDTABLE

There was a property that was given back to us ... But guess what? ... It’s got a pine plantation there. We can’t do anything with it. We can’t get in and chop that down. You have to have trucks to come in and take it. So it’s still out there, and we’re paying rates on it ... give us some good land back. But they won’t. And it’s that power thing. We’ve gotta keep you at that level, so you can’t achieve.¹³³

PARTICIPANT, BARENGI GADJIN LAND COUNCIL ROUNDTABLE

The farmers in this area, who are generational farmers, multigenerational. They’ve made super amounts of wealth and we’ve had to watch them do it ... When they gave back Ebenezer originally ... the actual site of the mission was way bigger. And they gave us this little plot where the church is ... because all the farmland that sits around ... all these other people around us have made millions of dollars off the land ... It’s basically land that you can’t really do anything with or make money off, in the modern economy.¹³⁴

PARTICIPANT, BARENGI GADJIN LAND COUNCIL ROUNDTABLE

First Peoples remain determined to uphold their obligations to Country. Co–Chair of First Peoples’ Assembly of Victoria Ngarra Murray (Wamba Wamba, Yorta Yorta, Dhudhuroa, Jupagulk, Baraparapa, Wiradjuri, Dja Dja Wurrung) explained:

We care for Country even if it has been destroyed. It’s still part of our Country, still part of our tribal territory; our ancestors come from there.¹³⁵

NGARRA MURRAY, CO-CHAIR OF FIRST PEOPLES’ ASSEMBLY OF VICTORIA

Decimation of the population

The First Nations population of Victoria, which had survived for thousands of generations, was rapidly and drastically reduced by the violence and disease imposed on First Peoples by the practices of colonisation. The Koori Health Research Database has compiled figures on population decline,¹³⁶ and the First Peoples’ Assembly of Victoria has also provided figures in evidence to Yoorrook.¹³⁷

The size of the Aboriginal population before European invasion has been the subject of debate.¹³⁸ In Victoria, ‘until recently, a consensus had developed ... that about 15000 [Aboriginal] people occupied the area south of the Murray River before British occupation’.¹³⁹

The population was initially reduced through the introduction of diseases — smallpox, influenza, whooping cough, measles, tuberculosis and venereal disease.¹⁴⁰ The population of First Peoples in Victoria ‘was affected by two successive smallpox epidemics around 1788 and 1829’,¹⁴¹ and this occurred ‘even before the invaders set foot on Victorian soil’.¹⁴² The precise cause of the smallpox outbreaks has not been determined, but it is known that vials of smallpox variola matter (the pus and scabs of people infected with smallpox) were brought by surgeon Dr John White on the First Fleet.¹⁴³ Smallpox ‘spread rapidly

because [of] the incredibly rich trade, family and cultural networks that crisscross the country’.¹⁴⁴

It has been estimated that these outbreaks reduced the population of First Peoples in Victoria by half.¹⁴⁵ Professor Richard Broome argues that ‘the figure of 15,000 must refer to the population at the founding of the colony in 1835, and that if each epidemic resulted in at least 50 per cent mortality, the pre-colonisation population must have been 60,000’.¹⁴⁶

In the twenty years to 1853, the population of First Peoples in Victoria plummeted to a total of 1907.¹⁴⁷ At the same time, official counts estimated 6.5 million sheep in Victoria.¹⁴⁸ This vast drop was due to a combination of colonial massacres, violence and disease, in part due to the impact on First Peoples’ diets and the disruption to First Peoples’ culture and way of life.¹⁴⁹ First Peoples could no longer hunt or eat their traditional foods. There were risks that food offered by colonisers was poisoned. Convenor of the Tunnerminnerwait and Maulboyheenner Commemoration Committee Dr Joseph Toscano told Yoorrook:

The local Aborigines now found themselves in an impossible situation, driven from their lands at the point of a gun, concerned about the very real possibility that the provisions that were being offered to them by squatters and Assistant Protectors alike could be poisoned, and unable to hunt and gather food on their traditional lands — many died of starvation.¹⁵⁰

DR JOSEPH TOSCANO

Based on journal evidence from the time, Professor Broome also documents low birth rates, with deaths outnumbering live births at a rate of five to one, due to ‘poor nutrition, venereal disease, loss of land and loss of faith in the future’.¹⁵¹

Population losses in individual First Nations were stark. According to Professor Broome:

- ‘The Wathawurrung (Barrabools of Geelong) numbered 275 in 1837 ... but only 30 in 1852’ — a 90 per cent decline.
- ‘The Gunaikurnai of Gippsland were estimated to number 300 in 1844 and 32 in 1852’ — a 90 per cent decline.
- ‘The Woiwurrung and Boonwurrung people of Naarm (Melbourne) were estimated at 350 in 1836 and 59 in 1852’ — an 83 per cent decline.¹⁵²

The Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation told Yoorrook that land injustice resulted in a ‘demographic disaster’.¹⁵³

Taungurung Land and Waters Council Aboriginal Corporation told Yoorrook how the arrival of Europeans impacted the Taungurung population:

Ian Clark has estimated that prior to the arrival of Europeans, with their guns and their diseases, the Taungurung population would have been ‘probably as high as 1,560’ and that by the mid-1840s there had been a loss of population of as much as 80 per cent. The historical records tell us that the white man’s diseases — smallpox in particular — took a considerable toll on the Taungurung people even before white men moved into Taungurung country in 1837. But there was one single frontier event that had a devastating impact on the Taungurung — that being the so called ‘Faithfull Massacre’ on the Broken River near Benalla in April 1838. The event itself was one of the few occasions when hostilities on the frontier resulted in an Aboriginal victory, with at least eight settlers being speared to death as they attempted to move sheep onto Taungurung country. But the response was brutal, with reprisal raids on Taungurung people in the months that followed resulting in a great many deaths.¹⁵⁴

TAUNGURUNG LAND AND WATERS COUNCIL ABORIGINAL CORPORATION

The rate of decline was of concern to the colonial government at the time, despite their active role in the decimation of the First Peoples population. In 1858, the Victorian Parliamentary Committee upon Protection to the Aborigines found that ‘[a] great injustice has been perpetrated upon the Aborigines’ and that when the government took their hunting grounds and their means of living, ‘proper provision should have been made for them’.¹⁵⁵ The Committee reported:

[S]ix to seven thousand Aborigines distributed over [Victoria]. So great has been the mortality amongst them, however, that so far as can be ascertained, there are not more than a few hundreds remaining, who are in a state of abject want ...¹⁵⁶

As discussed in Chapter 7: How colonisers stole Country, this led to the establishment of state-run reserves. Despite the harshness of life on reserves, survival was even more precarious for those outside their confines. It is estimated that the population that did not live on reserves left few descendants.¹⁵⁷ The current population of First Peoples in Victoria may have descended primarily from approximately 500 individuals on reserves in the 1870s.¹⁵⁸

As further discussed in Chapter 7: How colonisers stole Country, under assimilation policies the assumption was that the Aboriginal people would ‘gradually disappear in the face of the superior British civilisation’.¹⁵⁹ On stations, so-called ‘half castes’ outnumbered ‘fullbloods’ by the late 1880s.¹⁶⁰ The *Aborigines Protection Act 1886* (Vic) (the ‘Half-Caste Act’) had sought the absorption and eventual disappearance of First Peoples.¹⁶¹ By Federation in 1901, the official population count in Victoria was 1.2 million white people, 652 Aboriginal people and 11 million sheep.¹⁶²

The First Peoples’ Assembly of Victoria described the continued effects of land theft on the First Peoples population:

The Koori Research Health Database ... shows that it was colonisation and dispossession from land, followed by the government policies of the reserve system and Protection Acts that had the most significant impact on population decline, life expectancy, and health and wellbeing ... Population recovery only started to gain strength from the late 1960s, when government policies that blocked First Peoples recovery and development began to be reversed, as a direct result of First Peoples ‘leadership, activism and determination to survive.’ Recent census data shows the Victorian Aboriginal population has increased six-fold in a single generation, but a similar increase has not been seen in life expectancy. Despite Australia being ranked sixth on the World Development Index for life expectancy, Indigenous Australians rank around 143, suffering the lowest life expectancy of any ‘fourth world’ people living in a first world society.¹⁶³

FIRST PEOPLES’ ASSEMBLY OF VICTORIA

Genocide

The impact on First Peoples of the large-scale appropriation of land at the centre of colonisation has been called ‘annihilation’¹⁶⁴ and ‘a relationship of genocide’.¹⁶⁵ To satisfy their colonial greed for land domination, both State and non-state actors sought to eradicate First Peoples.¹⁶⁶ From 1834, mass killings, disease, sexual violence, exclusion, linguicide, cultural erasure, environmental degradation, child removal, absorption and assimilation combined to bring about the near-complete physical destruction of First Peoples in Victoria.

Yoorrook finds that the decimation of the First Peoples population in Victoria to between one per cent and five per cent of the pre-colonisation population by 1901 was the result of ‘a coordinated plan of different actions aimed at the destruction of the essential foundations of the life of national groups’.¹⁶⁷ This was genocide (see further Chapter 39: Redress).

Intergenerational trauma

The structure of invasion is set in place by the various stages of colonisation that then embed intergenerational and collective trauma in First Nations communities. As First Nations trauma expert, Judy Atkinson, notes in her ground-breaking *Trauma Trails: Recreating Song Lines (2002)*, these stages are: physical violence (invasion, disease, death and destruction), structural violence (enforced dependency, legislation, reserves and child removals) and psycho-social dominance (cultural and spiritual genocide).¹⁶⁸

VICTORIAN ABORIGINAL CHILD AND COMMUNITY AGENCY

What has become clear to the current living generations is that we carry some of that trauma our Ancestors experienced. This trauma expresses itself through an overwhelming sense of sadness when we talk about our history to each other, a suppression of the tragic events when relating our story to others, and a heartfelt hurt when remembering the struggle of our Ancestors.¹⁶⁹

MCDONALD FAMILY OF TAE RAK (LAKE CONDAH)

The British invasion and dispossession of First Peoples has led to intergenerational trauma and persistent social inequities that continue today.¹⁷⁰ The impacts of colonisation on First Peoples’ health are discussed in detail in Chapter 28: Health inequities.

Yoorrook heard about the devastating impacts of intergenerational trauma¹⁷¹ on First Peoples. As VACCHO explained:

Discrimination, racism and the suppression of Aboriginal and Torres Strait Islander cultures have perpetuated a cycle of trauma. For example, when cultural practices are devalued or actively suppressed and criminalised, individuals may internalise a sense of shame, leading to a fractured sense of self.¹⁷²

VICTORIAN ABORIGINAL COMMUNITY CONTROLLED HEALTH ORGANISATION

WHAT IS INTERGENERATIONAL TRAUMA?

The trauma experienced by previous generations, including the impact of dispossession, child removal policies, racism, violence and other acts of the State, can be transmitted to succeeding generations.¹⁷³ Intergenerational trauma gives rise to higher childhood mortality rates, educational deficits, unemployment, poverty and reduced life expectancy.¹⁷⁴

Associate Professor Graham Gee, an Aboriginal-Chinese man and clinical psychologist with expertise in healing and recovery from complex trauma, explained that colonisation and racism contribute to intergenerational trauma.¹⁷⁵ Reflecting on the ongoing impact of colonisation on mental health and wellbeing he said:

[T]he average Australian thinks, ‘That’s over, it’s done in the past’. What they are not realising is how profound that loss of human life was in that genocide and how many Elders and how much cultural knowledge was devastated ... the dispossession of land and resources and how that fragmented families and communities who were then removed through legislation and the removal of children from their families and suppressed their language and their knowledge. All of that results in intergenerational entrenched disadvantage.¹⁷⁶

ASSOCIATE PROFESSOR GRAHAM GEE

A participant at a roundtable with Boonwurrung Land and Sea Council further stated that the ‘[g]enetic lottery put[s] you on the outside. And a lot of us suffered hurt. We’re outside the mainstream and made to feel like we were not worthy’.¹⁷⁷

In the First Peoples’ Assembly of Victoria land injustice submission, Barry Firebrace-Briggs (Yorta Yorta, Ulupna) explained the relationship between land theft and intergenerational trauma:

The dispossession of land is the number one contributing factor to the loss of language, cultural practices, song, dance, and cultural identity. Over time, this has led to our people being left behind, made examples of, and struggling to make ends meet. This is ‘Generational trauma’, which affects my family to this day. My people’s mental health and wellbeing has continued to decline, and many seek destructive ways to manage this with the use of drugs and alcohol. This manifests itself in the poor life expectancy, chronic disease that plagues our people today.¹⁷⁸

BARRY FIREBRACE-BRIGGS, FIRST PEOPLES’ ASSEMBLY OF VICTORIA

Intergenerational trauma often does not fade away with time but accumulates through each generation.¹⁷⁹ Digital humanities specialist Dr Bill Pascoe told Yoorrook that First Peoples live with the legacy of intergenerational trauma from colonisation including massacres and violence, being forced off Country, being forced onto and off missions and reserves:

Each generation has a new form of violence against it, and they develop new forms of resistance to it. After the massacres, women are abducted. Children worked as domestics on farms. People get sent to missions. There’s the eugenics phase. There’s dog licences and segregation, and all of the other things that you’ve been hearing about and will hear about. So the point is that it’s still with us.¹⁸⁰

DR BILL PASCOE

Evidence to Yoorrook emphasised that the impact of colonisation also manifests as a loss of hope. VACCHO explained that the loss of hope is a profound emotional and psychological experience accompanied by feelings of despair and resignation.¹⁸¹ Hope is fundamentally the belief in a possibility of positive change, improvement and a better future.¹⁸² Hope functions as a motivator, it builds resilience and supports wellbeing and the pursuit of goals.¹⁸³

Intergenerational poverty while State, churches and landowners profit

All of the economic wealth of the State comes from the taking Aboriginal people’s land. Early colonial governments were funded primarily by revenue from the sale of First Peoples’ Country, excises on crops and livestock grown on Country and minerals taken from Country.¹⁸⁴

DJIRRA

The entire wealth of the State comes from the theft of First Peoples’ lands, waters and resources.¹⁸⁵ The Victorian Government told Yoorrook that Aboriginal people were excluded from the economy, could not own land and were systematically denied education and employment.¹⁸⁶ In addition, dispossessing First Peoples of their land and excluding them from the colonial economy denied First Peoples the ability as landowners to derive and accumulate wealth from land and waters.¹⁸⁷

The State, churches and private landowners have all profited and continue to profit from the atrocities of dispossession.¹⁸⁸ An anonymous submission to Yoorrook said:

White people altogether make millions of dollars trading stolen indigenous lands back and forth between themselves in the form of real estate, with some becoming super rich through the mining of stolen lands, while Aboriginal people are the ones more likely to be experiencing homelessness and poor overcrowded conditions.¹⁸⁹

ANONYMOUS 258

The systematic exclusion of First Peoples from the economy has resulted in transgenerational poverty.¹⁹⁰ This refers to persistent economic disadvantage transmitted across generations in a family or community, often compounded by factors such as limited access to education, employment opportunities and essential resources.¹⁹¹

Denying First Peoples the right to participate and benefit economically from their land and resources continues the colonialist tradition of denying First Peoples the ability to accumulate assets and generate intergenerational wealth. While First Peoples have limited rights and interests in land and have been largely excluded from participating and benefiting from the wealth generated from country, settlers have benefited, and continue to benefit, from country. Total land value in Australia now sits over \$5 trillion and the total residential property market is over \$10 trillion.¹⁹²

FIRST PEOPLES’ ASSEMBLY OF VICTORIA

The wealth of settlers and pastoralists was grounded in the often-violent dispossession and alienation of First Peoples from their Country.¹⁹³ Following the discovery of gold in central Victoria in 1851, First Peoples were forcibly removed from their Country and onto reserves, to facilitate a massive population influx that saw Victoria’s population increase five-fold in seven years.¹⁹⁴ By 1860, Victoria was one of the wealthiest colonies in the world because of its gold mining industry,¹⁹⁵ which to date has extracted \$287.4 billion worth of gold (see further Chapter 15: Earth, sea and living things).¹⁹⁶

While First Peoples were denied legal ownership of their traditional lands and natural resources, colonisers became landowners acquiring land under State laws for agriculture and pastoralism. This allowed agriculturist and pastoralist families to accumulate vast amounts of intergenerational wealth: ‘[M]any of Victoria’s great nineteenth-century fortunes remained connected to large pastoral estates established between 1836 and 1851’.¹⁹⁷ The Wamba Wemba Aboriginal Corporation said: ‘Settler organisations have been able to establish themselves supported by intergenerational wealth gained from the dispossession of Aboriginal people from our land.’¹⁹⁸

WAMBA WEMBA ABORIGINAL CORPORATION

Participants at a roundtable with the Gunaikurnai Land and Waters Aboriginal Corporation said:

[O]ur children were taken, and our people were moved onto missions, so then your ancestors could get access to the natural resources with their sheep and cattle industry, so then that helps them become rich.¹⁹⁹

PARTICIPANT, GUNAIKURNAI LAND AND WATERS ABORIGINAL CORPORATION ROUNDTABLE

Hamish McPherson, a non-Indigenous person from the Benalla Aboriginal History Group said

The settlers were to grow wealthy from grazing the fertile valleys of the north-east. Their punitive expeditions had made the country dangerous for the Koorie land owners, but safe for their valuable flocks of sheep and cattle. The settlers could now turn their attention to accumulating the capital, social status and political power of a respectable land-owning class.²⁰⁰

HAMISH MCPHERSON

Less than one per cent of the land in Victoria is owned or controlled by Traditional Owner corporations or held by the government exclusively for First Peoples’ use.²⁰¹ In addition, land returned under native title or the *Traditional Owner Settlement Act 2010* (Vic) is usually land that cannot be monetised.²⁰² Yoorrook heard that First Peoples communities need access to farming land for agriculture and economic development and land in town to set up businesses and provide housing.²⁰³ As discussed in Chapter 15: Earth, sea and living things, Yoorrook heard how none of the profits from Victoria’s resources have gone directly to First Peoples and the Victorian Government still refuses to commit to reforms that would support First Peoples’ economic participation, including commercial rights in relation to water and fish.

Yoorrook heard from church representatives about how the Catholic Church, Uniting Church and Anglican Church benefited from First Peoples’ dispossession. Between 1836 and 1877, the colonial government granted over 1 million British pounds to churches for the construction of church buildings and payment of stipends.²⁰⁴ This is equivalent today to nearly \$200 million (not factoring in an increase in the underlying land values over the past 150 years).²⁰⁵

The grants contributed toward funding the building of more than 500 churches in Victoria. The majority were either for:

- the Church of England (195) (now the Anglican Church)
- Presbyterian churches (165) (noting that part of the Presbyterian Church of Australia, the Methodist Church of Australasia and the Congregational Union of Australia combined in 1977 to form the Uniting Church in Australia)
- the Catholic Church (111).²⁰⁶

In addition to colonial government funding, Yoorrook accepts that the churches or the members of the church communities likely made significant matching or accompanying contributions.

In its submission, the Catholic Church acknowledged that, of the 111 churches built by the Catholic Church in this period, it is likely that ‘many, if not most’ will have been funded by the government (at least in part).²⁰⁷

The Uniting Church provided a further submission to Yoorrook on 7 February 2025, reflecting the Uniting Church’s continued efforts to gather information relevant to this issue. The Uniting Church confirmed:

- its records indicate that there are 127 properties (with a total area of 21.16 hectares) that are held in trust for the Uniting Church and that were granted by the Crown pursuant to the *State Aid to Religion Abolition Act 1871* (Vic).
- the 127 properties referred to above constitute 8.5 per cent of the Uniting Church in Australia’s titles in Victoria, and represent 5.4 per cent of the total land area comprised by Uniting Church in Australia property in Victoria (that total land area being 389.2 hectares).²⁰⁸

It is difficult to determine which current land holdings were the result of land grants in the 1800s or were purchased on the market.

However, from records produced to Yoorrook by the Anglican Church Dioceses of Melbourne, Bendigo, Wangaratta and Gippsland (Anglican MBWG Dioceses), Yoorrook can identify at least the following examples of the financial benefits derived from grants or gifts of land in the 1850s and 1860s by either the colonial government, or early colonial figures, as shown in Table 8.1.

Table 8.1: Properties granted to the Anglican Church by the colonial government in the 1800s

Church property		Acquisition	Value
Holy Trinity, 8 Church Street, Yackandandah		Land grant — 1863 ²⁰⁹	\$580,000 ²¹⁰
Holy Trinity, Barrabool, 410 Meerawarp Road		Gift from individual — 1855 ²¹¹	Sold in 2023 for \$1.9m ²¹²
Holy Trinity Sandridge, Bay Street, Port Melbourne		Land grant — 1852 ²¹³	Sold in 1997 for \$995,000 (the Anglican MBWG Dioceses’ best estimate).
Holy Trinity Church, 227 Albert Street, Sebastopol, Ballarat		Land grant — 1863 ²¹⁴	For sale (media reports suggest it is expected to sell for over \$1m) ²¹⁵

Each of the church representatives who appeared before Yoorrook acknowledged that land held by the church involved the dispossession of First Peoples. Tim O’Leary, the Executive Director Stewardship for the Catholic Archdiocese of Melbourne, said:

I certainly acknowledge the archdiocese is part of that history of dispossession and I also accept that we have been the beneficiary of land and others.²¹⁶

TIM O’LEARY

At the time of the hearings before Yoorrook, only the Anglican MBWG Dioceses was willing to publicly share the value of its land holdings. The Anglican MBWG Dioceses property trusts hold an estimated 260.05 hectares of land in Victoria, which is estimated to be worth approximately \$1.49 billion.²¹⁷ Of that, the diocese of Melbourne holds \$1.38 billion,²¹⁸ but this does not include the value of buildings and improvements on the land.²¹⁹ Bishop Treloar told Yoorrook:

[T]here is no question that there is an incredible disparity of land justice ... outcomes between the Anglican Church and First Nations Victorians.²²⁰

BISHOP RICHARD TRELOAR

The extent and value of the Catholic Church, Uniting Church and Anglican Church’s land holdings as described in the responses provided to Yoorrook is outlined in Table 8.2.

Table 8.2: Extent and value of land holdings of the Catholic Church, Uniting Church and Anglican Church

	Catholic Archdiocese of Melbourne	Anglican MBWG Dioceses	Uniting Church in Australia (UCA)
Number of church buildings in Victoria	730 ²²¹	467 ²²²	504 ²²³
Land size in Victoria	112.875 hectares ²²⁴	260 hectares ²²⁵	304 hectares (reflecting 76.5% of UCA’s land holding) ²²⁶
Dollar value of land in Victoria	\$3.278 billion ²²⁷	\$1.49 billion ²²⁸	\$214,329,721 ²²⁹ (reflecting the value of 39.1% of properties)
Recent church land sales in Victoria <i>Note: land sale values are listed irrespective of the manner of acquisition</i>	\$212 million (for the sale of 75 properties from 2014 to 2024) ²³⁰	• Melbourne: \$57,469,480 (30 properties) • Bendigo: \$10,357,855 (30 properties) • Wangaratta: \$4,309,781 (27 properties) • Gippsland: \$6,742,000 (18 properties)²³¹ (between 2014 and 2024)	\$462,719,083.10 ²³² (between 2009 and 2024)

Archbishop Comensoli and Reverend Fotheringham accepted as a general proposition that the value and size of land grants made to churches highlights a disparity in the treatment of churches and First Peoples.²³³

At the hearings, the Anglican Church was not able to say how much if any of the money made from land sales in recent years has gone to First Nations people. Bishop Treloar said that the Diocese of Gippsland has a policy that requires 1.5 per cent to be set aside for Aboriginal Ministry.²³⁴ Bishop Treloar acknowledged that this is a ‘woefully inadequate figure’.²³⁵ The Anglican MBWG Dioceses submission also referred to the funding of the National Aboriginal and Torres Strait Islander Anglican Council (although this is not exclusively sourced through land sales) and programs of each Anglican MBWG Diocese that support and fund its Victorian First Peoples Ministries. The Uniting Church accepted that it does not have an ongoing policy of transfer of profits to Traditional Owners.²³⁶ Reverend Fotheringham said that this sat ‘uncomfortably’ with him and that it is a matter that the Uniting Church must address.²³⁷ The UCA’s submission referred to a range of programs and initiatives (including land transfers) through the 1980s to the present that have provided financial support to First Peoples.²³⁸

Representatives of the Anglican MBWG Dioceses and UCA acknowledged that land was stolen, and a representative of the Catholic Church provided a qualified acknowledgement as follows:

I would accept that parts — I would accept that the concept of land generally has — it was stolen, but I can’t talk about that in terms of this parcel of land and that parcel.²³⁹

ARCHBISHOP COMENSOLI

Yoorrook heard that despite the churches’ acknowledgments of how they have benefited from First Peoples’ stolen lands, none of those who appeared before Yoorrook had any active plans for financial reparations schemes to address land injustice,²⁴⁰ nor had a policy to notify or consult with Traditional Owners in respect of sales of church or parish land.²⁴¹

Memorialisation and place names

[T]here is nothing pioneering about ... upholding an ideology that seeks to strip an entire nation of its language, its culture, its land and its people, yet these colonisers continue to be celebrated through monuments on lands that they stole.²⁴²

KEICHA DAY

‘The first settlers’, they refer to themselves. But to me they are the first ‘unsettlers’. Our people have been settled here for a very long time. For them to become settled our people become unsettled.²⁴³

PARTICIPANT, BUNURONG LAND COUNCIL ROUNDTABLE

The history of Victoria has been written by colonisers without First Peoples’ voices and perspectives. The apparent history of the State is incomplete and gives a distorted view of the past. This does a disservice to all Victorians.

Yoorrook heard from multiple witnesses about how the prevailing narrative about Victoria’s past endures because of the memorialisation and celebration of colonisers through monuments and plaques at significant sites, while First Peoples’ histories and perspectives are ignored. For example, quotes from Keicha Day (Gunditjmara, Yorta Yorta) and participants from a roundtable with Bunurong Land Council are shown above.

As described in Land Chapter 7: How colonisers stole Country, in 1834, the Henty family unlawfully occupied Gunditjmara Country and began farming and whaling and established a township. Yoorrook visited the Portland area in Gunditjmara Country, where there are many memorials and monuments to the Henty family.²⁴⁴ A small plaque on the back of one of the monuments is the only recognition given to First Peoples. The plaque is obscured by grass.

The memorialisation of colonial figures is not a practice of the past. An additional Henty monument was erected by their descendants and District residents in 2007, and in 2019, the Glenelg Shire Council proposed an exhibition to commemorate the Henty family.²⁴⁵

Suzannah Henty, a sixth-generation descendent of James Henty, reflected on the many colonial memorials in the Portland area that refer to the Hentys as being ‘first’ on the land act to erase the existence and resistance of First Peoples.²⁴⁶ She said:

The Henty legacy is enduring in large part due to their memorialisation. As I have written elsewhere, colonial memorials should not be conceived in terms of a colonial heritage. Their function was to produce heritage for the nation to inherit. Settler colonies longed for something which they lack, which is a sense of belonging to a land which they have stolen. ... [T]he heritage that is produced by these memorials perpetuates colonialism by denying the existence of and resistance by First Nations people.²⁴⁷

SUZANNAH HENTY

Yoorrook heard how this unbalanced approach to memorialisation harms First Peoples and effects an ongoing dispossession and exclusion from Country.²⁴⁸ This is destructive to First Peoples and serves ‘to tear us down and make us look small’.²⁴⁹ Braydon Saunders (Gunditjmara) told Yoorrook how younger Gunditjmara have reclaimed spaces around Portland for an annual dawn service and smoking on 26 January, which has attracted support and involvement from hundreds of people in the community.²⁵⁰ This kind of positive reclamation and revitalisation is healing for First Peoples.

Yoorrook also heard that the British not only tried to clear the land of its people but ‘Westernised’ the landscape by planting foreign trees, introducing foreign species and changing place names.²⁵¹ For example, Scottish surveyor Major Thomas Mitchell renamed the river known as Bochara to Glenelg (after the British Colonial Secretary), and Budj Bim was given a name after a friend of Mitchell, William Eeles (an error led to the name being recorded as Mt Eccles).²⁵² The McDonald family of Tae Rak (Lake Condah) explained how this contributed to the erasure of First Peoples and attempted to break First Peoples’ connections with Country:

The instant erasure of the name of a feature enhanced the loss of the stories connected with that feature. Place names are culturally important and provide a tangible connection to place. ... The loss of these cultural features reduced our connection to Country and annihilated some of our Creation stories.²⁵³

MCDONALD FAMILY OF TAE RAK (LAKE CONDAH)

The historic Renaming Project of Merri-bek City Council (formerly Moreland City Council) is an example of how renaming is possible and has the possibility for enhancing awareness, acknowledgement and healing.²⁵⁴ However, the process must be underpinned by cultural safety and respectful dialogue.²⁵⁵

Seeking recognition today

Yoorrook heard about the impact of dispossession on First Peoples’ ability to be recognised today as Traditional Owners under the *Native Title Act 1993* (Cth), *Traditional Owner Settlement Act 2010* (Vic) and *Aboriginal Heritage Act 2006* (Vic). This was a key theme in submissions and evidence to Yoorrook. It is a fundamental issue for treaty to address. Uncle Johnny Lovett said:

So it’s thrown a lot of confusion into Aboriginal people as well. You know, some people may think because you’re born on country, that’s who you are. Well, that’s not the point. That’s not how it works with Aboriginal people. Because you just being born on country doesn’t give you a right and connection to country, you know.²⁵⁶

UNCLE JOHNNY LOVETT

Tony Kelly, CEO of First Nations Legal and Research Services, explained that ‘the legacy’ of colonisation ‘has meant that people are often in conflict with each other about whose Country is whose, or ... where the boundaries are’.²⁵⁷ This is made worse by ‘very inaccurate, conflicted and contradictory records that just fuel into the disputes. So that trauma, combined with ... difficulty in bringing a complete picture together’.²⁵⁸

Each recognition system establishes different criteria for determining the Traditional Owners or right people for a particular area of Country. The problems of each system in relation to establishing First Peoples’ ownership and their shortfalls in meeting the standards of the *Universal Declaration on the Rights of Indigenous Peoples* are discussed in detail in Chapter 9: How we got here — overview of recognition systems, Chapter 10: Native title, Chapter 11: Traditional Owner settlements and Chapter 12: Cultural heritage.

The history of colonisation and land theft in Victoria means that many lines of descent and country boundaries have been obscured.²⁵⁹ As explained by participants at a roundtable with Nindi-Ngujarn Ngarigo Monero, this is exacerbated by ‘government agencies relying on non-Indigenous records’ that are ‘incomplete and they treat that as the only tangible bit of information they have’.²⁶⁰

Tony Kelly told Yoorrook that defining boundaries today is difficult, as boundaries (in the Western sense) did not exist for First Nations:²⁶¹

[T]he people who dispossessed them are now asking them to go through these hoops to demonstrate that they’ve still got connection to Country, and then to define themselves in terms of an area with a boundary that really wouldn’t have sat culturally.²⁶²

TONY KELLY

The various recognition systems were described as ‘a colonial system which punishes Aboriginal people for the colonisers’ historical injustice’.²⁶³ This has led to fragmentation, contest and division between communities to establish who is responsible for which Country.²⁶⁴ When disputes about boundaries and the right people for Country arise, they are settled within a colonial framework that is not culturally appropriate or informed.²⁶⁵

Yoorrook heard how these disputes and their outcomes — including denial of land rights for some groups — result in significant trauma for communities. People and communities in this situation often feel that they have no voice and that they are experiencing a repeated dispossession.²⁶⁶ First Peoples also felt that they were being deliberately pitted against one another. The Wamba Wemba Aboriginal Corporation and others have called for resourcing for First Peoples-led programs to support healing and rebuilding relationships between clans to address the ongoing impacts of colonial violence and the divisive effects of the recognition regime.²⁶⁷

The way forward

Just as land injustice is the foundational cause of Indigenous suffering, disadvantage, and anti-Indigenous racism, land justice is the heart of Indigenous wellbeing. Where Indigenous rights and interests to land are celebrated, then political, social and economic benefits flow not only to Indigenous people but to wider communities. Indigenous land justice is integral not only to righting the wrongs of the past, but to creating a new, more just, more sustainable future for all Victorians.²⁶⁸

ASSOCIATE PROFESSOR NIKKI MOODIE

The harms and devastation arising from British colonisers and the State stealing Country are numerous, profound and wide-reaching. The severance of First Peoples from Country can never be fully redressed because its impacts on First Peoples’ Countries, lives, communities and rights cannot be quantified.

The way forward in addressing these systemic injustices requires the State to take meaningful action based on its recognition of First Peoples’ sovereignty and self-determination. It requires reckoning with the past and telling the true history of colonisation in Victoria. Minister Hutchins acknowledged that we cannot change history, but ‘we can accept its truth and seek to understand its enduring impacts’.²⁶⁹

This will involve fundamental renegotiation of First Peoples’ rights to land, waters and all aspects of Country, cultural heritage, processes for recognition and land management approaches, as described in Chapter 9: How we got here — overview of recognition systems to Chapter 14: Water. It requires reconceptualisation of natural resources and living things, and their importance to the spiritual, cultural, communal and economic survival of First Peoples. It requires redress, nation rebuilding and healing, including language revitalisation, as explored in Chapter 39: Redress. These steps should be effected through statewide treaty.

The way forward also requires the Victorian Government to immediately provide resources and support, guided by First Peoples, to decolonise Victoria’s landscapes and actively recognise Victoria’s true history. This includes:

- establishing markers, memorials, signs and information acknowledging relevant First Peoples’ stories and perspectives at culturally and historically significant sites, including massacre sites
- reinstating Indigenous place names across Victoria and ensuring they are prominently reflected in signs, maps and official documents
- funding decontamination processes for returned land.

Recommendations

RECOMMENDATION 15

Led and decided by First Peoples and Traditional Owner groups, the Victorian Government and local Government authorities must provide resources and support to establish markers, memorials, signs and information acknowledging relevant First Peoples’ histories and perspectives at culturally and historically significant sites, including:

- a. Sites of historical injustice;
- b. Massacre sites;
- c. Former missions and reserves;
- d. Sites relevant to frontier wars and First Nations people who served in war;
- e. Sites relevant to First Peoples’ leadership; and
- f. Other sites as determined by Traditional Owners or Aboriginal Representative Bodies.

RECOMMENDATION 16

Led by First Peoples and Traditional Owner groups, the Victorian Government and local government authorities must reinstate First Peoples’/Indigenous place names across Victoria, initially prioritising prominent public spaces and significant parks, reserves and waterways, and road names and ensure these place names are reflected on relevant maps, signs and official documents. Place names should be determined by relevant Traditional Owner groups and the First Peoples’ Assembly of Victoria should authorise and coordinate this process at the Statewide level.

RECOMMENDATION 17

In consultation with First Peoples and relevant Traditional Owner groups, the Victorian Government must fund environmental restoration, which may include:

- a. Testing and decontamination processes for land returned or being returned to Traditional Owners, either as part of the settlement package or retrospectively where land is unusable due to contamination or degradation;
- b. Other forms of environmental and cultural restoration; and
- c. Procurement opportunities for First Peoples where possible.

RECOMMENDATION 18

The Victorian Government must amend the *State Aid to Religion Abolition Act 1871* (Vic) to introduce a mechanism for case-by-case consideration and approval of proposed land sales, which includes consideration of:

- a. Whether relevant Traditional Owners have been consulted in respect of the sale; and
- b. Whether it is proposed that a portion of the proceeds from the sale be shared with the Traditional Owners of that land.

RECOMMENDATION 19

Consistent with their commitments to First Peoples, Churches should identify, as a priority, opportunities within the State of Victoria to:

- a. Return land acquired for little or no consideration, or reserved by the Crown or Governor for Church purposes, to Traditional Owners of that land; and
- b. Share a portion of proceeds from the future sale of land of the nature described in (a) with Traditional Owners of that land (irrespective of whether it is subject to the *State Aid to Religion Abolition Act 1871* (Vic)).

Endnotes

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- Transcript of Ngarra Murray, Co–Chair of First Peoples’ Assembly of Victoria, 17 April 2024, 5 [1]–[5].
- Associate Professor Nikki Moodie, Submission 526, 4.
- Victorian Aboriginal Community Controlled Health Organisation, Submission 445 (Education, Health, Housing), 12.
- Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 10, citing Federation of Victorian Traditional Owner Corporations, *Victorian Traditional Owner Cultural Landscapes Strategy* (July 2023) 5.
- Transcript of Minister Harriet Shing MP, 24 April 2024 (Part 1), 43 [22]–[36]; Witness Statement of Minister Steve Dimopoulos MP, 8 March 2024, 3–4 [16]–[17].
- Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 9 [36].
- Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 4–5 [16].
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- Transcript of Ngarra Murray, Co–Chair of First Peoples’ Assembly of Victoria, 17 April 2024, 5 [1]–[5].
- Transcript of roundtable with Gunditj Mirring Traditional Owners Aboriginal Corporation, 19 January 2024, 22, served on the State of Victoria on 12 April 2024.
- Transcript of roundtable with Nindi–Ngujarn Ngarigo Monero, 13 November 2023 (Part 2), 19, served on the State of Victoria on 12 April 2024.
- Transcript of roundtable with First People of Millewa Mallee Aboriginal Corporation, 5 December 2023, 44, served on the State of Victoria on 12 April 2024.
- Wurundjeri Woi–wurrung Cultural Heritage Aboriginal Corporation, Submission 344 (‘Summary of Past and Ongoing Land Injustice’), 3; Wamba Wemba Aboriginal Corporation, Submission 349, 14, 16.
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- Witness Statement of Ngarra Murray, Co–Chair of First Peoples’ Assembly of Victoria, 11 April 2024, 19 [55].
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- James Boyce, 1835: *The Founding of Melbourne and the Conquest of Australia* (Black Inc, 2011) 163, citing Richard Waterhouse, *The Vision Splendid: A Social and Cultural History of Rural Australia* (Curtin University Books, 2005), 19–20. See also ‘[Map Showing the Pastoral Holdings of the Port Phillip District: 1835–51](#)’.
- James Boyce, 1835: *The Founding of Melbourne and the Conquest of Australia* (Black Inc, 2011), 163. See also ‘[Map Showing the Pastoral Holdings of the Port Phillip District: 1835–51](#)’.
- Department of Transport and Planning, Response to NTP–003–003 — ‘Government Land Acquisitions and Sales’, 1, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 8 November 2023.
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- Victorian Aboriginal Legal Service, Submission 339 (Land, Sky, Waters), 11–12.
- Transcript of Paul Paton, 17 April 2024, 52 [40]–[46].
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- Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 9 [35].
- Witness Outline of Aunty Dr Jill Gallagher, 28 March 2024, 5 [44]–[45].
- Tanaya Edwards, Submission 319, 3.
- Witness Outline of Aunty Dr Jill Gallagher, 28 March 2024, 5 [44]–[45].
- Transcript of Aunty Maude Alberts, 25 March 2024, 21–22 [10].
- Transcript of Uncle Graham Atkinson, 15 April 2024, 18 [15]–[20].
- Transcript of Uncle Andrew Gardiner, 29 April 2024, 3 [25]–[30].
- Witness Statement of Minister Steve Dimopoulos MP, 8 March 2024, 5 [1]–[12].
- The State told Yoorrook that it made a once–off allocation of \$2.8 million as part of the 2022–2023 Victorian State Budget to deliver a Certificate IV in Teaching an Australian First Nations Language, and built a team of specialist teachers to revive language on Country and in classrooms and kindergartens.
- Barry Firebrace–Briggs in First Peoples’ Assembly of Victoria, Submission 378 (Land, Sky, Waters), 12, 22.
- Victorian Aboriginal Legal Service, Submission 448 (Education), 50.
- See Witness Statement of Dr Aunty Vicki Couzens, 28 March 2024, 8 [72], 27–28, extracting Victorian Aboriginal Corporation for Languages, ‘VACL Manifesto’, 7 August 2020; First Peoples’ Assembly of Victoria, Submission 378 (Land, Sky, Waters), 12; Transcript of Aunty Dr Jill Gallagher, 28 March 2024, 50 [31]–[37]; Transcript of Surveyor–General Craig Sandy, 15 April 2024, 40 [10]–[25].
- Transcript of Dr Aunty Vicki Couzens, 28 March 2024, 37 [25]–[35].
- Australian Bureau of Statistics, ‘[Language Statistics for Aboriginal and Torres Strait Islander Peoples](#)’ (Webpage, 25 October 2022); See also ‘[VACL Aboriginal Languages of Victoria Map](#)’, Maggolee (Webpage).
- Transcript of Professor Marcia Langton, 27 March 2024, 34 [45].
- Australian Government, Department of Infrastructure, Transport, Regional Development and Communications, [National Indigenous Languages Report](#) (Report, 16 August 2020), 9.
- Transcript of Uncle Johnny Lovett, 29 April 2022, 80 [5].

- The Hon. Gabrielle Williams was Minister for Aboriginal Affairs from March 2020 until June 2022, when this became known as Minister for Treaty and First Peoples (she held this Ministership from June 2022 to October 2023). The Hon. Natalie Hutchins has been Minister for Treaty and First Peoples since October 2023. Natalie Hutchins was also the Minister for Aboriginal Affairs from December 2014 to December 2018. See Parliament of Victoria, ‘[The Hon. Gabrielle Williams](#)’ (Webpage); See Parliament of Victoria, ‘[The Hon. Natalie Hutchins](#)’ (Webpage); [Department of Premier and Cabinet Annual Report 2018–19](#).
- Witness Statement of Minister Gabrielle Williams MP, 3 May 2022, 10 [79].
- Transcript of Professor Marcia Langton, 27 March 2024, 34 [30].
- Witness Statement of Aunty Fay Carter, 29 April 2022, 4 [12]; Transcript of Aunty Dr Jill Gallagher, 28 March 2024, 56 [16]–[19].
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- Joshua Struthers, Submission 279, 2.
- Witness Outline of Aunty Glenys Watts, 5 December 2022, 2 [21]–[22].
- Uncle Johnny Lovett and Claudette Lovett, Submission 228, 3.
- Transcript of Dr Aunty Vicki Couzens, 28 March 2024, 26 [35].
- Witness Statement of Uncle Kevin Coombs, 24 May 2022, 5 [10].
- Shannon Faulkhead and Jim Berg (eds), *Power and the Passion: Our Ancestors Return Home* (Koorie Heritage Trust, 2010), 11.
- Witness Statement of Aunty Fay Carter, 29 April 2022, 10–11 [47].
- Transcript of Uncle Kevin Coombs, 26 May 2022, 211 [29]–[33].
- Wamba Wemba Aboriginal Corporation, Submission 349, 5, quoting Uncle Danny Kelly, Wamba Wemba Aboriginal Corporation (WWAC) Sovereign Elders’ Council Member.
- Transcript of Bishop Richard Treloar, 1 May 2024, 27 [30].
- Transcript of Bishop Richard Treloar, 1 May 2024, 6 [25]–[35].
- Transcript of Reverend David Fotheringham, 1 May 2024, 7 [30]–[35].
- Transcript of Bishop Richard Treloar, 1 May 2024, 27 [20]–[35].
- Transcript of Bishop Richard Treloar, 1 May 2024, 31 [10]–[15].
- Fifth Plenary Council of Australia, *Reconciliation: Healing Wounds, Receiving Gifts* (2022), 1.
- Transcript of Archbishop Peter Comensoli, 1 May 2024, 31 [41].
- Transcript of Archbishop Peter Comensoli, 1 May 2024, 31 [34]–[37].
- Transcript of Archbishop Peter Comensoli, 1 May 2024, 38 [33]–[34].
- Transcript of Archbishop Peter Comensoli, 1 May 2024, 38 [34]–[35].
- Transcript of Archbishop Peter Comensoli, 1 May 2024, 38 [40]–[41].

- Transcript of Archbishop Peter Comensoli, 1 May 2024, 9 [20].
- Transcript of Archbishop Peter Comensoli, 1 May 2024, 9 [13].
- Transcript of Archbishop Peter Comensoli, 1 May 2024, 11 [25]–[30].
- Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 12 [52].
- Transcript of Uncle Johnny Lovett, 29 April 2022, 79 [35]; Transcript of roundtable with Nindi–Ngujarn Ngarigo Monero, 13 November 2023, 17, served on the State of Victoria on 12 April 2024.
- Transcript of roundtable with Nindi–Ngujarn Ngarigo Monero, 13 November 2023, 17, served on the State of Victoria on 12 April 2024.
- Transcript of Dr Aunty Vicki Couzens, 28 March 2024, 24 [42]–[45].
- Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) and Australian National University (ANU), *National Indigenous Languages Report* (Report, 16 August 2020), 9.
- Victorian Aboriginal Community Controlled Health Organisation, Submission 445 (Education, Health, Housing), 17.
- Transcript of Dr Aunty Vicki Couzens, 28 March 2024, 36 [37].
- Transcript of Dr Aunty Vicki Couzens, 28 March 2024, 36 [38].
- Victorian Aboriginal Legal Service, Submission 448 (Education), 50.
- Transcript of Dr Aunty Vicki Couzens, 28 March 2024, 24 [46]–25 [1].
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- Transcript of roundtable with Nindi–Ngujarn Ngarigo Monero, 13 November 2023, 16, served on the State of Victoria on 12 April 2024; Transcript of roundtable with First People of Millewa Mallee Aboriginal Corporation, 5 December 2023, 25, served on the State of Victoria on 12 April 2024.
- Witness Outline of Dr Aunty Vicki Couzens, 28 March 2024, 8 [73].
- Transcript of Dr Aunty Vicki Couzens, 28 March 2024, 24 [4]–[9], 35 [5]–[10].
- Transcript of Dr Aunty Vicki Couzens, 28 March 2024, 35 [35].
- The State told Yoorrook that it made a once–off allocation of \$2.8 million as part of the 2022–2023 Victorian State Budget to deliver a Certificate IV in Teaching an Australian First Nations Language and built a team of specialist teachers to revive language on Country and in classrooms and kindergartens.
- Transcript of Dr Aunty Vicki Couzens, 28 March 2024, 26 [10].
- Transcript of Dr Aunty Vicki Couzens, 28 March 2024, 26 [13]–[16].
- Transcript of Dr Aunty Vicki Couzens, 28 March 2024, 24 [25]–[40], 25 [8]–[26].
- Transcript of Dr Aunty Vicki Couzens, 28 March 2024, 24 [33]–[40], 25 [8]–[26].
- Transcript of Dr Aunty Vicki Couzens, 28 March 2024, 30 [5].
- Transcript of Dr Aunty Vicki Couzens, 28 March 2024, 26 [20]–[25].
- Witness Outline of Dr Aunty Vicki Couzens, 28 March 2024, 11 [86].
- Transcript of Dr Aunty Vicki Couzens, 28 March 2024, 33 [30]–[35].

98. Transcript of Dr Aunty Vicki Couzens, 28 March 2024, 28 [41].

99. Closing the Gap, ‘[Closing the Gap Targets and Outcomes](#)’ (Webpage).

100. Closing the Gap, ‘[Closing the Gap Targets and Outcomes](#)’ (Webpage).

101. State of Victoria, *Victorian Aboriginal Affairs Framework 2018–2023* (October 2018), 70.

102. National Indigenous Australians Agency, ‘[Outcome 16: Aboriginal and Torres Strait Island cultures and language are strong, supported and flourishing](#)’ (Webpage).

103. ‘Strong language’ is defined as follows: ‘the language is used by all age groups, including all children, and people in all age groups are fluent speakers.’: Australian Government, Productivity Commission, Closing the Gap Information Repository, ‘[Socio-economic outcome area 16: Aboriginal and Torres Strait Islander cultures and languages are strong, supported and flourishing](#)’ (Webpage).

104. Transcript of Dr Aunty Vicki Couzens, 28 March 2024, 26 [10], 30 [35]–[37].

105. *United Nations Declaration on the Rights of indigenous peoples*, GA Res 74/135, UN Doc A/Res/74/135 (18 December 2019, adopted 23 January 2020) [24].

106. First Languages Australia and Commonwealth of Australia, *Voices of Country: Australia’s Action Plan for the International Decade of Indigenous Languages 2022–2032* (Action Plan, 2023).

107. Transcript of Dr Aunty Vicki Couzens, 28 March 2024, 25 [30]–[40].

108. Transcript of Dr Aunty Vicki Couzens, 28 March 2024, 25 [30]–[40].

109. *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007).

110. *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007) art 13(1).

111. Transcript of Ngarrra Murray, Co-Chair of First Peoples’ Assembly of Victoria, 17 April 2024, 10 [36]. See also Djaara, *Dheikunya dja: Dja Dja Wurrung Country Plan 2014–2034* (2014), 7, 22.

112. Bill Gammage, *The Biggest Estate on Earth: How Aborigines Made Australia* (Allen & Unwin, 2011), 322.

113. See generally Bill Gammage, *The Biggest Estate on Earth: How Aborigines Made Australia* (Allen & Unwin, 2011); Guy Hull, *The Ferals that Ate Australia* (HarperCollins, 2023).

114. McDonald Family of Tae Rak (Lake Condah), Submission 202, 171–172.

115. Uncle Brendan Kennedy, Submission 360 (Land, Sky, Waters), 3.

116. Transcript of Uncle Johnny Lovett, 29 April 2022, 87.

117. Witness Statement of Uncle Colin Walker, 27 May 2022, 14 [110].

118. Bill Gammage, *The Biggest Estate on Earth: How Aborigines Made Australia* (Allen & Unwin, 2011), 320–1.

119. Bill Gammage, *The Biggest Estate on Earth: How Aborigines Made Australia* (Allen & Unwin, 2011), 314–15.

120. See Bill Gammage, *The Biggest Estate on Earth: How Aborigines Made Australia* (Allen & Unwin, 2011), 322; Tim Lee, ‘[Scientist Investigating Australia’s Past Says Indigenous Cultural Burning Key to Controlling Bushfires](#)’, ABC News (Webpage, 26 June 2021); Nicola Heath, ‘[Firestick Farming: How Traditional Indigenous Burning Protected the Bush](#)’, SBS (Webpage, 23 March 2021).

121. Transcript of Mick Bourke, 26 April 2024, 62.

122. Witness Statement of Minister Gabrielle Williams MP, 3 May 2022, 7 [52].

123. Transcript of Minister Harriet Shing MP, 24 April 2024 (Part 2), 6 [35]–7 [5], 9 [8]–[16]; Transcript of roundtable with Bunurong Land Council, 2 November 2023, 36–37, 39–40, served on State 1 April 2024. See also Chapter 14: Water.

124. Transcript of Will Mooney, 15 April 2024, 75 [4].

125. Witness Outline of Uncle Brendan Kennedy, 23 April 2024, 12 [116].

126. Djirra, Submission 348 (Land, Sky, Waters), 7.

127. University of Melbourne Law School, Submission 334, 9.

128. Transcript of Uncle Robbie Thorpe (Djuran Bunjilinee), 27 March 2024, 71 [27]–[35].

129. Transcript of Uncle Brendan Kennedy, 24 April 2024 (Part 2), 15 [40]–[45].

130. Dale Wandin, Submission 506, 17. See also Transcript of roundtable with Barengi Gadjin Land Council, 26 October 2023, 23, served on the State of Victoria on 1 April 2024; Transcript of Ngarrra Murray, Co-Chair of First Peoples’ Assembly of Victoria, 17 April 2024, 10 [33]–[43], 13 [15]–[38]; Transcript of Rueben Berg, Co-Chair of First Peoples’ Assembly of Victoria, 17 April 2024, 14 [15]–[38].

131. See Victorian Aboriginal Community Controlled Health Organisation, Submission 340 (Land, Sky and Waters), 9; Transcript of Tony Kelly, 16 April 2024, 68 [36]–[39]; Transcript of Ngarrra Murray, Co-Chair of First Peoples’ Assembly of Victoria, 17 April 2024, 13 [15]–[38]; Dale Wandin, Submission 506, 17–18.

132. Transcript of roundtable with Barengi Gadjin Land Council, 26 October 2023, 15, 17–18, served on the State of Victoria on 1 April 2024.

133. Transcript of roundtable with Barengi Gadjin Land Council, 26 October 2023, 15, served on the State of Victoria on 1 April 2024.

134. Transcript of roundtable with Barengi Gadjin Land Council, 26 October 2023, 15, served on the State of Victoria on 1 April 2024.

135. Transcript of Ngarrra Murray, Co-Chair of First Peoples’ Assembly of Victoria, 17 April 2024, 13 [36]–[37].

136. Figures on population decline have been compiled by the Koori Health Research Database at Monash University: Janet McCalman, Len Smith and Rebecca Kippen, ‘[Koori Health Research Database](#)’, *Australian Research Data Commons* (Webpage).

137. First Peoples’ Assembly of Victoria, Submission 378 (Land, Sky, Waters), 23.

138. Len Smith et al, ‘Fractional Identities: The Political Arithmetic of Aboriginal Victorians’ (2008) 38(4) *Journal of Interdisciplinary History* 533, 533.

139. Len Smith et al, ‘Fractional Identities: The Political Arithmetic of Aboriginal Victorians’ (2008) 38(4) *Journal of Interdisciplinary History* 533, 535.

140. Richard Broome, *Aboriginal Victorians: A History since 1800* (Allen & Unwin, 2nd ed, 2024), 91–2; Len Smith et al, ‘Fractional Identities: The Political Arithmetic of Aboriginal Victorians’ (2008) 38(4) *Journal of Interdisciplinary History* 533, 535.

141. Len Smith et al, ‘Fractional Identities: The Political Arithmetic of Aboriginal Victorians’ (2008) 38(4) *Journal of Interdisciplinary History* 533, 535.

142. Victorian Aboriginal Child and Community Agency, Submission 77 (Criminal Injustice, Child Protection), 48, citing Noel Butlin, *Our Original Aggression* (Allen & Unwin, 1983).

143. Nakari Thorpe, Olivia Willis and Carl Smith, ‘[Devil devil’: The sickness that changed Australia](#)’, ABC News (Webpage, 7 June 2021).

144. Nakari Thorpe, Olivia Willis and Carl Smith, ‘[Devil devil’: The sickness that changed Australia](#)’, ABC News (Webpage, 7 June 2021), quoting Professor John Maynard.

145. Len Smith et al, ‘Fractional Identities: The Political Arithmetic of Aboriginal Victorians’ (2008) 38(4) *Journal of Interdisciplinary History* 533, 535.

146. Richard Broome, *The Victorians: Arriving* (Fairfax, Syme & Weldon, 1984), 28; Len Smith et al, ‘Fractional Identities: The Political Arithmetic of Aboriginal Victorians’ (2008) 38(4) *Journal of Interdisciplinary History* 533, 535.

147. Len Smith et al, ‘Fractional Identities: The Political Arithmetic of Aboriginal Victorians’ (2008) 28(4) *Journal of Interdisciplinary History* 533, 535.

148. Len Smith et al, ‘Fractional Identities: The Political Arithmetic of Aboriginal Victorians’ (2008) 28(4) *Journal of Interdisciplinary History* 533, 535.

149. First Peoples’ Assembly of Victoria, Submission 378 (Land, Sky, Waters), 23.

150. Dr Joseph Toscano, Submission 82, 15.

151. Richard Broome, *Aboriginal Victorians: A History since 1800* (Allen & Unwin, 2005), 93.

152. Richard Broome, *Aboriginal Victorians: A History since 1800* (Allen & Unwin, 2005), 91; Diane E Barwick, ‘Changes in the Aboriginal Population of Victoria: 1863–1966’ in DJ Mulvaney and J Golson (eds), *Aboriginal Man and Environment in Australia* (Australian National University Press, 1971), 288, 301.

153. Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation, Submission 344 (‘A Summary of Past and Ongoing Land Injustice’), 1.

154. Taungurung Land and Waters Council Aboriginal Corporation, Submission 596 (Land, Sky, Waters 1), 4.

155. Select Committee of the Legislative Council on the Aborigines, Parliament of Victoria, *Report of the Select Committee of the Legislative Council on the Aborigines* (Parliamentary Paper No D 8, 1859), iv.

156. Select Committee of the Legislative Council on the Aborigines, Parliament of Victoria, *Report of the Select Committee of the Legislative Council on the Aborigines* (Parliamentary Paper No D 8, 1859), iii.

157. Len Smith et al, ‘Fractional Identities: The Political Arithmetic of Aboriginal Victorians’ (2008) 38(4) *Journal of Interdisciplinary History* 533, 538.

158. Len Smith et al, ‘Fractional Identities: The Political Arithmetic of Aboriginal Victorians’ (2008) 38(4) *Journal of Interdisciplinary History* 533, 547.

159. Len Smith et al, ‘Fractional Identities: The Political Arithmetic of Aboriginal Victorians’ (2008) 38(4) *Journal of Interdisciplinary History* 533, 538.

160. Len Smith et al, ‘Fractional Identities: The Political Arithmetic of Aboriginal Victorians’ (2008) 38(4) *Journal of Interdisciplinary History* 533, 538.

161. Len Smith et al, ‘Fractional Identities: The Political Arithmetic of Aboriginal Victorians’ (2008) 38(4) *Journal of Interdisciplinary History* 533, 540.

162. Len Smith et al, ‘Fractional Identities: The Political Arithmetic of Aboriginal Victorians’ (2008) 38(4) *Journal of Interdisciplinary History* 533, 536.

163. First Peoples’ Assembly of Victoria, Submission 378 (Land, Sky, Waters), 23.

164. Environmental Justice Australia, Submission 346 (Land Sky Waters 2), 5.

165. Tony Barta, ‘Relations of Genocide: Land and Lives in the Colonization of Australia’ in Isidor Wallimann and Michael N Dobkowski (eds), *Genocide and the Modern Age: Etiology and Case Studies of Mass Death* (Greenwood Press, 1987), 237, 247–8.

166. See Patrick Wolfe, ‘Settler colonialism and the elimination of the native’ (2006) 8 *Journal of Genocide Research* 387.

167. Raphael Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (Carnegie Endowment for International Peace, 1944), 147. [See further discussion in Chapter 39: Redress].

168. Victorian Aboriginal Child and Community Agency, Submission 77 (Criminal Injustice, Child Protection), 48.

169. McDonald Family of Tae Rak (Lake Condah), Submission 202, 188–189.

170. Victorian Aboriginal Community Controlled Health Organisation, Submission 445 (Education, Health, Housing), 12.

171. Intergenerational trauma is sometimes also referred to as generational, trans-generational or historical trauma.

172. Victorian Aboriginal Community Controlled Health Organisation, Submission 445 (Education, Health, Housing), 17.

173. Victorian Aboriginal Community Controlled Health Organisation, Submission 445 (Education, Health, Housing), 17.

174. Witness Statement of Marcus Stewart, former Co-Chair of the First Peoples’ Assembly of Victoria, 29 April 2022, 34 [95].

175. Transcript of Associate Professor Graham Gee, 14 June 2024, 56 [22]–[29], 63 [16]–[25].

176. Transcript of Associate Professor Graham Gee, 14 June 2024, 63 [16]–[25].

177. Summary of roundtable with Boonwurrung Land and Sea Council, 23 November 2023.

178. Barry Firebrace-Briggs in First Peoples’ Assembly of Victoria, Submission 378 (Land, Sky, Waters), 12.

179. Transcript of Dr Bill Pascoe, 26 March 2024, 49 [41–45], referencing generally the work of Judy Atkinson (e.g. Judy Atkinson, *Trauma trails, recreating song lines: The transgenerational effects of trauma in Indigenous Australia* (Spinifex Press, 2002)).

180. Transcript of Dr Bill Pascoe, 26 March 2024, 50 [1]–[5].

181. Victorian Aboriginal Community Controlled Health Organisation, Submission 445 (Education, Health, Housing), 13.

182. Victorian Aboriginal Community Controlled Health Organisation, Submission 445 (Education, Health, Housing), 13.

183. Victorian Aboriginal Community Controlled Health Organisation, Submission 445 (Education, Health, Housing), 13.

184. Djirra, Submission 348 (Land, Sky, Waters), 16.

185. Djirra, Submission 348 (Land, Sky, Waters), 16.

186. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 8 [31], 13 [54].

187. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 8 [31], 13 [54]–[56].

188. Transcript of roundtable with Barengi Gadjin Land Council, 26 October 2023, 14–15, served on the State of Victoria on 1 April 2024; Transcript of Professor Richard Broome, 26 March 2024, 23 [33]–[44].

189. Anonymous 258, Submission 258, 1.

190. Witness Outline of Aunty Dr Jill Gallagher, 28 March 2024, 5 [VII]; Lowanna Moore and Jennifer Mason, Submission 543, 3.

191. Francis Markham and Nicholas Biddle, *Income, Poverty and Inequality*, Centre for Aboriginal Economic Policy Research (CAEPR) (Report, 2016), 20.

192. First Peoples’ Assembly of Victoria, Submission 378 (Land, Sky, Waters), 21.

193. Zoe Laidlaw, ‘Settler-Colonial Philanthropy and Indigenous Dispossession’ in Ross L Jones, James Waghorne and Marcia Langton (eds), *Dhooimbak Goobgoowana: A History of Indigenous Australia and the University of Melbourne – Volume 1: Truth* (Melbourne University Press, 2024), 22, 22.

194. Witness Statement of Premier Jacinta Allan MP, 18 March 2024, 20 [149]–[150]; Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 7 [27]–[28].

195. Witness Statement of Premier Jacinta Allan MP, 18 March 2024, 21 [151], citing Resources Victoria, ‘[History of gold mining in Victoria](#)’ (Webpage, 2 June 2021).

196. Transcript of Minister Lily D’Ambrosio MP, 22 April 2024, 10 [14]–[18].

197. Zoe Laidlaw, ‘Settler-Colonial Philanthropy and Indigenous Dispossession’ in Ross L Jones, James Waghorne and Marcia Langton (eds), *Dhooimbak Goobgoowana: A History of Indigenous Australia and the University of Melbourne – Volume 1: Truth* (Melbourne University Press, 2024), 22, 23.

198. Wamba Wemba Aboriginal Corporation, Submission 349, 11.

199. Transcript of roundtable with Gunaikurnai Land and Waters Aboriginal Corporation, 30 November 2022 (Part 1), 12, served on the State of Victoria on 12 April 2024.

200. Hamish McPherson, Submission 290, 18.

201. Productivity Commission, ‘[Socio-Economic Outcome Area 15: Aboriginal and Torres Strait Islander People Maintain a Distinctive Cultural, Spiritual, Physical and Economic Relationship with Their Land and Waters](#)’ (Webpage).

202. Transcript of roundtable with Barengi Gadjin Land Council, 26 October 2023, 16, served on the State of Victoria on 1 April 2024. See also Chapter 10: Native title and Chapter 11: Traditional Owner settlements.

203. Transcript of roundtable with Barengi Gadjin Land Council, 26 October 2023, 16, served on the State of Victoria on 1 April 2024.

204. Submission of Catholic Archdiocese of Melbourne, 22, citing Diana Wendy Mary McKinley, ‘Give Them Churches: An analysis of the importance of the 1836 Church Act’ (PhD Thesis, University of Divinity, 2022), 148–149.

205. GBP1m in 1877 converts to GBP97,931,925.78 calculated based on 13 November 2024 using Bank of England, ‘[Inflation Calculator](#)’ (Webpage).

206. Submission of Catholic Archdiocese of Melbourne, 23, citing Diana Wendy Mary McKinley, ‘Give Them Churches: An analysis of the importance of the 1836 Church Act’ (PhD Thesis, University of Divinity, 2022), 151.

207. Submission of Catholic Archdiocese of Melbourne, 24.

208. Uniting Church in Australia, Annexure: Additional Submission to Yoorrook, dated 7 February 2025.

209. ‘Crown Lands Granted to Religious Denominations’, List, 1879: Bundle of documents provided by Anglican Diocese of Melbourne, Bendigo, Wangaratta and Gippsland, 28 March 2024, 236.

210. Diocese of Wangaratta Property Listing: Bundle of documents provided by Anglican Diocese of Melbourne, Bendigo, Wangaratta and Gippsland, 5 February 2025, 200.

211. Bundle of documents provided by Anglican Diocese of Melbourne, Bendigo, Wangaratta and Gippsland, 5 February 2025, 154, 236.

212. Diocese of Melbourne Property Listing: Bundle of documents provided by Anglican Diocese of Melbourne, Bendigo, Wangaratta and Gippsland, 5 February 2025, 215.

213. ‘Crown Lands Granted to Religious Denominations’, List, 1879: Bundle of documents provided by Anglican Diocese of Melbourne, Bendigo, Wangaratta and Gippsland, 5 February 2025, 235.

214. Diocese of Wangaratta Property Listing: Bundle of documents provided by Anglican Diocese of Melbourne, Bendigo, Wangaratta and Gippsland, 5 February 2025, 235.

215. Nicole Lindsay, ‘[Jingle bells fall silent as Christmas starts with sale of churches](#)’, *The Age* (Webpage, 6 December 2024).

216. Transcript of Tim O’Leary, 1 May 2024, 41 [20]–[23].

217. Anglican Church of Australia, ‘*Response to RFI 5 – Yoorrook Justice Commission*’, 8, produced by Anglican Church of Australia in response to the Commission’s Requests for Information dated 13 March 2024.

218. Anglican Church of Australia, ‘*Response to RFI 5 – Yoorrook Justice Commission*’, 8, produced by Anglican Church of Australia in response to the Commission’s Requests for Information dated 13 March 2024.

219. exchange between Bishop Genieve Blackwell and Counsel Assisting in Transcript of Bishop Genieve Blackwell, 1 May 2024, 42 [25]–[30]; Bundle of documents provided by Anglican Diocese of Melbourne, Bendigo, Wangaratta and Gippsland, 5 February 2025, 197.

220. Transcript of Bishop Richard Treloar, 1 May 2024, 43 [1].

221. Submission of Catholic Archdiocese of Melbourne, 16. Please note that in respect of this aggregate figure, the Catholic Archdiocese notes that ‘This information is based on limited information, some of which is sample data. The figures and data presented may not be fully reliable and should not be construed as definitive or comprehensive. Its accuracy cannot be guaranteed.’ Note also that certain sites include multiple church-related buildings, with each property on the site being treated as a separate ‘church building’ for the purposes of the aggregate figure.

222. Submission of Anglican Diocese of Melbourne, Bendigo, Wangaratta and Gippsland, 28 March 2024, 7.

223. Submission of the Uniting Church in Australia, 4 April 2024, 43.

224. Submission of Catholic Archdiocese of Melbourne, 18. Please note that in respect of this aggregate figure, the Catholic Archdiocese notes that ‘This information is based on limited information, some of which is sample data. The figures and data presented may not be fully reliable and should not be construed as definitive or comprehensive. Its accuracy cannot be guaranteed.’

225. Submission of Anglican Diocese of Melbourne, Bendigo, Wangaratta and Gippsland, 28 March 2024, 8.

226. Submission of the Uniting Church in Australia, 4 April 2024, 46.

227. Submission of Catholic Archdiocese of Melbourne, 18. Please note that in respect of this aggregate figure, the Catholic Archdiocese notes that ‘This information is based on limited information, some of which is sample data. The figures and data presented may not be fully reliable and should not be construed as definitive or comprehensive. Its accuracy cannot be guaranteed.’ This figure is based on the insured value of the land derived from information provided to insurers, as opposed to formal valuations.

228. Submission of Anglican Diocese of Melbourne, Bendigo, Wangaratta and Gippsland, 28 March 2024, 8.

229. Supplementary submission of the Uniting Church in Australia, 9 April 2024, 1–2.

Please note that the UCA cautioned as to the reliability of this figure — see the note to reader on the cover page of the supplementary submission.

230. Annexure C (confidential) to the Submission of Catholic Archdiocese of Melbourne.

Note: In respect of this aggregate figure, the Catholic Archdiocese notes that ‘This information is based on limited information, some of which is sample data. The figures and data presented may not be fully reliable and should not be construed as definitive or comprehensive. Its accuracy cannot be guaranteed.’

231. Bundle of documents provided by Anglican Diocese of Melbourne, Bendigo, Wangaratta and Gippsland, 5 February 2025, 215–224.

232. The Uniting Church in Australia and Synod acknowledge that whilst the Synod is not in law a successor in title to churches which came to form the Uniting Church in Australia (predecessor churches), church / congregation land listed as sold in Victoria between 2009 to 2024 with an aggregate value of \$462,719,083.10 includes lands received by predecessor churches for little or no consideration in the early post-colonisation period and from donations from predecessor church members (through living trusts or deceased estates), and lands purchased by predecessor churches using their own money for fair market value. It also includes lands received by the Uniting Church since its establishment in 1977 from donations from church members (through living trusts or deceased estates) and lands purchased by the Uniting Church since 1977 using its own monies for fair market value. The Uniting Church has not received any land grant for little or no consideration since 1977.

233. Transcript of Archbishop Peter Comensoli, 1 May 2024, 43 [10]–[16]; Transcript of Reverend David Fotheringham, 1 May 2024, 43 [24].

234. Transcript of Bishop Richard Treloar, 1 May 2024, 44 [10]–[15].

235. Transcript of Bishop Richard Treloar, 1 May 2024, 44 [15].

236. Transcript of Reverend David Fotheringham, 1 May 2024, 47 [10]–[15].

237. Transcript of Reverend David Fotheringham, 1 May 2024, 47 [21].

238. Submission of the Uniting Church in Australia, 4 April 2024, 48–60. See also Submission of Anglican Diocese of Melbourne, Bendigo, Wangaratta and Gippsland, 28 March 2024, 7.

239. Transcript of Archbishop Peter Comensoli, 1 May 2024, 49 [33]–[35].

240. Transcript of Archbishop Peter Comensoli, 1 May 2024, 51 [10]–[15]; Transcript of Reverend David Fotheringham, 1 May 2024, 52 [10]–[18]; Transcript of Bishop Genieve Blackwell, 1 May 2024, 52 [24].

241. See Submission of the Uniting Church in Australia, 4 April 2024; Submission of Catholic Archdiocese of Melbourne; Submission of Anglican Diocese of Melbourne, Bendigo, Wangaratta and Gippsland, 28 March 2024.

242. Transcript of Keicha Day, 25 March 2024, 59 [5]–[8].

243. Transcript of roundtable with Bunurong Land Council, 2 November 2023, 49–50, served on the State of Victoria on 1 April 2024.

244. Witness Outline of Suzannah Henty, 27 March 2024, 4–8.

245. Transcript of Suzannah Henty, 28 March 2024, 11 [27]–[35].

246. Transcript of Suzannah Henty, 28 March 2024, 5 [45]–6 [8]. [See also Witness Outline of Suzannah Henty, 27 March 2024, 2–8; Witness Exhibit of Suzannah Henty, Colonial impact register; Suzannah Henty, In the Soil that Nurtures Us: A Certain Death to the Colonial Myth \(2021\) Index Journal 5.](#)

247. Transcript of Suzannah Henty, 28 March 2024, 5 [45]–6 [8].

248. Transcript of Suzannah Henty, 28 March 2024, 5 [9]–[11].

249. Transcript of Braydon Saunders, 25 March 2024, 55 [10].

250. Transcript of Braydon Saunders, 25 March 2024, 55 [25]–[30].

251. McDonald Family of Tae Rak (Lake Condah), Submission 202, 171–172; Eleanor Benson et al, ‘Mapping the spatial politics of Australian settler colonialism’ (2023) 102 *Political Geography*, 102.

252. McDonald Family of Tae Rak (Lake Condah), Submission 202, 172; Brianna Young, Submission 551 (‘Developing a communications and engagement ‘blueprint’ for decolonising place names in Victoria’), 31.

253. McDonald Family of Tae Rak (Lake Condah), Submission 202, 172 .

254. Merri-bek City Council, Submission 889, 12; Brianna Young, Submission 551 (‘Developing a communications and engagement ‘blueprint’ for decolonising place names in Victoria’), 20–29.

255. Merri-bek City Council, Submission 889, 12; Brianna Young, Submission 551 (‘Developing a communications and engagement ‘blueprint’ for decolonising place names in Victoria’), 40–44.

256. Transcript of Uncle Johnny Lovett, 29 April 2022, 96 [1]–[5].

257. Transcript of Tony Kelly, 16 April 2024, 60 [37]–[39].

258. Transcript of Tony Kelly, 16 April 2024, 60 [39]–[42].

259. Transcript of Professor Marcia Langton, 27 March 2024, 34 [9]–[16].

260. Transcript of roundtable with Nindi-Ngujarn Ngarigo Monero, 13 November 2023, 12, served on the State of Victoria on 12 April 2024.

261. Transcript of Tony Kelly, 16 April 2024, 62 [17]–[20].

262. Transcript of Tony Kelly, 16 April 2024, 62 [25]–[28].

263. Anonymous 11, Submission 11, 1–2.

264. Transcript of roundtable with Bangerang Aboriginal Corporation, 7 December 2023, 8, served on the State of Victoria on 1 April 2024.

265. Transcript of roundtable with Nindi-Ngujarn Ngarigo Monero, 13 November 2023 (Part 2), 25, served on the State of Victoria on 12 April 2024.

266. Summary of roundtable with Boonwurrung Land and Sea Council, 23 November 2023.

267. Wamba Wemba Aboriginal Corporation, Submission 349, 4.

268. Associate Professor Nikki Moodie, Submission 526, 7.

269. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 5 [16].

Chapter 9: How we got here — overview of recognition systems

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You can't expect your oppressors to liberate you. So you can't actually say, we expect whitefellas to free us and give our land back. It's something we have to fight for.¹

PARTICIPANT, BARENGI GADJIN LAND COUNCIL ROUNDTABLE

Introduction

Established systems for recognising First Peoples' land rights in Victoria were purportedly established to redress the wholesale dispossession of First Peoples under colonisation. These systems are not fit for purpose, not aligned and do not go far enough to realise First Peoples' inherent rights to Country. That these systems exist at all is because of the decades of sustained activism and advocacy of First Peoples for the return of land, for the protection of culture and to recognise their rights to land.

As Yoorrook heard, despite this advocacy and the purported intent of the systems, there are still significant barriers to meaningful recognition of First Peoples' rights to Country.

This chapter examines the three main systems in Victoria recognising First Peoples' land and cultural heritage rights, focusing on the following laws:

- *The Native Title Act 1993* (Cth) ('NTA')
- *The Traditional Owner Settlement Act 2010* (Vic) ('TOSA')
- *The Aboriginal Heritage Act 2006* (Vic) ('AHA').

These land recognition systems and their history are complex, so this chapter only provides an overview. Chapter 10: Native title, Chapter 11: Traditional Owner settlements and Chapter 12: Cultural heritage focus respectively on the *NTA*, *TOSA* and *AHA*, how these laws work, their compliance with First Peoples' rights and their ability to deliver justice, recognition and self-determination.

This chapter starts by discussing the ongoing resistance of First Peoples in the struggle for land and cultural heritage rights. It then explores the background of each recognition system, their main limitations in realising rights and the injustices that continue through their inadequacies. The chapter concludes by examining treaty as an alternative pathway to achieving land rights recognition.

First Peoples' struggle for land and cultural heritage rights

First Peoples have been engaged in a political struggle for land rights for over two hundred years. Beginning with violent resistance to colonial dispossession in the 19th century, then to fights for civil rights in the early and mid-20th century, and later to the land rights claims of the 1970s and 1980s, Aboriginal activists in Victoria and across Australia have sustained an ongoing fight to address the injustice of dispossession and the theft of land.² Alongside the struggle for recognition of land rights, First Peoples in Victoria have fought for the recognition and protection of cultural heritage.

In many ways this fight has been more challenging in Victoria than in other parts of Australia due to the speed, violence and extent of land theft across the state (see Chapter 7: How colonisers stole Country and Chapter 8: Impacts of Country being stolen). Yoorrook repeatedly heard about the cruel irony that First Peoples have been made to ask for what belonged to them for many millennia. The requirement for First Peoples to prove ongoing connection to the very land from which colonial authorities and governments forcibly removed them, deepens that cruelty. The State acknowledged that through the policies of exclusion and assimilation, the State severed First Peoples' ties to Country and dispersed Traditional Owners across the state. Over many decades, the policies of successive governments dictated where First Peoples could live, work and marry, whether on or off missions and reserves.³ Yet it is First Peoples who the State holds accountable for establishing and re-establishing their rights to their own Country.

The State’s journey to acknowledging systemic injustices has been long and difficult. Despite persistent calls for land justice from the 1840s, it was not until the 1970s that the Victorian Government passed the first land rights legislation. And despite the continued efforts of many over centuries of struggle, the State has only returned a limited amount of land in Victoria to First Peoples in freehold (see Chapter 11: Traditional Owner settlements).

Victoria’s multiple recognition systems

There are three primary land recognition systems operating in Victoria. The *NTA*, *TOSA* and *AHA* each provide mechanisms under which the State recognises rights and interests of Traditional Owners. The *NTA* and *TOSA* recognise rights and interests in land. The *AHA* provides Traditional Owners with a role in overseeing and protecting Aboriginal cultural heritage. The mechanisms are summarised in Table 9.1.

Table 9.1: Recognition systems

Native Title Act 1993 (Cth)	The <i>Native Title Act 1993</i> (Cth) (‘NTA’) is Commonwealth legislation that allows a claim group to bring a native title claim in the Federal Court and seek a determination as to whether its native title rights still exist and can be recognised. The <i>NTA</i> also allows Traditional Owner groups to enter into Indigenous Land Use Agreements (or ILUAs), which are voluntary agreements between native title groups and other parties concerning how the land or water can be used. ⁴ The definition of ‘native title’ in the <i>NTA</i> requires an unbroken connection with land by a society bound by traditional laws and customs since the imposition of Australian sovereignty. Further discussed in Chapter 10: Native title.
Traditional Owner Settlement Act 2010 (Vic)	The <i>Traditional Owner Settlement Act 2010</i> (Vic) (‘TOSA’) is Victorian legislation introduced as an alternative to the <i>NTA</i> . <i>TOSA</i> establishes a framework for Traditional Owner groups to negotiate a Recognition and Settlement Agreement (RSA) with the State, which provides formal recognition and rights and interests in land. These rights and interests are comparable to rights available under the <i>NTA</i> . There is no requirement under <i>TOSA</i> for a Traditional Owner group to prove that they have an unbroken connection with their land, or have continually observed traditional laws and customs, since the imposition of Australian sovereignty. Further discussed in Chapter 11: Traditional Owner settlements.
Aboriginal Heritage Act 2006 (Vic)	The <i>Aboriginal Heritage Act 2006</i> (Vic) (‘AHA’) is Victorian legislation that provides for the protection of Aboriginal cultural heritage places and objects. The <i>AHA</i> allows a Traditional Owner group to apply to the Victorian Aboriginal Heritage Council to become a Registered Aboriginal Party (RAP). RAPs have a role in managing Aboriginal cultural heritage on their Country. Further discussed in Chapter 12: Cultural heritage.

These laws have provided important rights and protections for First Peoples, but they are still colonial systems. Yoorrook heard that they have only achieved limited success and do not fully realise First Peoples’ connection to Country or responsibility to care for Country. The Victorian Aboriginal Community Controlled Health Organisation (VACCHO) told Yoorrook: ‘These processes, instead of empowering communities, perpetuate dependency on Government-established standards and thresholds, placing a burden on communities to meet these criteria with limited resources’.⁵

Traditional Owners may not be the ultimate decision-maker regarding cultural heritage protection on their Country. The Victorian Civil and Administrative Tribunal (VCAT) may review (and possibly overturn) the decisions of a Registered Aboriginal Party (RAP) if the RAP refuses to approve a cultural heritage management plan or cultural heritage permit.⁶

Courts established by the Commonwealth Government are the final decision-maker on native title claims, to which the State is a necessary respondent. The land rights recognised under the *NTA* and *TOSA* are non-exclusive, weaker and subsidiary to other forms of rights and interests.⁷ These limitations create further trauma for First Nations communities and mean that these laws do not and cannot achieve self-determination.⁸

The three established recognition systems contain a bundle of different rights, obligations and responsibilities. Each form involves a level of acknowledgment that the claim group represents Traditional Owners for a distinct area of land. In addition, each group must meet a certain threshold of representative governance. Each process confers different rights and responsibilities on the relevant group. Depending on the form of statutory recognition, where these rights are likely to be impacted by government or third-party development, they may give rise to further rights, such as the right to be consulted, to negotiate an agreement or to compensation.⁹ However, in many cases developers do not notify Traditional Owners of proposed works or activities on their Country and Traditional Owners do not have the legal rights or practical capacity to influence or prevent works. This is because of limitations in relevant legislative regimes (the *AHA*, *NTA*, *TOSA*, planning and environment laws), particularly in the case of privately owned land.¹⁰ Moreover, Traditional Owner groups who do not have formal recognition are not afforded these rights.

First Peoples’ land rights in Victoria

The first Victorian land rights law: *Aboriginal Lands Act 1970* (Vic)

The first Victorian land rights law was the *Aboriginal Lands Act 1970* (Vic) (‘ALA 1970’).¹¹ The ALA 1970 established trusts to hold freehold title on behalf of First Peoples residents at two significant former mission sites to whom shares in the trusts were allocated – Framlingham and Lake Tyers (Bung Yarnda).¹² The approximate sizes of the trust land areas were 694 hectares for the Framlingham site, and 4000 hectares for the Lake Tyers (Bung Yarnda) site.¹³ The ALA 1970 was introduced in response to community advocacy for land rights by the residents at Framlingham and Lake Tyers (Bung Yarnda).¹⁴ At the time, the Government was beginning to move away from assimilationist and protectionist policies and towards involving First Peoples in decisions about their own lives and communities. This was a departure from the ‘mistaken belief that [First Peoples] needed protection’.¹⁵ This legislation and other ad hoc returns of land were the only recognition of land rights in Victoria until the introduction of the *NTA* more than 20 years later.¹⁶

The central component of the ALA 1970 was the creation of trusts. The ALA 1970 created a trust for Framlingham and a trust for Lake Tyers and ‘put in place a regime for the management and use of the land’.¹⁷ On 1 January 1968, people living at either site ‘were gazetted as members of either [trust] and were allocated shares’.¹⁸ Under the ALA 1970, members hold shares in the trust, while the trust owns the land.¹⁹ Each trust is a body corporate that ‘continues to exist even if its members die or transfer their shares to another person’.²⁰ The legislation allows each trust to sell or lease the land ‘but there are restrictions on how that can be done’.²¹

The intention of the ALA 1970 was to enable these communities to become self-sufficient. However, the Minister for Treaty and First Peoples the Hon Natalie Hutchins MP told Yoorrook that the ALA 1970 ‘attached paternalistic prescriptions to how the lands could be used and governed’, including requiring a corporate structure to be established and reporting to the relevant Minister.²² Minister Hutchins said that the legislation puts ‘ultimate control and decision making in the hands of the Minister’, not community members.²³

In addition, Minister Hutchins told Yoorrook that the ALA 1970 ‘placed an unfair administrative burden on the communities, which has, and continues to, impact their ability to comply with the legislation’.²⁴ The Victorian Government appointed an external administrator to run the Lake Tyers trust. Aunty Marjorie Thorpe (Gunaikurnai, Tjapwurrung) gave evidence that during this period it felt like the mission days and the site ‘looked like a prison farm’.²⁵ Aunty Marjorie Thorpe said:

We had fences put up ... prison green fences aluminium fences, which were surrounding every house. It was a six-foot high fence around every house. Today those fences are falling apart because they are aluminium. They can’t stand up to the winds, so they’re falling over and there is no resource to fix them up.²⁶

AUNTY MARJORIE THORPE

Yoorrook also heard from First Peoples that the Lake Tyers (Bung Yarnda) community is in a deplorable state and it cannot wait any longer for change.²⁷ Additionally, there are low employment and education rates at the site, and houses and infrastructure have deteriorated.²⁸

An independent review of the ALA 1970 was conducted between 2018 and 2021 and a final report was delivered in September 2021.²⁹ The review included 42 recommendations to improve the ALA 1970, relating to the shareholding system, the governance and regulation of the trusts, dispute resolution, engagement with residents at Framlingham and Lake Tyers (Bung Yarnda), the sale of trust land, and other opportunities for economic development.³⁰ The Victorian Government gave its support in full or in principle to all 42 of the recommendations.³¹ Minister Hutchins reaffirmed the Victorian Government’s commitment to reforming the ALA 1970, acknowledging that the legislation was ‘significantly outdated’ and ‘reform is overdue’.³²

The Victorian Parliament passed the *Aboriginal Land Legislation Amendment Act 2024* (Vic) in August 2024. The amending Act implements ‘phase one’ of the Victorian Government’s response to the review, improving processes for share transfers, governance, economic activity and ongoing review of the ALA 1970. The government has committed to implementation of the remaining 14 recommendations, subject to further analysis and community engagement. The Victorian Government has not published a timeline for this to occur. Significantly, recommendations the State has not yet implemented include restrictions on the sale or transfer of trust land and mining restrictions.³³

CLOSURE OF MISSIONS AND LAKE TYERS (BUNG YARNDAL) PROTESTS

The Lake Tyers mission site is located on Gunaikurnai Country at a site known to the Gunaikurnai as Bung Yarnda.³⁴ The Traditional Owners of the lands are the Krowathunkooloong, one of five clans of the Gunaikurnai nation.³⁵ It is an important and culturally significant area of Country where the water meets the mountains.³⁶

In 1861, Lake Tyers mission was established by the Church of England missionary Reverend John Bulmer.³⁷ In 1908, the Board for the Protection of Aborigines (Protection Board) took over management of the mission. Then, as Minister Hutchins explained, in 1917 the Protection Board made the decision to close Coranderrk, Lake Condah (Tae Rak) and Framlingham, and to forcibly relocate the residents to the Lake Tyers (Bung Yarnda) mission.³⁸ The McDonald family of Tae Rak (Lake Condah) explained that this was part of the Aboriginal Protection Board’s ‘policy of concentration’ for ‘all Aboriginal people who remained on reserves to be placed at Lake Tyers’.³⁹

Minister Hutchins said: ‘It appears the State made this decision so the Board could reduce spending on Aboriginal people and sell the reserve land, as it was desired by Europeans’.⁴⁰ Minister Hutchins also outlined, ‘By this time, residents at Framlingham, Coranderrk and Lake Tyers had already successfully resisted multiple State attempts to remove them from their land’.⁴¹ The State used various approaches to try and force people off the reserves, including ‘removing all stock and farming implements ... selling off and denying access to housing, the sale of land despite its reservation as an Aboriginal reserve and the expulsion of Aboriginal residents of mixed descent’.⁴²

By 1948, the State had sold off land at Coranderrk and Lake Condah (Tae Rak) and redistributed it to non-Aboriginal returned soldiers under the soldier settlement scheme (see Chapter 7: How colonisers stole Country for more details about the scheme).⁴³ None of this land was allocated to Aboriginal returned servicemen.

Uncle Jim Berg (Gunditjmara) told Yoorrook that Lake Tyers (Bung Yarnda) became a clearing place for First Peoples from across Victoria.⁴⁴ Uncle Jim Berg referred to these people as the ‘lost generation’.⁴⁵

From the 1960s, the Victorian Government started to coerce First Peoples off the reserves and into nearby towns with the promise of a better life.⁴⁶ Aunty Marjorie Thorpe (Gunaikurnai, Tjapwurrung) told Yoorrook: ‘In 1962, the Board announced the closure of Lake Tyers Aboriginal Station’.⁴⁷ The residents of Lake Tyers (Bung Yarnda), and others launched a campaign protesting its closure.⁴⁸

Aunty Marjorie Thorpe further explained: ‘In May 1963, residents and other activists marched through Melbourne to Parliament House to protest the forced closure of Lake Tyers’.⁴⁹ They marched alongside Uncle Sir Pastor Doug Nicholls (Yorta Yorta) and other members of the Aborigines Advancement League.⁵⁰ Pressure on the government led to the first return of land to First Peoples in Victoria’s history under the ALA 1970.⁵¹

A foundational Victorian land rights case: *Onus v Alcoa Australia Ltd* (1981)

First Peoples in Victoria led a successful land rights case a decade before the High Court of Australia recognised native title.

In the 1980s, the mining company Alcoa of Australia Ltd planned to build an aluminium smelter on land near Portland. This land contained relics of First Peoples occupation. Two Gunditjmara women, Aunty Sandra Onus (Gunditjmara) and Aunty Tina Saunders nee Frankland (Gunditjmara), brought proceedings against Alcoa, seeking an injunction to prevent Alcoa from interfering with relics at the site,⁵² which would be a breach of the *Archaeological and Aboriginal Relics Preservation Act 1972* (Vic) ('AARP Act').⁵³ As Uncle Johnny Lovett (Gunditjmara, Boandik) explained: 'The case ended in the High Court ... [which] recognised that the Gunditjmara people carry responsibilities from their ancestors' to protect this part of Victoria.⁵⁴ The High Court decision in *Onus v Alcoa of Australia Ltd*⁵⁵ found that the Gunditjmara people had standing to apply for an injunction to protect their cultural heritage under the AARP Act.⁵⁶ Uncle Johnny Lovett reflected:

It was a recognition of connection to Country, traditional ownership and our cultural heritage, which then paved the way for the native title claim that was later brought about in the 1990s.⁵⁷

UNCLE JOHNNY LOVETT

The Victorian Government wanted the smelter construction to proceed. So, the then Premier John Cain proposed a deal in exchange for withdrawal of the Gunditjmara legal action against Alcoa.⁵⁸ The deal included handing back 53 hectares of land at Tae Rak, including the Lake Condah mission and cemetery, and funding to govern the area and for the acquisition of properties of cultural significance.⁵⁹

To effect the transfer, the Victorian Government introduced the Aboriginal Land (Lake Condah) Bill in parliament but it was blocked by the Opposition.⁶⁰ The Victorian Government then asked the Commonwealth to introduce legislation resulting in the *Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987* (Cth).⁶¹ A handover ceremony was celebrated at Lake Condah (Tae Rak) in 1988. Today, the land is held by the Gunditj Mirring Traditional Owners Aboriginal Corporation as the representative body for Gunditjmara native title holders and Traditional Owners.

The legal significance of the *Onus v Alcoa* decision ... [is] often overlooked in the history of land rights and native title in Australia. These outcomes sit alongside other well known bench marks in our land rights history ... In *Onus v Alcoa* the High Court recognised traditional ownership, and linked it with heritage protection, whilst the State government offered a settlement package also based on traditional ownership.⁶²

JESSICA K WEIR

AUNTY SANDRA ONUS REFLECTS ON *ONUS V ALCOA*⁶³

I grew up with an Aunty called Aunty Betty, and she was a fighter. She was a big warrior woman. She instilled in me, that fighting spirit, that spirit of injustice. How our people were badly done by, how we were ripped off ... and how the law had no rights telling us what to do.

So I believed that the white man's law was wrong. And I remember saying to Tina, 'what are we going to do about this, this Alcoa. What they were doing out on the land desecrating our sites, are we going to take this?' So we decided we would get an interlocutory injunction stopping Alcoa until a court decided what we could do. Yeah we got death threats, death threats were part of the equation. We were always getting death threats — Tina and I ...

But still we went on, we persisted, we knew we were in the right and we weren't going to give up, and we didn't. Our mothers told us — keep fighting, keep going, and we did.

... We kept fighting the good fight and we took it to the courts. We believed that the courts had no other way other than to see us through.

I had a meeting with my grandmother one day. She told me about what happened at the Mission — about how they used to hide in fright from the white man who go riding around with guns when the men went away working ... I said to her then, 'I promise you Nan that when I can I'm going to fight to get this land back, this Mission land, I'm getting it back for you, for you all'. I meant that when I said it ...

Alcoa asked us what we wanted and we said 'we don't want a lot', the main object ... was to get the Mission back ... and then the money put into an account, not a lot of money, to maintain the Mission. So we accepted the money and out of that we built five cabins, we built a recreation complex. We didn't want to look as if we were greedy, really we should have asked for a lot more, expected a lot more, but we didn't ...

Well now, 'good on you aunt ... we thought youse were mad', I've had the comments said to me, 'we thought youse were mad'. Well we weren't mad, we were quite sane. We just wouldn't take them at their word, what they wanted to do.⁶⁴

AUNTY SANDRA ONUS

Native title

Mabo v Queensland (No 2) (1992)

In 1992, almost 200 years after the British colonised Victoria, the High Court of Australia in *Mabo v Queensland [No 2]* (*‘Mabo’*) rejected the idea that at the time of colonisation Australia was terra nullius (a Latin term meaning ‘no one’s land’, ‘land belonging to no one’ or ‘land with no inhabitants’).⁶⁵

The colonisers used the concept of terra nullius to justify acts of colonisation (see Chapter 2: Sovereignty). The British common law distinguished between settled, ceded and conquered lands. ‘Settlement’ involved the occupation of otherwise unoccupied land or land known as terra nullius. According to this theory, land was unoccupied if it was ‘desert and uncultivated’. The legal consequence of ‘discovering’ an ‘uninhabited country’ (or a ‘terra nullius’) was that all English laws became ‘immediately there in force’. On the other hand, for conquered or ceded countries with pre-existing legal systems, the ‘ancient laws of the country remain’ until altered or changed by the King.⁶⁶ From the mid 1860s, the colonisers extended legal definitions and meanings of terra nullius to include ‘barbarous country’, ‘backward’⁶⁷, or ‘uncivilised’⁶⁸. The concept of native title pre-dates the decision in *Mabo* and arose in this historical context.

By the 1820s and 1830s, North American jurisprudence held that Indigenous peoples’ sovereignty and property rights survived colonisation.⁶⁹ The British chose to ignore these principles in Australia. Professor Henry Reynolds described this as the ‘original sin of the British, to make that decision that they didn’t have to concern themselves about the rights of the native people in Australia’.⁷⁰

The decision of the High Court in *Mabo* was an important turning point in Australian legal history. The High Court held that First Peoples had pre-existing systems of law that survived British colonisation.⁷¹ The Australian legal system could recognise native title provided it had not been extinguished by an inconsistent exercise of land rights under the State’s legal system, for example, through the grant of land in freehold title prior to the commencement of the *NTA*.⁷²

Mabo was decided at a time when there was increasing recognition of Indigenous rights in the domestic law of other countries and in international law.⁷³ The High Court based the recognition of native title on the developing body of international human rights law.⁷⁴ The High Court recognised that the doctrine of terra nullius was no longer supported in international law and should not be retained as part of the common law of Australia.⁷⁵ Justice Brennan stated that Australian law could not remain ‘frozen in an age of racial discrimination’.⁷⁶ Justice Brennan held that the British Crown justified the taking of First Peoples’ lands based on a ‘false’ and ‘unacceptable’ theory that First Peoples were ‘so low on the scale of organization’ that their claims as ‘sovereigns or proprietors of the soil’ could be ‘utterly disregarded’.⁷⁷ This was ‘a discriminatory denigration of indigenous inhabitants, their social organisation and customs’.⁷⁸

It was clear from the outset that the First Peoples who had suffered the most from colonisation would have the least to gain from the recognition of native title by the High Court. This was for two reasons:

- first, most native title has been extinguished in Victoria. The State can extinguish native title, including by granting rights to land (such as freehold title) or introducing legislation that is inconsistent with native title.⁷⁹ The colonisation of Victoria occurred with such speed and violence that it was one of the fastest land occupations in history.⁸⁰ Approximately two-thirds of Victoria is currently held as private property,⁸¹ and grants of freehold or leasehold interests have occurred over most of the state at one time or another. As a result, only one third of Victoria is still Crown land and notionally available for native title claims.⁸²

- second, the courts have interpreted native title as being based on the continuity of traditional laws and customs. First Peoples seeking recognition of their native title must establish that their traditional connection with the land has been substantially maintained.⁸³ Once connection to the land is broken, native title rights are extinguished under Australian law.⁸⁴ As discussed in Chapter 8: Impacts of Country being stolen, the way that Victoria was colonised makes establishing this connection difficult. First Peoples in Victoria were forcibly removed from their Country. These difficulties are discussed further in Chapter 10: Native title.

Mabo has broader implications for the legitimacy of state sovereignty. Sovereignty is discussed in Chapter 2: Sovereignty.

The Native Title Act 1993 (Cth)

The *Mabo* decision sparked critical debate across Australian society. Known colloquially as ‘Mabo madness’, the debate was frequently characterised by misinformation and the fuelling of community anxiety. The Kennett government, elected four months after the decision, played a significant part in contributing to this climate of ‘analysis, conjecture and even hysteria’.⁸⁵ Premier Jeff Kennett was among the political leaders who spread the myth that native title was ‘a threat to suburban backyards’.⁸⁶ As the late respected Elder Uncle Kevin Coombs (Wotjobaluk, Wemba Wemba, Wiradjuri) told Yoorrook:

When Mabo first came on the scene, some politicians said, ‘Oh they’ll be taking your backyards, the MCG will be gone, everything will be handed over to the Aboriginal people’. That’s not what it was about, it was about being recognised.⁸⁷

UNCLE KEVIN COOMBS

In response to *Mabo*, the Commonwealth Government introduced the *NTA*. The *NTA* established a national regime for recognising and protecting native title. Before its introduction, the heads of Commonwealth, state and territory governments met in Naarm (Melbourne) to discuss an Australia-wide legislative response to *Mabo*. At that meeting, Premier Kennett called the Commonwealth’s proposal for native title legislation ‘unworkable’.⁸⁸ He later admitted he was wrong and that *Mabo* was essential to reconciliation.⁸⁹

WHAT IS NATIVE TITLE UNDER THE *NTA*?

The *NTA* defines native title based on the decision in *Mabo*.⁹⁰ Native title is the communal, group or individual rights and interests of Aboriginal or Torres Strait Islander Peoples in relation to land or waters, where:

- the rights and interests are possessed under the traditional laws acknowledged, and the traditional customs observed, by the Aboriginal or Torres Strait Islander Peoples
- Aboriginal or Torres Strait Islander Peoples, by those laws and customs, have a connection with the land or waters
- the rights and interests are recognised by the common law of Australia.⁹¹

The *NTA* was not the first land rights legislation in Australia. In 1974, the Commonwealth Royal Commission into Aboriginal Land Rights chaired by Justice Edward Woodward found that:

the only appropriate direct recompense for those who have lost their traditional lands is other land — together with finance to enable that land to be used appropriately, either for housing or for some economic purpose.⁹²

ABORIGINAL LAND RIGHTS COMMISSION

This resulted in the introduction of legislation in other parts of Australia. These laws included the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) (which Yoorrook was told ‘remains the high watermark for land rights legislation in Australia’)⁹³ and the *Aboriginal Land Rights Act 1983* (NSW). Uncle Graham Atkinson (Yorta Yorta, Dja Dja Wurrung) told Yoorrook that there was a push for similar legislation in Victoria but the Cain government blocked changes from occurring.⁹⁴ The Cain government also chose not to progress other legislation and recommendations, including the Aboriginal Land Claims Bill 1983 (Vic) to establish an Aboriginal Land Claims Tribunal⁹⁵ and a recommended annual \$5 million compensation from Victorian and Commonwealth government revenue to Traditional Owners.⁹⁶

Rainer Mathews, Principal Legal Officer at First Nations Legal and Research Services told Yoorrook that the *NTA* was initially put forward as part of a three-pronged response to the *Mabo* decision:⁹⁷ Firstly, to establish a legislative framework to facilitate claims and determinations of native title (the *NTA*), the second proposed response was to establish an Indigenous Land Fund for Indigenous groups whose native title had been extinguished, and the third proposal was to establish a Social Justice Package. The Howard Government chose not to implement the Social Justice Package.⁹⁸

Following the introduction of the *NTA*, Premier Kennett oversaw the passage of the *Land Titles Validation Act 1994* (Vic). The primary purpose of this law was to validate the extinguishment of native title over areas of land.⁹⁹ The law allowed First Peoples to seek compensation if their native title rights were affected.¹⁰⁰ However, compensation claims had to be brought in the Victorian Supreme Court — a prohibitively expensive and complex route for many.¹⁰¹ The law was criticised as discriminatory, since communities would not have the finances to bring a claim.¹⁰²

In 1996, the High Court of Australia clarified that native title could co-exist with pastoral leases in *Wik Peoples v Queensland*,¹⁰³ which led to further changes. In 1998, the Kennett government broadened the *Land Titles Validation Act 1994* (Vic) through an amendment bill, which in effect singled out and extinguished the property rights of First Peoples in Victoria.¹⁰⁴ Uncle Dr Wayne Atkinson (Yorta Yorta, Dja Dja Wurrung) described it as ‘one of the most racist pieces of legislation to be introduced into the Victorian Parliament since the infamous Aborigines Protection Acts’.¹⁰⁵

In Victoria, as of April 2025, there had been six determinations where native title was found to exist.¹⁰⁶ These determinations are:

- Wotjobaluk, Jaadwa, Jadawadjali, Wergaia, and Jupagulk Peoples (WJJWJ Peoples) (2005)¹⁰⁷
- Gunditjmara (2007)¹⁰⁸
- Gunaikurnai (2010)¹⁰⁹
- Gunditjmara and Eastern Maar over a joint area (2011)¹¹⁰
- Eastern Maar (2023)¹¹¹
- Eastern Maar (2024).¹¹²

There have also been three determinations where the courts concluded that native title did not exist.¹¹³ Nationally, in contrast to Victoria, there have been over 500 determinations

where native title has been found to exist.¹¹⁴ The difficulties of establishing native title in Victoria are discussed in Chapter 10: Native title.

Yorta Yorta v Victoria (1994–2002)

I was involved in the Yorta Yorta native title case. It went on for ten years and we lost. The court said the tide of history washed away our traditional rights. But we still go fishing, still go hunting and still eat our traditional food, so I’m confused. How did our history get washed away? We still have our family ties. We respect our stories and our waters where we fish. We were insulted by the decision. No culture in the world really stays the same — nowhere white people have been. So of course Yorta Yorta people have changed — but we are still Yorta Yorta people and we always will be.¹¹⁵

UNCLE COLIN WALKER

The Yorta Yorta people have sought the recognition of their ownership of Country since invasion.¹¹⁶ In the 1980s, the Yorta Yorta people lodged a formal claim with the State Government under Premier John Cain to regain the Barmah Forest and Millewa Forest.¹¹⁷ The claim did not succeed.¹¹⁸

Following the introduction of the *NTA*, in February 1994, the Yorta Yorta brought the first native title claim to trial in Victoria.¹¹⁹ The Victorian Kennett government and the subsequent Bracks government opposed the Yorta Yorta People’s claim.¹²⁰ Despite the efforts of the Yorta Yorta to reclaim their lands since the 1860s, Premier Kennett suggested the claim was ‘based solely upon political opportunism’.¹²¹ Noel Maughan MP asserted in parliament: ‘I believe some of those involved in land rights claims are not attracted by the spiritual association or affinity with the land, but by the mercenary aspects of their claims’.¹²² Uncle Graham Atkinson spoke of the disbelief he felt during the court hearings:

I sat in those hearings that many times and ... I couldn’t believe what I was seeing. You know, the State Government represented by their legal team opposing our claim, and they succeeded.¹²³

UNCLE GRAHAM ATKINSON

In the Federal Court decision, *Members of the Yorta Yorta Aboriginal Community* (‘Yorta Yorta’) v *Victoria*, Justice Olney considered the *NTA* definition of native title and the requirement to establish continued acknowledgment and observance of traditional laws and customs.¹²⁴ Justice Olney found:

The evidence does not support a finding that the descendants of the original inhabitants of the claimed land have occupied the land in the relevant sense since 1788 nor that they have continued to observe and acknowledge, throughout that period, the traditional laws and customs in relation to land of their forebears.¹²⁵

JUSTICE HOWARD OLNEY, YORTA YORTA V VICTORIA

Justice Olney considered the history of colonial policies of forced removal of First Peoples from their lands to missions and reserves and the suppression of language and culture. He concluded that by 1881, the Yorta Yorta ‘were no longer in possession of their tribal lands’¹²⁶ and had ‘by force of the circumstances in which they found themselves, ceased to observe [traditional] laws and customs’.¹²⁷ It did not matter that colonisers broke this connection against First Peoples’ will and that it was a direct result of Government policies, actions and colonial violence.

Traditional Owners ... [were] immensely disappointed with the outcome of the Yorta Yorta native title claim. A strict interpretation of the Native Title Act led to the view that Traditional Owners can only be officially recognised if they have remained immune from historical influences since European settlement.¹²⁸

UNCLE GRAHAM ATKINSON

Justice Olney held that once connection is broken, native title rights are considered extinguished: ‘The tide of history has ... washed away any real acknowledgment of ... traditional laws and any real observance of ... traditional customs’.¹²⁹ In 2002, the Yorta Yorta claim was defeated in the High Court after eight years of litigation and at a cost to the State of approximately \$4 million.¹³⁰

YORTA YORTA CONNECTION TO THE BARMAH-MILLEWA FOREST

The Barmah-Millewa Forest is a ‘natural and cultural landscape of profound heritage importance’.¹³¹ It ‘is the largest river red gum forest in the world’ located at the heart of Yorta Yorta Country.¹³² Co-Chair of the First Peoples’ Assembly of Victoria, Ngarra Murray (Wamba Wamba, Yorta Yorta, Dhudhuroa, Jupagulk, Baraparapa, Wiradjuri, and Dja Dja Wurrung) explained: ‘There is evidence that the Yorta Yorta People have occupied the region for more than 40,000 years. Scarred trees, mound sites and traditional fish trap systems can still be seen in the forest today’.¹³³

The river systems flowing through the Barmah-Millewa Forest are critically important for Yorta Yorta People. The Yorta Yorta Nation Aboriginal Corporation explains that as ‘river-based people ... the majority of food ... came from the rich network of rivers, lagoons, creeks and wetlands which are still regarded as the life source and the spirit of the Yorta Yorta Nation’.¹³⁴

TIMELINE OF THE YORTA YORTA NATIVE TITLE CLAIM

1994

Initial claim

The Yorta Yorta Aboriginal Community lodged their native title claim, asserting traditional ownership and connection to their lands.¹³⁵

1998

Federal Court decision

The Federal Court (Justice Olney) refused the claim, ruling that the Yorta Yorta people had not maintained their connection to the land under traditional law and customs.¹³⁶

2001

Appeal to full Federal Court

The Yorta Yorta appealed the decision, leading to a full Federal Court hearing. The full Federal Court, by a majority of two (Justices Branson and Katz) to one (Chief Justice Black), upheld the judgment of Justice Olney that the native title claim of the members of the Yorta Yorta Aboriginal Community was unsuccessful.¹³⁷

2002

High Court appeal

The case ultimately reached the High Court of Australia, where the Yorta Yorta people sought to overturn the earlier decisions and assert their native title rights.¹³⁸

2002

High Court decision

In December 2002, the High Court upheld the previous decisions, ruling against the Yorta Yorta native title claim. The court found by majority that the evidence did not establish continuous traditional laws and customs necessary to maintain native title.¹³⁹

In Victoria, where colonial policy had forcibly removed First Peoples from their Country, many First Peoples believed it would be impossible to attain recognition of native title.¹⁴⁰ One of the principal claimants in the Yorta Yorta case, Uncle Dr Wayne Atkinson, pointed out in 2001:

While the removal of old barriers was encouraging, the construction of new ones has been disheartening. As demonstrated in the Yorta Yorta case, the NTA and its interpretation by the Courts has set the Indigenous struggle for land in the more populous regions of the country back to the pre-Mabo era. This experience suggests that the ideals of equality and justice before the law under present conditions remain elusive.¹⁴¹

UNCLE DR WAYNE ATKINSON

Despite the unsuccessful outcome in the Yorta Yorta claimants’ native title claim through the decisions of the Federal Court, Full Federal Court and ultimately the High Court, negotiations between the State Government and the Yorta Yorta Nation Aboriginal Corporation between May 2002 and June 2004 ultimately led to the Yorta Yorta Co-operative Land Management Agreement.¹⁴² This provided the Yorta Yorta with co-management and recognition of their traditional ownership of the Barmah Forest and surrounding forests.¹⁴³ It was an example of what could be achieved outside of the native title process.¹⁴⁴

By the 2000s, political opposition to native title started to soften around Australia. Other jurisdictions had demonstrated the workable reality of dealing with native title claims and the operation of rights once recognised.¹⁴⁵ At the same time, First Peoples in Victoria,

recognising the limitations of the *NTA*, began to organise and renew their efforts for an alternative to native title in Victoria.¹⁴⁶ From September 2001, ‘the Victorian Government adopted a more conciliatory approach to the resolution of native title claims’,¹⁴⁷ ultimately resolving some claims by consent and issuing the Guidelines for Native Title Proof.

In more recent years, there have been significant advances in native title case law nationally, with the courts adopting a more expansive interpretation of native title rights and interests.¹⁴⁸ This is discussed further in Chapter 10: Native title.

Traditional Owner settlements

The Land Justice Group

As Uncle Graham Atkinson explained, in Victoria ‘the *Yorta Yorta* decision suggested that litigation of native title was virtually impossible, and that land justice would require very different arrangements’.¹⁴⁹

In response, in February 2005, two years after the *Yorta Yorta* decision, delegates from Traditional Owner groups met to establish the Victorian Traditional Owners Land Justice Group (Land Justice Group).¹⁵⁰ They issued a statement to government ministers calling for an alternative approach to native title to overcome the limits of the *Yorta Yorta* case.¹⁵¹ The Land Justice Group sought a ‘comprehensive land justice settlement’, noting that First Peoples in Victoria were the owners of approximately 0.01 per cent of the state that was once ‘all theirs’.¹⁵²

We were determined to continue the struggle of our ancestors in the hope our children wouldn’t need to fight for land justice.¹⁵³

DR UNCLE GRAHAM ATKINSON

The Land Justice Group sought to ‘establish a fairer process’ that recognises Traditional Owners’ current connections to land, rather than viewing Traditional Owners ‘as museum pieces frozen in time’.¹⁵⁴ The Land Justice Group also sought compensation funded from State revenue, a devolved cultural heritage scheme (discussed further below) and a commercial share of natural resources.¹⁵⁵

In March 2008, following the Land Justice Group’ extensive advocacy, the Brumby Government announced the formation of a steering committee to examine the Land Justice Group’s proposal and to potentially develop a framework for the settlement of Traditional Owner land claims directly with the State.¹⁵⁶ Chaired by Professor Mick Dodson, its membership consisted of representatives from the Land Justice Group, Native Title Services Victoria¹⁵⁷ and senior departmental officers from the Victorian Government.¹⁵⁸ The committee produced the Steering Committee Report,¹⁵⁹ which in turn guided the design of *TOSA*.

The Traditional Owner Settlement Act 2010 (Vic)

TOSA was innovative legislation. It actively addressed the two major issues facing First Peoples seeking native title recognition in Victoria: dispossession from Country and extinguishment of native title through inconsistent land grants. The First Peoples’ Assembly of Victoria explained that *TOSA* ‘attempted to develop a flexible approach to prior extinguishment and address issues of connection that prevented *Yorta Yorta* achieving land justice under the *NTA*’.¹⁶⁰

Unlike native title, *TOSA* does not require evidence of a traditional society largely unaffected by colonisation. Instead, the focus is on identifying the “‘right people for country” who have the “negotiation capacity” to meaningfully enter into agreement-

making under the Framework’.¹⁶¹ However, the legacy of colonisation means that determining the right people for Country has often been challenging.

To overcome the issue of prior extinguishment, *TOSA* provides that the State may enter into recognition and settlement agreements with Traditional Owner groups in relation to public land¹⁶² regardless of any historical grants that may have extinguished native title. Under s 9, recognition and settlement agreements enable the recognition of Traditional Owner rights, including in relation to:

- identity and culture
- maintenance of relationship with land
- rights to access, use, camp on and enjoy land, to take natural resources, to conduct cultural and spiritual activities and to protect important places.¹⁶³

TOSA also enables the making of other related agreements: Land Agreements (s 5), Land Use Activity Agreements (s 6), Funding Agreements (s 7) and Natural Resource Agreements (s 8) (see Chapter 11: Traditional Owner settlements).

The Land Justice Group detailed a series of land justice aspirations in 2005 relating to land, waters and natural resources. The State chose not to meet a number of key aspirations, including an equitable share of natural resources for commercial use, an allocation of water for Aboriginal cultural flows, an allocation of tradeable water for Traditional Owners, and a ‘water trust’ to purchase water allocations.¹⁶⁴

Traditional Owners continue to seek these measures. These water-related matters are discussed in Chapter 14: Water.

Cultural heritage protection

The desecration of First Peoples’ remains

Stand tall be strong
As we walk together shoulder to shoulder
To return our Ancestors back home
To be reburied in their
Country of Birth
Where they were removed
From Mother Earth
They were used for scientific purposes
Hidden away in cold steel cabinets
Shoe boxes, wooden boxes
In sheds out of sight
We need to bring them back home ...
‘We will not be well until this is done’.¹⁶⁵

UNCLE JIM BERG

First Peoples’ cultural heritage and human remains have been destroyed, stolen, bought and sold since the earliest days of the colony. The colonisation of Australia coincided with the enlightenment period in Europe, which was preoccupied with the study of natural phenomena, particularly things considered exotic and unfamiliar. Distinguished Professor Marcia Langton (Yiman, Bidjara) told Yoorrook that ‘white settlers were grave robbing and ... by various other means taking Aboriginal human remains from very early times’.¹⁶⁶

Starting in the mid-1700s, it become popular in Europe to collect Indigenous human remains from around the world. First Peoples’ bodies and body parts were sold overseas and placed in museums, universities and private collections.¹⁶⁷ As Professor Paul Turnbull writes, this was part of

a remarkable surge of interest in morphological and anatomical investigation of [Australian Aboriginal people]; so much so that by the early 1880s there was a complex scientific discourse in operation, centred on the Aboriginal body.¹⁶⁸

The rise in racial ‘science’ in the 1850s invigorated this obsession with First Peoples’ remains. The publication of Charles Darwin’s *On the Origin of Species* in 1859 provided yet another stimulus to racist dialogue and research, leading to ‘local and international markets for the bodies of Indigenous Australians for ... racial research’.¹⁶⁹

In Victoria, two of the largest collectors of First Peoples human remains were Museums Victoria (then called the National Museum of Victoria) and the University of Melbourne (see further discussion in Chapter 23: Tertiary overview and historical context). Both organisations encouraged people to hand in First Peoples’ bodies and body parts for scientific research. The Commonwealth and State governments provided funding to institutions, including the University of Melbourne, to conduct research on human remains.¹⁷⁰ Yoorrook heard that people were incentivised by as little as a ‘shilling and sixpence’ to dig up and rob First Peoples’ burial grounds.¹⁷¹

From 1902, Victoria Police regularly transferred First Peoples’ remains found throughout Victoria (and reported to Victoria Police) to Museums Victoria.¹⁷² Between 1905 and 1978, at least 236 transfers were made.¹⁷³ Records show that Victoria Police also sent First Peoples’ remains to doctors or government pathologists for analysis.¹⁷⁴

The University of Melbourne was an avid collector of First Peoples’ bodies and body parts from its foundation in 1853¹⁷⁵ (see further Chapter 23: Tertiary overview and historical context). The university had prominent eugenicists on its staff, including Professor of Anatomy, Richard Berry.¹⁷⁶ The University of Melbourne continued to build its collection under his direction.¹⁷⁷

Berry was an enthusiastic eugenicist who believed that the mental capacity and hence the worth of an individual or race could be ascertained by the size of the head. He collected skulls ... and published widely on his theories of this racial hierarchy.¹⁷⁸

The University of Melbourne held another significant collection of Aboriginal human remains — the Murray Black collection. George Murray Black was a Gippsland farmer who had studied engineering at the University of Melbourne. Uncle Colin Walker (Yorta Yorta) said:

George Black was paid to dig up a lot along Dhungalla and take the remains. They called it the Murray Black Collection. Some of the Elders reckoned he was paid five bob a skull at the time.¹⁷⁹

UNCLE COLIN WALKER

Professor Marcia Langton described Murray Black as having ‘an obsession with Aboriginal human remains’.¹⁸⁰ Professor Marcia Langton said:

[H]e created his own hobby ... of digging up graves around the State and collecting the body parts, and he must have had quite a collection on his farm.¹⁸¹

PROFESSOR MARCIA LANGTON

Throughout the 1920s to 1940s, Murray Black dug up human remains, initially as an amateur collector and later as commissioned by the University of Melbourne medical school and the Australian Institute of Anatomy in Canberra.¹⁸² The remains provided by Murray Black were divided by the University of Melbourne into the Black and Berry collections.¹⁸³

The first cultural heritage protection law: *The Archaeological and Aboriginal Relics Preservation Act 1972 (Vic)*

The 1960s and 1970s saw a shift in the way the world viewed First Peoples’ cultural heritage. Internationally, the UNESCO General Conference adopted the *Convention Concerning the Protection of the World Cultural and Natural Heritage*¹⁸⁴ in 1972. It was ratified by Australia in 1974.

In 1975, a review of Australia’s museums and national collections reflected:

Aboriginals [sic] were treated as living fossils. Most museums displayed Aboriginal objects, sacred and profane, in taxonomic classification comparable to fossils or fauna until recently when Aboriginal protests forced museums to declassify the Aboriginals [sic]. Only recently have they been seen by museums as people rather than fauna.¹⁸⁵

In Victoria, First Peoples’ advocacy led to Victoria’s first piece of legislation designed to protect Aboriginal heritage — the AARP Act. Minister Hutchins acknowledged to Yoorrook that it was shameful that the State of Victoria did not respond to First Peoples’ calls for protection of their cultural heritage until 1972.¹⁸⁶

The AARP Act focused on the protection of physical cultural heritage and evidence of past occupation such as carvings, drawings and skeletal remains.¹⁸⁷ The AARP Act appointed the Director of Museums Victoria as a ‘Protector of Relics’¹⁸⁸ and an Archaeological Relics Advisory Committee of 10 people.¹⁸⁹ The Committee’s role was to consider and advise on the preservation of archaeological relics.¹⁹⁰ Initially, only one of the people on the committee was required to be Aboriginal;¹⁹¹ this later changed to three.¹⁹²

The AARP Act was primarily concerned with the protection of heritage from a scientific perspective, rather than its value to the people who created it.¹⁹³ It ‘applied a Western, archaeological lens to Aboriginal heritage with little regard for Aboriginal cultural heritage values’.¹⁹⁴ This was demonstrated by the lack of First Peoples’ involvement under the AARP Act. Over time, the AARP Act was criticised, partly because it did not involve First Peoples in decision-making processes and did not recognise that cultural heritage is a product of the present, not just the past.¹⁹⁵

Minister Hutchins acknowledged that, although well intentioned, the AARP Act was misguided and reflected ‘a lack of understanding by the State regarding First Peoples’ continuing culture and connection to Country’.¹⁹⁶ Despite these shortcomings the legislation was used by First Peoples in Victoria in high-profile cases.

The [AARP] Act focused on protecting physical places and objects and facilitated the trade in what were condescendingly termed ‘Aboriginal relics’. Relics included Aboriginal Ancestral remains, effectively meaning that First Peoples’ Ancestors could be bought, sold and put on public display. This disgraceful situation was only remedied 12 years later as a result of the persistent work of First Peoples leaders such as Uncle Jim Berg, who convinced the Victorian Government to make it an offence to be in control of or display Ancestral Remains without the consent of the Secretary of the Department.¹⁹⁷

MINISTER NATALIE HUTCHINS MP

The fight for repatriation

We didn’t want the remains in boxes in museums. They’ve studied us long enough. So we freed them. We freed them back to their land, back to their Country. The Spirits are free then.¹⁹⁸

UNCLE COLIN WALKER

In the 1980s, Uncle Jim Berg used his position as an inspector under the AARP Act to campaign for human remains to be returned to First Peoples and buried on Country (‘repatriation’).

Ghow/Kow Swamp is a First Peoples burial site and one of the largest sites of Ancestors’ remains.¹⁹⁹ In the late 1960s and early 1970s, remains were discovered and excavated by archaeologists, despite protests from First Peoples.²⁰⁰ In 1984, Uncle Jim Berg became aware that ancestral remains, including those stolen from Ghow/Kow Swamp, were going to be sent to an exhibition in New York entitled ‘Ancestors’.²⁰¹ Uncle Jim Berg successfully obtained an injunction to prevent this occurring.²⁰²

A few months later, Uncle Jim Berg obtained an injunction against the University of Melbourne that required the return of the Murray Black collection.²⁰³ Following what Uncle Jim Berg described as ‘a very ugly confrontation’,²⁰⁴ the University of Melbourne initially challenged the injunction but later agreed to repatriate the remains.²⁰⁵ This led to a ‘cold and distant’ relationship for 25 years and Uncle Jim was not invited back to present lectures to medical students about his work in health.²⁰⁶ The University ‘discovered’ the Berry collection two decades later in a university storeroom.²⁰⁷ The remains were eventually repatriated in 2002.²⁰⁸ For further discussion of these events, see Chapter 23: Tertiary overview and historical context.

In 1985, also led by Uncle Jim Berg, the remains of 38 First Nations people from Victoria were buried at Kings Domain Resting Place in the Melbourne City Gardens following legal action taken by the Koorie Heritage Trust for their return from the Melbourne Museum.²⁰⁹

The late respected Elder Aunty Fay Carter (Yorta Yorta, Dja Dja Wurrung) told Yoorrook about the repatriation of the Jaara baby — a young First Peoples child who died during the mid-1800s, whose remains were held by Museums Victoria until 2003:²¹⁰

The Jaara baby was found by a wood chopper. And, of course, in those days, they used to bury — mainly children, I think, up in trees, high — high up in trees. And this wood chopper chopped down a tree — and he was actually on Dja Dja Wurrung country — chopped down a tree and Jaara baby fell out of the tree in a possum skin cloak. Very dilapidated possum skin cloak. And so he picked her up and took her to the police station, and the police station ended up taking her to ... the Melbourne Museum.

She was put in a metal drawer ... for nearly 100 years until we found out what had happened to the Jaara baby. So we went to the Museum ... to get the baby back and rebury her. And so we were — after some time of negotiating with the Museum, we were able to get them to agree to give her back to us.²¹¹

AUNTY FAY CARTER

First Peoples have been working to recover and repatriate their Ancestors and family remains for a long time. That fight continues — First Peoples are still working to recover ancestral remains from museums and institutions around the world.²¹² Sacred sites and burial grounds are still being desecrated, often with impunity. In Chapter 12: Cultural heritage, Yoorrook considers the strengths and limitations of the AHA in protecting cultural heritage, including human remains, and barriers to repatriation. Uncle Colin Walker (Yorta Yorta) articulated:

What haunts me every night is wondering — who is going to be responsible for bringing all the others back?²¹³

UNCLE COLIN WALKER

RETURN OF BURIAL SITES UNDER THE *ABORIGINAL LANDS ACT 1991* (VIC)

In 1991, there was a further return of land with the passing of the *Aboriginal Lands Act 1991* (Vic) (‘ALA 1991’), which returned three cemeteries at former reserve/mission sites to Traditional Owners.²¹⁴

The ALA 1991 granted freehold title over burial sites at Coranderrk reserve, Ebenezer and Ramahyuck mission sites. Minister Hutchins said the freehold titles was granted to the Wurundjeri Woi Wurrung Cultural Heritage Aboriginal Corporation, Goolum Goolum Aboriginal Co-Operative and Gippsland and East Gippsland Aboriginal Co-Operative, as the relevant Aboriginal-led community organisations at that time. The Barengi Gadjin Land Council are now recognised as the relevant Traditional Owner group with an interest in the Ebenezer site, and the Gunaikurnai Land and Waters Aboriginal Corporation are the responsible Traditional Owner group for the Ramahyuck site.²¹⁵

The ALA 1991 restricts the rights of titleholders by prohibiting them from selling or ‘transferring their respective interests in the land (Transfer Restriction) and restricting their use of the lands to Aboriginal cultural and burial purposes (Use Restriction)’.²¹⁶

Minister Hutchins stated that the Victorian Government ‘is progressing reforms to remove the restrictions’, recognising that they do not reflect current Victorian Government policies that seek to promote self-determination, including in relation to property rights.²¹⁷ Minister Hutchins explained that the ‘transfer and use restrictions will be removed on the Ebenezer and Ramahyuck mission cemeteries and retained for Coranderrk mission cemetery, in line with the respective wishes of the title holders and Traditional Owners’.²¹⁸

The government stated that it recognised the importance of ensuring that the State returns control of the Ebenezer cemetery to the Barengi Gadjin Land Council through reforms to the ALA 1991.²¹⁹

Yoorrook notes that the *ALA 1991* serves as another example of how land returns are often accompanied by restrictions, with the ultimate decision-making power remaining with the State. This process fails to transfer genuine power and resources, does not support self-determination and does not recognise sovereignty. The *ALA 1991* illustrates the ongoing inadequacy of the State’s response to land injustices.

A dual system for protection

The Federal Government introduced Aboriginal cultural heritage legislation in 1984 with the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) (‘*ATSIHP Act*’).²²⁰ The *ATSIHP Act* is based on the principle that areas and objects should be protected because of their cultural or spiritual significance to First Peoples.²²¹ This was a departure from state laws that protected sites and objects primarily on the basis of their archaeological or scientific significance.

In 1986, the Victorian Government introduced a bill to replace the *AARP Act*.²²² The bill was blocked by the then Opposition.²²³ The Victorian Government asked the Commonwealth to introduce the bill as part of the *ATSIHP Act*. In 1987, the Commonwealth introduced Part IIA of the *ATSIHP Act*, which applied exclusively to Victoria. Part IIA was repealed in 2006.²²⁴

The Commonwealth legislation recognised ‘Aboriginal folklore’, defined as ‘traditions or oral histories that are or have been part of, or connected with, the cultural life of Aboriginals (including songs, rituals, ceremonies, dances, art, customs and spiritual beliefs) and that are of particular significance to Aboriginals in accordance with Aboriginal tradition’.²²⁵ These values were capable of being recognised and protected through voluntary Aboriginal cultural heritage agreements (section 21K), but they were excluded from the primary protective order and offence provisions — 21C(1), 21D(1), 21E(1) and 21U(1).²²⁶ Under Part IIA, the Minister administering the *ATSIHP Act* could make declarations ordering or preventing actions to protect tangible Aboriginal cultural heritage (Aboriginal places and Aboriginal objects).²²⁷ An inspector or the Minister could make emergency declarations for 30 days.²²⁸ These powers did not extend to intangible cultural heritage. To date, very few applications for heritage protection declarations under the *ATSIHP Act* have been successful.²²⁹

The following two cases provide examples. In 1989, the Wamba Wemba people, custodians for lands on both the Victorian and New South Wales sides of the Murray River, applied to the Minister for an emergency declaration under the *ATSIHP Act*. The application related to a site on which a golf club was proposed to be built and where ancestral remains had been found, with evidence suggesting human occupation of the area for 30,000 years. The Minister refused to make the declaration. The Wamba Wemba unsuccessfully challenged the Minister’s decision in the Federal Court of Australia.²³⁰ The golf club was built on the site.

In 2003, the Melbourne Museum, prompted by then-employee and Aboriginal activist, Gary Foley, requested that the British Museum loan two bark etchings created by Dja Dja Wurrung people in the 1850s. These etchings were the ‘earliest surviving Aboriginal bark etchings in Australia’ and the ‘only remaining examples of artistic work done by Kulin men from the Loddon and Murray Rivers during the nineteenth century’.²³¹ When the bark etchings arrived at the Melbourne Museum, the Dja Dja Wurrung people, led by Uncle Gary Murray (Dhudhuroa, Yorta Yorta, Barapa Barapa, Dja Dja Wurrung, Wamba Wemba, Wergaia, Wiradjeri, Waywurru), claimed traditional ownership of the items and successfully sought an emergency declaration under Part IIA of the *ATSIHP Act*, preventing the Melbourne Museum from returning the items. The declaration was valid for 30 days but Rodney Carter (Dja Dja Wurrung), an inspector appointed under the *ATSIHP Act*, extended it multiple times.²³²

The Melbourne Museum successfully challenged the declaration extensions in court.²³³ The Dja Dja Wurrung people then applied to the Minister under ss 21E and 21L of the

ATSIHP Act for a permanent declaration of preservation and compulsory acquisition of the bark etchings. This was unsuccessful, and the Melbourne Museum returned the etchings to the British Museum.²³⁴

The Aboriginal Heritage Act 2006 (Vic)

Alongside its calls for land rights, the Victorian Traditional Owners Land Justice Group advocated for new cultural heritage legislation.²³⁵ The Bracks government agreed with the need for reform.²³⁶ The government wanted Victoria to regain primary responsibility for cultural heritage protection rather than the dual protection system.²³⁷

The Victorian Government introduced the *AHA* in 2006. For the first time, it placed primary responsibility for the management of cultural heritage in the hands of Traditional Owners. The *AHA* established the Aboriginal Heritage Council and the Victorian Aboriginal Heritage Register. The Aboriginal Heritage Council requires that members are Traditional Owners. It is responsible for appointing Registered Aboriginal Parties (RAPs) to protect cultural heritage on their Countries.²³⁸

In 2016, the government enacted important reforms to the *AHA*. This included Australia’s first explicit legal protection for intangible cultural heritage (traditional knowledge, music, stories, dance and languages).²³⁹

The *AHA* was ‘a welcome change’ from previous legislation.²⁴⁰ However, Yoorrook heard that there are still significant deficiencies in the legislation and changes are required to ensure the protection of cultural heritage and the self-determination of Traditional Owners. Chapter 12: Cultural heritage, assesses the operation of the legislation and current regime.

Treaty — a fourth pathway to recognition

Victoria has moved into a new era of recognition of First Peoples’ and Traditional Owner rights with the passing of the *Advancing the Treaty Process with Aboriginal Victorians Act 2018* (Vic). The treaty process provides additional pathways for Traditional Owner groups without existing formal recognition under the *NTA*, *TOSA* or *AHA* to participate in treaty negotiations.

The First Peoples’ Assembly of Victoria is an independent body that represents the Traditional Owners of Country and First Peoples in Victoria. It currently has 33 members —elected by First Peoples in Victoria — and other positions reserved for each Traditional Owner group formally recognised under legislation.

The First Peoples’ Assembly of Victoria and the Victorian Government have reached agreement on the Treaty Negotiation Framework, which will enable Traditional Owners to negotiate treaties across the state, and the Assembly to negotiate a statewide treaty to deliver structural reform that will benefit all First Peoples in Victoria and the broader community. For the purposes of statewide treaty negotiations, the First Peoples’ Assembly of Victoria is acting as the First Peoples’ Representative Body.

Traditional Owner treaties are grounded in the recognition of the inherent rights of Traditional Owners over their Country, including their traditional lands and waters. These treaties will empower Traditional Owners to exercise self-determination, allowing them to take control of matters directly affecting their Country and community.²⁴¹

First Peoples will negotiate Traditional Owner treaties through the formation of Treaty Delegations. The Treaty Negotiation Framework allows these delegations to form in a self-determined way, free from State involvement. Delegations may consist of Traditional

Owner groups with existing status and those seeking recognition to negotiate a treaty over specific areas. The Treaty Authority will assist in resolving any disputes that may arise during the formation of these delegations.

Role of the Treaty Authority

Under the Treaty Negotiation Framework²⁴² the State does not have a role in ensuring a Traditional Owner group’s readiness to negotiate, such as assessing its research, group composition and internal governance. Instead, the Treaty Authority oversees these processes. The Treaty Authority is an independent ‘umpire’ that consists solely of First Peoples, whose membership was selected through an independent process.²⁴³

The Treaty Authority is independent of the State of Victoria, the First Peoples’ Assembly of Victoria, Traditional Owners and other First Peoples groups. The Treaty Authority is grounded in First Peoples lore, law and cultural authority and is the first of its kind in Australia. Its role includes:

- making sure parties follow the rules for treaty-making in accordance with the Treaty Negotiation Framework
- assisting parties to make agreements
- helping resolve any disputes related to treaty-making
- carrying out research to support and inform treaty negotiations.

The Treaty Authority is not itself party to any treaty negotiations.

Under the Treaty Negotiation Framework, which establishes the standards and rules to facilitate the negotiations, there will be both a statewide treaty negotiated between the State and the First Peoples’ Assembly of Victoria, and local Traditional Owner treaties between the State of Victoria and Traditional Owner groups. The Treaty Authority will oversee negotiations and mediate disputes between these parties.²⁴⁴

The Treaty Authority will also play a central role in the early stages of Traditional Owner treaties. To negotiate a treaty, the relevant Traditional Owner group or groups must first form a First Nations Treaty Delegation in a process the Treaty Authority will oversee.²⁴⁵

If the experience of the *NTA* and the *TOSA* is any guide, the formation of a delegation could be a challenging process. In broad terms it will occur as follows:

- any Traditional Owner group that wants to negotiate a treaty for a particular area must apply to the Treaty Authority to be entered on a register.
- those groups with an existing status under the *AHA*, *TOSA* or *NTA* are automatically entitled to be entered on the register.
- those without such status are required to meet ‘Minimum Standards’, which present a low threshold, requiring that they identify the area they claim, the basis of their Traditional Ownership claim, their internal leadership and governance structures, and that they are inclusive of all group members.²⁴⁶ The Treaty Authority is required to enter such applications ‘without independently assessing the Group’s satisfaction of the Minimum Standards’.²⁴⁷ The issue will only arise if another Traditional Owner group raises a dispute in relation to their inclusion on the register.

Importantly, groups are not prohibited from seeking to be registered over an area for which another group already has recognition under the *AHA*, *TOSA* or *NTA*.

When disputes arise, the role of the Treaty Authority is to

convene facilitated discussions or yarning circles to offer the parties to a dispute the opportunity to speak in a safe and non-judgmental place, share their strengths in an inclusive environment and collaborate to build a plan and create a collective commitment to action.²⁴⁸

One of the advantages of this process is that it is First Peoples-led and governed. Additionally, the Treaty Authority has ‘as a matter of last resort’ the ability to suspend or terminate negotiations, remove a group from the register, or amend their entry on the register.²⁴⁹ The State does not have a role in this process.²⁵⁰

Additional pathways

In recognition of the struggle that many First Peoples in Victoria have endured in the fight for formal recognition under existing statutory systems and to maximise opportunities for participating in treaty, the First Peoples’ Assembly of Victoria has established an ‘additional pathway for Traditional Owner groups who do not have formal recognition under legislation to apply for a reserved seat’ on the First Peoples’ Assembly of Victoria.²⁵¹ This ensures that all Traditional Owners have a voice in the negotiation process.

The First Peoples’ Assembly of Victoria has determined the criteria that a group must meet to appoint a representative to the First Peoples’ Assembly of Victoria.²⁵² It is not yet clear what role such recognition may play in forthcoming negotiations for treaty. Traditional Owners appointed through the Additional Pathways process will work with other elected Assembly members on developing the foundations for future treaty-making.

The way forward

The ways the State currently recognises First Peoples’ inherent rights to Country and cultural rights are inadequate and fragmented.

The State can and should address these inadequacies in the shorter term, at least in part. How that can be done is discussed in the chapters relating to each specific recognition system (see Chapter 10: Native title, Chapter 11: Traditional Owner settlements and Chapter 12: Cultural heritage).

In the longer term, however, land justice for First Peoples requires higher-level transformation of the current colonial legacy system of legislation and policy — to a rational, holistic and coherent system recognising First Peoples’ inherent rights to Country and cultural rights. That transformation must produce a system that is integrated, not fragmented, and that is developed through First Peoples and the State meeting on equal terms.

Creating a comprehensive and internally coherent system of recognition of First Peoples’ rights to Country and cultural rights is a complex undertaking. It involves negotiating the undoing of the present structures that embody colonial outlooks. The process is also time consuming and lengthy because it involves the unravelling of more than 200 years of entrenched and systemic discrimination and unfairness to First Peoples. Treaty, therefore, is the most appropriate mechanism for agreeing, designing and establishing the format and processes for this transformation of recognition of First Peoples’ rights to Country and associated cultural rights.

Recommendations

RECOMMENDATION 20

The Victorian Government must:

- a. Adopt a principle that First Peoples are entitled to sufficient lands, waters, resources to support their social, emotional and cultural wellbeing; and
- b. To the extent that the existing systems are unable to deliver those lands, waters and resources, agree Traditional Owner treaties to provide an equitable share of lands, waters and resources to First Peoples.

RECOMMENDATION 21

Through the treaty process, the Victorian Government must negotiate with the First Peoples’ Assembly of Victoria and Traditional Owners to guarantee, uphold and enhance First Peoples’ inherent rights to Country through a self-determined, empowering and healing model, including by taking the following steps:

- a. Enabling recognition of First Peoples’ rights to land (at a minimum, reflecting UNDRIP principles);
- b. Enabling opportunities to disregard by agreement previously extinguished First Peoples’ rights to lands, waters and resources (including under s 47C of the *Native Title Act 1993* (Cth));
- c. Advocating to the Commonwealth Government for amendment to the *Native Title Act 1993* (Cth) to provide for certain prior extinguishment to be disregarded, expanding on the current categories and for the limitation of extinguishment with respect to future acts;
- d. Establishing a default mechanism to transfer to Traditional Owners entitlements to land, waters, resources on the sale, surrender or expiration of third party leasehold, licences, entitlements and other interests;
- e. Not granting new rights or entitlements in Crown lands, waters and resources without providing opportunities for Traditional Owners to themselves acquire the relevant interest, or benefit from the revenues generated;
- f. Ensuring that Traditional Owners have the opportunity to participate in the State’s ‘right of first refusal’ processes when the State is proposing to sell or repurpose Crown or Government-owned land;
- g. Establishing ongoing funding for Traditional Owner groups to purchase on the open market privately held land of cultural significance or which would support Traditional Owners’ community objectives;
- h. Enacting reforms enabling traditional cultural use rights on public land (more broadly than the rights recognised within individual TOSA and NTA agreements and determinations);
- i. Enacting reforms enabling First Peoples to commercially use and develop their lands, waters and resources; and
- j. Treating Traditional Owners as rights holders, not standard ‘land users’, including by exempting them from obligations to pay taxes, rates and charges in the case of lands, waters and natural resources.

RECOMMENDATION 22

The Victorian Government must provide additional funding and support for the Self-Determination Fund and the Treaty Authority to deliver processes for determining the right people for Country.

Endnotes

1. Transcript of roundtable with Barengi Gadjin Land Council, 26 October 2023, 7, served on the State of Victoria on 1 April 2024.
2. Federation of Victorian Traditional Owner Corporations, *Understanding the Landscape: The Foundations and Scope of a Victorian Treaty* (2019), 10.
3. Witness Statement of Minister Gabrielle Williams MP, 3 May 2022, 7 [58].
4. National Native Title Tribunal, ‘[About Indigenous Land Use Agreements](#)’ (Webpage).
5. Victorian Aboriginal Community Controlled Health Organisation, Submission 340 (Land, Sky, Waters), 9.
6. *Aboriginal Heritage Act 2006* (Vic) ss 116 and 121. Section 116 allows project sponsors to apply to VCAT to overturn a RAP’s decision to refuse a cultural heritage management plan. Section 121 allows applicants for a cultural heritage permit to apply to VCAT to overturn a RAP’s decision to refuse the permit. See also Victorian Aboriginal Heritage Council, *Taking Control of Our Heritage: Aboriginal People Caring for Aboriginal Heritage* (Report, April 2021), 21–23, 41.
7. First Peoples’ Assembly of Victoria, Submission 378 (Land, Sky, Waters), 21; First Nations Legal and Research Services, Submission 345, 11–13.
8. See First Nations Legal and Research Services, Submission 345, 17–18; Victorian Aboriginal Community Controlled Health Organisation, Submission 340 (Land, Sky, Waters), 9.
9. First Nations Legal and Research Services, Submission 345 (Addendum 2 ‘Technical Paper on the Methods of Establishing Non-Economic Reparations’), 8.
10. First Nations Legal and Research Services told Yoorrook that where projects are ‘wholly or partly on land where native title has been extinguished, or where land use activity agreement rights do not apply, then a First Nation may have little or no bargaining power’: First Nations Legal and Research Services, Submission 345 (Addendum 2 ‘Technical Paper on the Methods of Establishing Non-Economic Reparations’), 8.
- See also the above discussion in respect of RAP decisions on cultural heritage management plans and cultural heritage permits being subject to VCAT review. See also *Aboriginal Heritage Act 2006* (Vic) ss 116 and 121.
11. *Aboriginal Lands Act 1970* (Vic).
12. Department of Premier and Cabinet, Response to NTP-003-030 — ‘*Community Relations and Heritage, FPSR – Responses to RFI – Response from Matthew Lloyd*’, 6 [2], produced by the State of Victoria in response to the Commission’s Notice to Produce dated 19 February 2024. See also First Peoples Relations Victoria, ‘[Review of the Aboriginal Lands Act 1970](#)’ (Webpage); Anonymous 586, Submission 586 (Attachment: Diana Barwick An *Assessment of the Cultural and Historical Significance to the Present Aboriginal Community of the Land Reserved at Framlingham in 1861* (1979)).
13. Department of Premier and Cabinet, Response to NTP-003-030 — ‘*Yoorrook Justice Commission – Community Relations and Heritage, FPSR – Responses to RFI – Response from Matthew Lloyd*’, 6 [3], produced by the State of Victoria in response to the Commission’s Notice to Produce dated 19 February 2024.
14. First Peoples State Relations, ‘[Review of the Aboriginal Lands Act 1970](#)’ (Webpage).

- For the history of advocacy regrading Framlingham and Lake Tyres prior to 1970, see generally Anonymous 586, Submission 586 (Attachment: Diana Barwick An *Assessment of the Cultural and Historical Significance to the Present Aboriginal Community of the Land Reserved at Framlingham in 1861* (1979)).
15. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 16 [71].
16. Other land returned in Victoria under Victorian and Commonwealth legislation includes the *Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987* (Cth) returned Lake Condah and Framlingham Forest, *Aboriginal Lands (Aborigines’ Advancement League)* (Watt Street, Northcote) Act 1982 (Vic) provided land to the Aborigines’ Advancement League, *Aboriginal Lands Act 1991* (Vic) returned cemeteries and access roads at Coranderrk, Ramahyuck and Ebenezer and *Aboriginal Land (Manatunga Land) Act 1992* (Vic) returned four hectares of land to the Murray Valley Aboriginal Co-operative.
17. Department of Premier and Cabinet, Response to NTP-003-030 — ‘*Yoorrook Justice Commission – Community Relations and Heritage, FPSR – Responses to RFI – Response from Matthew Lloyd*’, 6 [4], produced by the State of Victoria in response to the Commission’s Notice to Produce dated 19 February 2024. See also First Peoples Relations Victoria, ‘[Review of the Aboriginal Lands Act 1970](#)’ (Webpage).
18. Department of Premier and Cabinet, Response to NTP-003-030 — ‘*Yoorrook Justice Commission – Community Relations and Heritage, FPSR – Responses to RFI – Response from Matthew Lloyd*’, 6 [4], produced by the State of Victoria in response to the Commission’s Notice to Produce dated 19 February 2024. See also *Aboriginal Lands Act 1970* (Vic) s 8.
19. Department of Premier and Cabinet, Response to NTP-003-030 — ‘*Yoorrook Justice Commission – Community Relations and Heritage, FPSR – Responses to RFI (19 February 2024) – Response from Matthew Lloyd*’, 6 [4], produced by the State of Victoria in response to the Commission’s Notice to Produce dated 19 February 2024. See also *Aboriginal Lands Act 1970* (Vic) ss 9 and 12.
20. Department of Premier and Cabinet, Response to NTP-003-030 — ‘*Yoorrook Justice Commission – Community Relations and Heritage, FPSR – Responses to RFI (19 February 2024) – Response from Matthew Lloyd*’, 6 [4], produced by the State of Victoria in response to the Commission’s Notice to Produce dated 19 February 2024. See also *Aboriginal Lands Act 1970* (Vic) s 10.
21. Department of Premier and Cabinet, Response to NTP-003-030 — ‘*Yoorrook Justice Commission – Community Relations and Heritage, FPSR – Responses to RFI (19 February 2024) – Response from Matthew Lloyd*’, 6 [4], produced by the State of Victoria in response to the Commission’s Notice to Produce dated 19 February 2024. See also *Aboriginal Lands Act 1970* (Vic) s 11(3) and (4).
22. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 20 [86].
23. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 35 [171].
24. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 35 [171].
25. Transcript of Aunty Marjorie Thorpe, 15 April 2024, 16 [17]–[20].
26. Transcript of Aunty Marjorie Thorpe, 15 April 2024, 16 [21]–[25].

27. Transcript of roundtable with Gunaikurnai Land and Water Aboriginal Corporation, 30 November 2022 (Part 1), 25, served on the State of Victoria on 12 April 2024; Transcript of Aunty Marjorie Thorpe, 15 April 2024, 17 [2]–[31].
28. Transcript of Aunty Marjorie Thorpe, 15 April 2024, 17 [2]–[31].
29. Jason Behrendt and Tim Goodwin, *Final Report to Minister For Aboriginal Affairs On The Aboriginal Lands Act 1970 (Vic)* (Report, 7 September 2021); Department of Premier and Cabinet, Response to NTP-003-030 — ‘*Yoorrook Justice Commission – Community Relations and Heritage, FPSR – Responses to RFI (19 February 2024) – Response from Matthew Lloyd*’, 6 [5], produced by the State of Victoria in response to the Commission’s Notice to Produce dated 19 February 2024.
30. Jason Behrendt and Tim Goodwin, *Final Report to Minister For Aboriginal Affairs On The Aboriginal Lands Act 1970 (Vic)* (Report, 7 September 2021); See also First Peoples – State Relations Victoria, ‘[Review of the Aboriginal Lands Act 1970](#)’ (Webpage), and ‘[Issues with the ALA and Recommendations](#)’ (Webpage).
31. Victorian Government, *Victorian Government response to the recommendations of the independent review of the Aboriginal Lands Act 1970* (Vic) (August 2023); Department of Premier and Cabinet, Response to NTP-003-030 — ‘*Yoorrook Justice Commission – Community Relations and Heritage, FPSR – Responses to RFI – Response from Matthew Lloyd*’, 6 [5], produced by the State of Victoria in response to the Commission’s Notice to Produce dated 19 February 2024.
32. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 35 [172].
33. Victorian Government, *Victorian Government response to the recommendations of the independent review of the Aboriginal Lands Act 1970* (Vic) (August 2023), 20.
34. Witness Outline of Aunty Marjorie Thorpe, 15 April 2024, 4 [22].
35. Transcript of Aunty Marjorie Thorpe, 15 April 2024, 11 [12]–[21].
36. Transcript of Aunty Marjorie Thorpe, 15 April 2024, 11 [22]–[26].
37. Find & Connect, ‘[Lake Tyers Mission Station](#)’ (Webpage); Deadly Story, ‘[Bung Yarnda \(Lake Tyers Mission\)](#)’ (Webpage); Lake Tyers Aboriginal Trust, ‘[The Trust: Mission History](#)’ (Webpage).
38. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 14 [61].
39. McDonald Family of Tae Rak (Lake Condah), Submission 202, 179.
40. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 14 [61], citing Board for the Protection of the Aborigines in the Colony of Victoria, *Twenty-Sixth Report* (1890).
41. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 14 [62] (citations omitted).
42. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 14 [62], citing Board for the Protection of Aborigines, *Fifty-First Report* (1925), 3; *Coranderrk Lands Act 1948* (Vic).
43. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 14–15 [62] (citations omitted).
44. Uncle Jim Berg, Submission 10, 20.
45. Transcript of Uncle Jim Berg, 27 March 2024, 48 [1].
46. Transcript of Aunty Marjorie Thorpe, 15 April 2024, 12 [19]–[20].
47. Witness Outline of Aunty Marjorie Thorpe, 14 April 2024, 4 [23].

48. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 15 [63], citing National Museum Australia ‘[Campaign to Save Lake Tyers](#)’ (Webpage).
49. Witness Outline of Aunty Marjorie Thorpe, 14 April 2024, 4 [23].
50. Transcript of Aunty Marjorie Thorpe, 14 April 2024, 10 [38]–[44].
51. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 15 [63].
52. *Onus v Alcoa of Australia Ltd* (1981) 149 CLR 27, 30–32 (Gibbs CJ).
53. Section 21 of the AARP Act made it an offence to wilfully or negligently deface or damage or otherwise interfere with a ‘relic’.
54. Witness Statement of Uncle Johnny Lovett, 27 April 2022, 19 [112]–[114]. See also *Onus v Alcoa Australia Ltd* (1981) 149 CLR 27, 32 (Gibbs CJ).
55. *Onus v Alcoa of Australia Ltd* (1981) 149 CLR 27, (Gibbs CJ).
56. *Onus v Alcoa of Australia Ltd* (1981) 149 CLR 27, 36 [6] (Gibbs CJ).
57. Witness Statement of Uncle Johnny Lovett, 27 April 2022, 19 [114].
58. Jessica K Weir, *The Gunditjmara Land Justice Story* (Australian Institute of Aboriginal and Torres Strait Islander Studies, 2009), 13–15.
59. Jessica K Weir, *The Gunditjmara Land Justice Story* (Australian Institute of Aboriginal and Torres Strait Islander Studies, 2009), 13–15.
60. Jessica K Weir, *The Gunditjmara Land Justice Story* (Australian Institute of Aboriginal and Torres Strait Islander Studies, 2009), 11.
61. Jessica K Weir, *The Gunditjmara Land Justice Story* (Australian Institute of Aboriginal and Torres Strait Islander Studies, 2009), 11.
62. Jessica K Weir, *The Gunditjmara Land Justice Story* (Australian Institute of Aboriginal and Torres Strait Islander Studies, 2009), 15.
63. Yoorrook Justice Commission, ‘[One of the Most Significant Land Rights Cases in Victoria’s History: Onus v Alcoa](#)’ (Online video, 2024).
64. Yoorrook Justice Commission, ‘[One of the Most Significant Land Rights Cases in Victoria’s History: Onus v Alcoa](#)’ (Online video, 2024).
65. See *Mabo v Queensland [No 2]* (1992) 175 CLR 1, 41 (Brennan J).
66. *Mabo v Queensland [No 2]* (1992) 175 CLR 1, 34 (Brennan J). See also *Cooper v Stuart* (1889) 14 App Cas 286, 291 (Lord Watson); See also Suzannah Henty, ‘In the Soil That Nurtures Us: A Certain Death to the Colonial Myth’ (2021) 1(3) *Index Journal* 1, 16.
67. *Mabo v Queensland [No 2]* (1992) 175 CLR 1, 32, 36 (Brennan J).
68. *Cooper v Stuart* (1889) 14 App Cas 286, 291 (Lord Watson).
69. Transcript of Professor Henry Reynolds, 27 March 2024, 14 [10]–[15].
- These cases are known as the Cherokee Cases or the Marshall Trilogy.
70. Transcript of Professor Henry Reynolds, 27 March 2024, 14 [25]–[27].
71. *Mabo v Queensland [No 2]* (1992) 175 CLR 1, 69 (Brennan J).
72. *Mabo v Queensland [No 2]* (1992) 175 CLR 1, 69 (Brennan J).
73. *Mabo v Queensland [No 2]* (1992) 175 CLR 1, 42 (Brennan J).

74. *Mabo v Queensland [No 2]* (1992) 175 CLR 1, 29 (Brennan J).

75. *Mabo v Queensland [No 2]* (1992) 175 CLR 1, 41–42 (Brennan J).

76. *Mabo v Queensland [No 2]* (1992) 175 CLR 1, 42 (Brennan J).

77. *Mabo v Queensland [No 2]* (1992) 175 CLR 1, 39–40 (Brennan J).

78. *Mabo v Queensland [No 2]* (1992) 175 CLR 1, 40 (Brennan J).

79. *Mabo v Queensland [No 2]* (1992) 175 CLR 1, 68 (Brennan J).

80. Richard Broome, *Aboriginal Victorians: A History since 1800* (Allen & Unwin, 2005) 54.

81. Federation of Victorian Traditional Owner Corporations, *A Framework for Traditional Owner Treaties: Lessons from the Settlement Act* (Discussion Paper No 5, 2021) 11 (‘Treaty Paper 5’); Department of Environment, Land, Water and Planning (Vic), [Crown Land in Victoria \(Overview\)](#) (Fact Sheet), 1.

82. Department of Environment, Land, Water and Planning (Vic), [Crown land in Victoria \(Overview\)](#) (Good Governance Fact Sheet No 12) 1; Federation of Victorian Traditional Owner Corporations, *A Framework for Traditional Owner Treaties: Lessons from the Settlement Act* (Discussion Paper No 5, 2021) 11 (‘Treaty Paper 5’).

83. *Mabo v Queensland [No 2]* (1992) 175 CLR 1, 59–60 (Brennan J).

84. *Mabo v Queensland [No 2]* (1992) 175 CLR 1, 60 (Brennan J).

85. Mark Harris, ‘Jeff Kennett, *Mabo*, and the *Land Titles Validation Bill*’ (1993) 3(64) *Aboriginal Law Bulletin* 22, 22.

86. Mark Harris, ‘Jeff Kennett, *Mabo*, and the *Land Titles Validation Bill*’ (1993) 3(64) *Aboriginal Law Bulletin* 22, 22, in a position he later conceded was incorrect. See, eg, The Age, ‘[I Was Wrong on Mabo: Kennett](#)’ (Webpage, 1 June 2002).

87. Witness Statement of Uncle Kevin Coombs, 26 May 2022, 20 [125]–[126].

88. Mark Harris, ‘Jeff Kennett, *Mabo*, and the *Land Titles Validation Bill*’ (1993) 3(64) *Aboriginal Law Bulletin* 22, 22.

89. The Age, ‘[I Was Wrong on Mabo: Kennett](#)’ (Webpage, 1 June 2002).

90. *Western Australia v Ward (2002)* 213 CLR 1, 65 (Gleeson CJ, Gaudron, Gummow and Hayne JJ).

91. *Native Title Act 1993* (Cth) s 223.

92. Aboriginal Land Rights Commission, Parliament of Australia, [Second Report](#) (Parliamentary Paper No 69, April 1974) 10 [55].

93. Comhar Group, Submission 338, 3.

94. Transcript of Uncle Graham Atkinson, 15 April 2024, 24 [26]–[31].

95. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 48 [242], citing *Aboriginal Land Claims Bill 1983* (Vic). Preamble, sections 3, 7, 12, 24 and Explanatory memorandum; Victoria, Parliamentary Debates, Legislative Assembly, 16 March 1983, 3145 (Mr Cain, Premier); Victoria, Parliamentary Debates, Legislative Assembly, 29 November 1983, 2371 (Mr. Cain, Premier); Australian Law Reform Commission, ‘[Legislation on hunting and gathering rights](#)’ (2010).

96. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 48–49 [242]–[243], citing Social Development Committee, *Report upon Inquiry into Compensation for Dispossession and Dispersal of the Aboriginal People* (Parliament of Victoria, 1984); Victoria, *Parliamentary Debates*, Legislative Council, 1 May 1985.

97. Transcript of Rainer Matthews, 16 April 2024, 61 [1]–[14].

98. Transcript of Rainer Matthews, 16 April 2024, 61 [1]–[14].

99. Mark Harris, ‘Jeff Kennett, *Mabo*, and the *Land Titles Validation Bill*’ (1993) 3(64) *Aboriginal Law Bulletin* 22, 22.

100. *Land Titles Validation Act 1994* (Vic) s 13.

101. Mark Harris, ‘Jeff Kennett, *Mabo*, and the *Land Titles Validation Bill*’ (1993) 3(64) *Aboriginal Law Bulletin* 22, 23, citing Victorian Aboriginal Legal Service, Submission to the Parliamentary Hearing Committee on the State Government’s Land Titles Validation Bill 1993 (4 August 1993) 1.

102. Mark Harris, ‘Jeff Kennett, *Mabo*, and the *Land Titles Validation Bill*’ (1993) 3(64) *Aboriginal Law Bulletin* 22, 23, citing Victorian Aboriginal Legal Service, Submission to the Parliamentary Hearing Committee on the State Government’s Land Titles Validation Bill 1993 (4 August 1993) 1.

103. *Wik Peoples v Queensland* (1996) 187 CLR 1.

104. Land Titles Validation (Amendment) Bill 1998 (Vic).

105. Wayne Atkinson, ‘[The Victorian Government’s Land Titles Validation Act 1998: “Return to or Continuation of Colonial Mindset”](#)’ (Speech, La Trobe University, 12 December 2000).

106. Department of Premier and Cabinet, ‘Native Title Act 1993 and the Traditional Owner Settlement Act 2010’, 13.

107. *Clarke on behalf of the Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagulk Peoples v Victoria* [2005] FCA 1795.

108. *Lovett on behalf of the Gunditjmara People v Victoria* [2007] FCA 474.

109. *Mullett on behalf of the Gunai/Kurnai People v Victoria* [2010] FCA 1144.

110. *Lovett on behalf of the Gunditjmara People v Victoria* (No 5) [2011] FCA 932.

111. *Austin on behalf of the Eastern Maar People v Victoria* [2023] FCA 237.

112. *Austin on behalf of the Eastern Maar People v State of Victoria* (No 2) [2024].

The 2024 Eastern Maar native title determination was not included in information provided by the State to Yoorrook in 2023, so is not reflected in tables and figures in Chapter 10: Native title.

113. National Native Title Tribunal, ‘[National Native Title Register](#)’ (Webpage); Department of Premier and Cabinet, ‘Native Title Act 1993 and the Traditional Owner Settlement Act 2010’, 13.

114. National Native Title Tribunal, ‘[Statistics](#)’ (Webpage, accessed 16 November 2024).

115. Witness Statement of Uncle Colin Walker, 27 May 2022, 7 [53].

116. Transcript of Uncle Graham Atkinson, 15 April 2024, 20 [27]–[34].

117. Transcript of Uncle Graham Atkinson, 15 April 2024, 20 [27]–[37].

118. Transcript of Uncle Graham Atkinson, 15 April 2024, 20 [27]–[37].

119. *Application by Yorta Yorta Clans* (National Native Title Tribunal, VC1994/001, commenced 21 February 1994).

120. The Age, ‘[Victoria to Oppose Yorta Yorta Claim](#)’ (Webpage, 16 May 2002).

121. Mark Harris, ‘Jeff Kennett, *Mabo*, and the *Land Titles Validation Bill*’ (1993) 3(64) *Aboriginal Law Bulletin* 22, 23.

122. Victoria, *Parliamentary Debates*, Legislative Assembly, 12 November 1998, 1129 (Noel Maughan).

123. Transcript of Uncle Graham Atkinson, 15 April 2024, 21 [35]–[38].

124. *Members of the Yorta Yorta Aboriginal Community v Victoria* [1998] FCA 1606.

125. *Members of the Yorta Yorta Aboriginal Community v Victoria* [1998] FCA 1606, [129] (Olney J).

126. *Members of the Yorta Yorta Aboriginal Community v Victoria* [1998] FCA 1606, [121] (Olney J).

127. *Members of the Yorta Yorta Aboriginal Community v Victoria* [1998] FCA 1606, [121] (Olney J).

128. Uncle Graham Atkinson, Submission 330, 2.

129. *Members of the Yorta Yorta Aboriginal Community v Victoria* [1998] FCA 1606, [129] (Olney J).

130. Andrew Scarce, ‘[Yorta Yorta Title Decision Pending](#)’, *The Riverine Herald* (28 April 2000) 5. See also Wayne Atkinson, “‘Not One Iota’ of Land Justice: Reflections on the Yorta Yorta Native Title Claim 1994–2001’ (2001) 5(6) *Indigenous Law Bulletin* 19, 22.

131. Witness Outline of Ngarra Murray, Co–Chair of First Peoples’ Assembly of Victoria, 17 April 2024, 17 [42], citing Yorta Yorta Traditional Owner Land Management Board, *Joint Management Plan for Barmah National Park* (2020), 85.

132. Witness Outline of Ngarra Murray, Co–Chair of First Peoples’ Assembly of Victoria, 17 April 2024, 16 [40].

133. Witness Outline of Ngarra Murray, Co–Chair of First Peoples’ Assembly of Victoria, 17 April 2024, 16 [40].

134. Yorta Yorta Nation Aboriginal Corporation, ‘Yorta Yorta History’ (Webpage).

135. *Application by Yorta Yorta Clans* (National Native Title Tribunal, VC1994/001, commenced 21 February 1994).

136. *Members of the Yorta Yorta Aboriginal Community v Victoria* [1998] FCA 1606, [126] (Olney J).

137. *Members of the Yorta Yorta Aboriginal Community v Victoria* (2001) 110 FCR 244.

138. *Members of the Yorta Yorta Aboriginal Community v Victoria* (2002) 214 CLR 422.

139. *Members of the Yorta Yorta Aboriginal Community v Victoria* (2002) 214 CLR 422 446 [52] (Gleeson CJ, Gummow and Hayne JJ)].

140. National Native Title Tribunal, [25 Years of Native Title Recognition](#) (Fact Sheet, 2017), 2.

141. Wayne Atkinson, “‘Not One Iota’ of Land Justice: Reflections on the Yorta Yorta Native Title Claim 1994–2001’ (2001) 5(6) *Indigenous Law Bulletin* 19, 20.

142. Peter Seidel and Julian Hetey, ‘Summary of the Yorta Yorta Nation Aboriginal Corporation / State of Victoria Co–Operative Management Agreement’ (Pt 1) (2004) 6(4) *Indigenous Law Bulletin* 15, 15.

143. Transcript of Uncle Graham Atkinson, 15 April 2024, 21 [17]–[21].

144. Henry Atkinson, ‘Yorta Yorta Co–Operative Land Management Agreement: Impact on the Yorta Yorta Nation’ (2004) 6(5) *Indigenous Law Bulletin* 23, 24–5.

145. Federation of Victorian Traditional Owner Corporations, ‘A Framework for Traditional Owner Treaties: Lessons from the Settlement Act’ (Discussion Paper, 2021), 11 (‘Treaty Paper 5’).

146. Federation of Victorian Traditional Owner Corporations, ‘A Framework for Traditional Owner Treaties: Lessons from the Settlement Act’ (Discussion Paper, 2021), 11 (‘Treaty Paper 5’).

147. Witness Statement of Minister Natalie Hutchins MP, 18 March 2023, 50 [250], citing

citing Native Title Unit, Department of Justice, Guidelines for Native Title Proof – Victoria, not published; 2001.

148. Bryan Keon–Cohen, ‘From Euphoria to Extinguishment to Co–Existence?’ (2017) 23 *James Cook University Law Review* 9, 14–15.

149. Uncle Graham Atkinson, Submission 256, 2.

150. Transcript of Uncle Graham Atkinson, 15 April 2024, 28 [44]–29 [1].

151. Victorian Traditional Owners Land Justice Group, ‘[Statement](#)’ (Archived Webpage, 17 February 2005), 2.

152. Victorian Traditional Owners Land Justice Group, ‘[Statement](#)’ (Archived Webpage, 17 February 2005), 2.

153. Uncle Graham Atkinson, Submission 330, 4.

154. Uncle Graham Atkinson, Submission 330, 6.

155. Victorian Traditional Owners Land Justice Group, ‘[Statement](#)’ (Archived Webpage, 17 February 2005), 2 [3.1].

156. Department of Justice (Vic), *Report of the Steering Committee for the Development of a Victorian Native Title Settlement Framework* (Report, December 2008), 9–10.

157. At that time known as Native Title Services Victoria, now known as First Nations Legal and Research Services.

158. Department of Justice (Vic), *Report of the Steering Committee for the Development of a Victorian Native Title Settlement Framework* (Report, December 2008), 9.

159. Department of Justice (Vic), *Report of the Steering Committee for the Development of a Victorian Native Title Settlement Framework* (Report, December 2008), 10.

160. First Peoples’ Assembly of Victoria, Submission 378 (Land, Sky, Waters), 26.

161. Department of Justice (Vic), *Report of the Steering Committee for the Development of a Victorian Native Title Settlement Framework* (Report, December 2008), 67.

162. *Traditional Owner Settlement Act 2010* (Vic) s 12.

163. *Traditional Owner Settlement Act 2010* (Vic) s 9.

164. Victorian Traditional Owners Land Justice Group, ‘[Statement](#)’ (Archived Webpage, 17 February 2005) 2. See also Department of Premier and Cabinet, ‘Native Title Act 1993 and the Traditional Owner Settlement Act 2010’, 15.

In correspondence to Yoorrook, the State noted that it met or partly met “many” of the aspirations within the Statement, including through the *Aboriginal Heritage Act 2006* (Vic) (said to address the aspiration for a new devolved Aboriginal cultural heritage regime), and the establishment in 2008 of the Steering Committee for the Development of a Victorian Native Title Settlement Framework and subsequent *Traditional Owner Settlement Act 2010* (Vic).

165. Uncle Jim Berg, Submission 10, 9.

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The Mabo decision was like a dream. I remember it on TV and I'm thinking, 'we're going to get our land back' and then we got the Native Title Act. Then we got the 10-point plan and all the other diminishing returns on what the dream is.¹

PARTICIPANT, GUNDITJ MIRRORING TRADITIONAL OWNERS CORPORATION ROUNDTABLE

Introduction

The way the original and oldest ownership rights have been dwindled away by the native title process is discriminatory. Indeed it is an act of sacrilege in our ancestor's cultural integrity.²

UNCLE DR WAYNE ATKINSON

Native title in Victoria is not fit for purpose and has not delivered land justice.³ It has not provided Traditional Owners in Victoria with self-determination nor adequately supported economic development. Evidence to Yoorrook repeatedly reported that native title processes are long, complex and expensive to administer.⁴ Witnesses also pointed to the high evidentiary bar for establishing native title that places an unjust burden of proof on First Peoples and can lead to trauma and division. Even where native title can be established, Yoorrook heard that it provides a limited and narrow set of rights and inadequate compensation.

As the First Peoples' Assembly of Victoria told Yoorrook:

The [Native Title Act 1993 (Cth)] has failed to provide justice for Victorian Traditional Owners and has instead validated colonial settlement. This is particularly evident in [the Yorta Yorta determination] where the High Court determined that the impact of [colonisation] severed connection to Country.⁵

FIRST PEOPLES' ASSEMBLY OF VICTORIA

Similarly, Principal Legal Officer at First Nations Legal and Research Services (FNLRs) Rainer Mathews told Yoorrook that the native title regime disenfranchises or penalises Traditional Owners who have been most impacted by the violence of colonisation and acts to validate colonial settlement:⁶

[The g]reat irony of the native title framework is that the more dispossession you have then the less availability there is of a remedy. So the worse the colonisation has been the less able you are to have your rights recognised and the less able you are to have some other kind of remedy like compensation. It is ... the reverse of many other areas of the law where the more harm you've suffered the greater the remedy is.⁷

RAINER MATHEWS

Planning and development researcher and Director of the Centre for Urban Research at RMIT Professor Libby Porter said:

I see these regimes as part of a liberal mode of recognition or 'bounded recognition' that always seek to incorporate First Peoples law/lore, knowledges and rights into an unchanged status quo that preserves the power and dominance of settler-colonial institutions and society. While some of these modes of recognition can open up possibilities for First Peoples, they tend always to be ultimately framed on the terms of the settler state and to significantly constrain and limit First Peoples' agency and rights.⁸

PROFESSOR LIBBY PORTER

Yoorrook also heard how the Victorian Government has used its power to extinguish and oppose native title. In 1998, the State's decision to oppose the recognition of native title in *Members of the Yorta Yorta Aboriginal Community v Victoria*⁹ ('Yorta Yorta v Victoria') set a negative precedent for native title in Victoria.

The inadequacies of native title in achieving land justice in Victoria are accepted by the State. The Victorian Government recognised this in introducing the *Traditional Owner Settlement Act 2010 (Vic)* (‘TOSA’) as an alternative recognition framework (see Chapter 11: Traditional Owner settlements). In evidence to Yoorrook, the Victorian Surveyor-General Craig Sandy acknowledged ‘[t]he difficulty involved in achieving native title in heavily colonised States such as Victoria, and its limited set of rights when achieved’.¹⁰ Then Minister for Treaty and First Peoples (previously Minister for Aboriginal Affairs) the Hon Gabrielle Williams MP¹¹ acknowledged that native title ‘has not translated into ... true self-determination’ nor ‘prevented ongoing Systemic Injustice that is linked to dispossession’.¹² This chapter explores the limitations of the native title system in recognising First Peoples’ land rights in Victoria.

What is native title?

Native title refers to the recognition in Australian law of First Peoples’ rights and interests in their traditional lands and waters, based on cultural practices and connection to the land. The *Native Title Act 1993 (Cth)* (‘NTA’) is a Commonwealth law introduced by the Australian Government in response to the decision of the High Court of Australia in *Mabo v Queensland (No 2)*¹³ (‘*Mabo*’). For the first time in Victoria, the *NTA* established a statutory process for legal recognition of First Peoples’ native title rights in public lands and waters.

Limitations of Yoorrook’s Terms of Reference

Yoorrook’s Terms of Reference place restrictions on how Yoorrook can inquire into native title.¹⁴ Yoorrook may inquire into how ongoing systemic injustice can be redressed, including recommended reform to existing law and policies.¹⁵ However, Yoorrook is not permitted to inquire specifically into actions of the Commonwealth, which is the responsible government for the *NTA*.¹⁶ Yoorrook is also not to inquire into ‘specific outcomes ... in legal proceedings’ including under the *NTA*.¹⁷ As such, Yoorrook examines native title and the *NTA* as an important part of the land rights regime in Victoria.

GROUPS IN VICTORIA THAT HAVE HAD NATIVE TITLE RECOGNISED

Despite its limitations, native title has provided important rights to groups that have made successful claims.¹⁸ As of April 2025, there have been six determinations in Victoria where native title was found to exist:¹⁹

- Wotjobaluk, Jaadwa, Jadawadjali, Wergaia, and Jupagulk Peoples (WJJWJ Peoples) (2005)²⁰
- Gunditjmara (2007)²¹
- Gunaikurnai (2010)²²
- Gunditjmara and Eastern Maar over a joint area (2011)²³
- Eastern Maar (2023)²⁴
- Eastern Maar (2024).²⁵

The total sizes of determination areas where native tile was found to exist are outlined in Table 10.1 (Crown land) and Table 10.2 (public land). The time it took to reach a determination is shown in Table 10.3. The 2024 Eastern Maar native title determination was not included in information provided by the State to Yoorrook in 2023, so is not included in Table 10.1, Table 10.2 or Table 10.3.

Table 10.1: Areas of Crown land in Victoria over which native title has been recognised (as of October 2023, all figures are approximate and provided by the State)²⁶

Traditional Owner group	WJJWJ Peoples	Gunditjmara	Gunaikurnai	Gunditjmara and Eastern Maar	Eastern Maar (2023)
Native title determination application area ²⁷	9,773.98 km ²	1,426.32 km ²	13,848.27 km ²	42.62 km ²	1,155.80 km ²
Area of Crown land recognised ²⁸	397.74 km ²	1,328.82 km ²	13,156.88 km ²	30.32 km ²	Data was not available.

Table 10.2: Areas of public land where native title is recognised (all figures are approximate and provided by the State)²⁹

Type of land	Volume of public land where native title is recognised in Victoria
Total land in Victoria (including three nautical miles from Victoria’s coast) ³⁰	Approximately 237,410 km ²
Crown land in Victoria ³¹	Approximately 77,620 km ² (approximately 32% of total land).
Crown land in Victoria where native title is recognised ³²	Approximately 14,913.76 km ² (approximately 6% of total land and approximately 19% of Crown land).

THE NTA AND NATIVE TITLE LAW

Native title recognises that First Peoples in Australia continue to hold rights to land and waters according to their traditional laws and customs.³³ The *NTA* establishes a process that allows First Peoples to lodge an application with the Federal Court of Australia seeking a determination as to whether native title rights can be recognised.³⁴ It does not provide for recognition of rights over private land.

The main objects of the *NTA* are to:

- provide for the recognition and protection of native title
- establish ways in which future dealings affecting native title may proceed and set standards for those dealings
- establish a mechanism for determining claims to native title
- provide for, or permit, the validation of past acts and intermediate period acts that have been invalidated because of the existence of native title.³⁵

Examples of commonly recognised native title rights include rights to:

- protect sites
- access, camp and hunt on the land
- hold ceremony
- take resources from the land and waters for traditional (non-commercial) purposes (see below discussion of limited native title rights).³⁶

Native title rights can be partially or fully extinguished. Native title can be extinguished by the State, including by granting rights to land (such as freehold title) or introducing legislation that is inconsistent with native title.³⁷ Most private property is held in freehold. A freehold estate is the greatest interest in land recognised by Australian law, close to absolute ownership of the land.³⁸ Native title will also be extinguished by public works on land (such as the construction of a road, railway or other fixed structure), or commercial and other leases that confer exclusive possession rights.³⁹

The *NTA* also establishes the ‘future acts’ regime. A ‘future act’ is an activity proposed by someone other than the native title claimants or holders that has the potential to affect native title rights and interests (such as the grant of a mining tenement or compulsory acquisition of land).⁴⁰ Where a future act is proposed, the native title claimants or holders must be notified.⁴¹ Depending on the activity, the native title claimants or holders may be entitled to negotiate conditions about how the activity is conducted.⁴²

Agreements under the *NTA* are most commonly achieved through Indigenous Land Use Agreements (ILUAs). ILUAs are voluntary agreements between native title groups and other parties concerning how the land or water can be used. ILUAs also operate as contracts.⁴³ An ILUA can cover a range of issues such as the development of the area, access to land and water, mining, cultural heritage and the co-existence of native title with other rights.⁴⁴ It also allows for compensation where future acts affect native title.⁴⁵

The State told Yoorrook that as of February 2024, there have been 60 ILUAs registered under the *NTA* in Victoria.⁴⁶ Most were negotiated by Traditional Owners in response to third-party proposals to use public land (mainly mining).⁴⁷ The native title group for some ILUAs have not yet had their native title determined.⁴⁸

Native title claims can be resolved by agreement in what is called a ‘consent determination’ or by a determination of the court following litigation.⁴⁹ The State told Yoorrook that ‘[i]n April 2000, the ... Victorian Government committed to resolve native title claims by mediation rather than litigation, with recognition of native title as a potential outcome of mediation’.⁵⁰ In 2001, the Victorian Government accepted the possibility of State consent to native title recognition and committed ‘to negotiate in good faith for final settlement of claims’, including compensation.⁵¹

All native title claims in Victoria except *Yorta Yorta v Victoria* have been resolved by a consent determination with the State government.⁵² While this has avoided protracted and harmful litigation around the question of native title, it has still involved lengthy court proceedings and significant costs to all parties involved.

What Yoorrook heard

[D]espite its historic significance, the Mabo decision gives little more than a sense of justice to those Aboriginal communities whose native title has been extinguished or lost without consultation, negotiation or compensation. Their dispossession has been total, their loss has been complete.⁵³

FORMER PRIME MINISTER PAUL KEATING

Most native title in Victoria has been extinguished

Native Title is a weak form of title in the sense that any inconsistent right to land that’s been created in the intervening period will extinguish it, and so within the frame of the Native Title Act, all of those land releases in the 1800s will have extinguished any right to Native Title.⁵⁴

RAINER MATHEWS

Most native title in Victoria has been extinguished. Yoorrook heard that this is the major ‘barrier to recognition of native title rights in Victoria’.⁵⁵

Native title rights and interests can only be validly claimed in areas where native title has not been fully extinguished. Native title claims commonly relate to land still owned by the Crown including parks, public reserves and unallocated Crown land.⁵⁶ Land validly granted in freehold title to third party landowners fully extinguishes native title rights and interests and on this basis must be excluded from native title claims. Any inconsistent right to land that has been created since British settlement, such as a grant of freehold title, extinguishes native title.⁵⁷

The speed of colonisation, the extent of land grants and the growth and density of the coloniser population in Victoria had the effect of extinguishing most native title across the State.⁵⁸ By the 1930s, all that remained of Victoria’s unalienated Crown land were areas deemed not suitable for agriculture or that had been reserved for a particular public purpose.⁵⁹ Today, the Victorian Government currently holds approximately 8.8 million hectares of land across Victoria.⁶⁰ This represents almost 40 per cent of the State’s total land mass. Of those land holdings, 7.75 million hectares is reserved Crown land (comprised of national parks, state forests and reserves), 300,000 hectares is unreserved Crown land and 200,000 hectares is freehold land.⁶¹

Native title claims lodged in Victoria have, to date, typically been subject to a process known as ‘tenure analysis’.⁶² As part of this process, the State examines each parcel of Crown land within a native title claim area.⁶³ Historical records are analysed with the aim of uncovering previous grants of interests (e.g. leases, licenses) and other activities (e.g. the construction of public works) capable of extinguishing native title.⁶⁴ Tenure analysis routinely uncovers land grants and works dating back decades or to the colonial era. Such a discovery may be fatal to native title.⁶⁵

The Victorian Government has acted to extinguish native title

Yoorrook heard that, following *Mabo*, the Victorian Government actively sought to extinguish native title. Chapter 9: How we got here — overview of recognition systems discusses how, after the introduction of the *NTA*, the government introduced legislation validating the extinguishment of native title.⁶⁶

Yoorrook received evidence about other legislation introduced with the effect of extinguishing native title.⁶⁷ For example, in 1993, the Kennett government introduced the *Victorian Plantations Corporation Act 1993* (Vic)⁶⁸ which granted a perpetual plantation licence to Hancock Victorian Plantations.⁶⁹ To date the Victorian Government has received \$550 million in revenue from that grant,⁷⁰ none of which has been distributed to Traditional Owners.⁷¹

Minister for Environment the Hon Steve Dimopoulos MP accepted that at the time the *Victorian Plantations Corporation Act* was introduced, there was a general awareness that granting such licences would extinguish native title.⁷² The Taungurung Land and Waters Council Aboriginal Corporation (Taungurung Land and Waters Council) told Yoorrook that Taungurung Country includes plantations that are the subject of licences issued under the *Victorian Plantations Corporation Act*. The Taungurung Land and Waters Council queried the legality of the legislation and whether free, prior and informed consent of relevant First Peoples had been provided.⁷³ Minister for Treaty and First Peoples the Hon Natalie Hutchins MP observed that a departmental briefing memorandum contemporaneous with the introduction of the *Victorian Plantations Corporation Act* produced to Yoorrook by the State ‘was pretty disgraceful in its content’ and accepted that there was an attitude within government at that time which regarded First Peoples and First Peoples’ rights as ‘the enemies’.⁷⁴

Yoorrook also heard about a government briefing from the Department of Conservation and Natural Resources in 1993.⁷⁵ Its purpose was to provide information to executives on issues arising out of the *Mabo* decision. The briefing concluded:

Because of the historical circumstances in Victoria whereby Aboriginal groups were dispossessed and displaced to a very significant degree (thereby breaking their customary association with their land), and because of the relatively few areas of land that have not been subject to some form of land dealing in the past, claims in Victoria will be difficult to prove. The impact here of the *Mabo* judgment will not be of general significance. However, there will be claims and in some limited areas is a potential for them to succeed.⁷⁶

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

Minister Dimopoulos accepted that the briefing could be interpreted as recommending the extinguishment of native title and that the authors of the briefing memo likely saw this as a positive outcome.⁷⁷ Minister Dimopoulos considered that such actions ‘denied Traditional Owners what’s rightfully theirs, even a seat at the table for the conversation’.⁷⁸

The burden of proof is unjust and can lead to trauma and division

We are required to demonstrate a connection to culture without recognition of the ways we were forbidden from practicing culture, resulting in culture going to sleep or being lost by many families.⁷⁹

WAMBA WEMBA ABORIGINAL CORPORATION

Yorta Yorta v Victoria and the connection requirement

To establish that they hold native title, First Peoples must satisfy the definition of native title in s 223(1) of the *NTA*. This requires First Peoples to prove:

- they hold rights and interests possessed under traditional laws and customs
- they have a connection with land or waters ‘by those laws and customs’, and
- those rights and interests are recognised by the common law.⁸⁰

Yoorrook heard that the requirements for recognition of native title are inconsistent with the way Victoria was settled. The *Yorta Yorta v Victoria* case established that ‘connection’ under the *NTA*⁸¹ requires connection with traditional lands through the observance and acknowledgement of traditional laws and customs. This connection must have ‘continued substantially uninterrupted’⁸² since the assertion of British sovereignty in 1788. This requires Traditional Owner groups to demonstrate unbroken continuation of pre-settlement traditional laws and customs observed by ancestors at the time of settlement.⁸³ Yet the colonisation process in Victoria actively and forcefully removed First Peoples from their Country as a deliberate attempt to sever First Peoples’ ties with their own lands.⁸⁴ Inaugural Co-Chair of the First Peoples’ Assembly of Victoria Marcus Stewart (Taungurung) said:

As was established in *Yorta Yorta Aboriginal Community v Victoria* the severance of ‘connection’ to land for any reason, whether through violence or racist policy, will extinguish our rights, so that the so-called ‘tide of history’ will wash away any claim we may have to the land.⁸⁵

MARCUS STEWART, INAUGURAL CO-CHAIR OF FIRST PEOPLES’ ASSEMBLY OF VICTORIA

Uncle Graham Atkinson (*Yorta Yorta*, *Dja Dja Wurrung*) said:

It only took Olney J ... [o]ne minute to hand down his decision that just sort of swept away our ... rights. But ... *Yorta Yorta* is still persisting. It hasn’t ... given up the fight.⁸⁶

UNCLE GRAHAM ATKINSON

The ‘long shadow’ of *Yorta Yorta v Victoria*

FNLRS submitted that the *Yorta Yorta v Victoria* experience ‘was traumatic for the *Yorta Yorta* people involved, casts a long shadow, and is fixed in the collective memory of many Traditional Owners’.⁸⁷

The State’s response to the *Yorta Yorta v Victoria* claim was to ‘cross-examine heavily the Aboriginal witnesses and to discredit their evidence, and then there was also the preference of white records, white squatters and ... first colonisers over the oral tradition of the *Yorta Yorta*’.⁸⁸ Uncle Colin Walker (*Yorta Yorta*), an applicant on behalf of the *Yorta Yorta* people, told Yoorrook:

When I had to give evidence, they knew I was a local bloke and that I had the knowledge from my Elders. But they just crucified me. What hurt me is that the judge said I was a deliberate liar. We had to go through a lot to prove who we are, and our connection to Country. We had to prove it was handed down to us.⁸⁹

UNCLE COLIN WALKER

Yoorrook heard about the ongoing pain and hurt caused by the *Yorta Yorta v Victoria* decision to Yorta Yorta people. Uncle Graham Atkinson said the decision had a ‘tragic effect’ on the community and exposed the inadequacies of native title.⁹⁰ Aunty Marjorie Thorpe (Gunaikurnai, Tjapwurrung) said the decision was ‘devastating’ and that the native title legislation is flawed at its core and does not really address the needs of First Peoples in Victoria.⁹¹ Karen Jackson (Yorta Yorta) told Yoorrook:

Yorta Yorta is so strong and Yorta Yorta has always had connection. Yorta Yorta mob are everywhere, we talk about Country and we are connected to that space and we know that space. It was one of the worst days of my life. That was a shock that happened based on white man’s story not blackfella’s story and all of that telling of connection and belonging.⁹²

KAREN JACKSON

FNLRS CEO Tony Kelly spoke of the wider chilling effect of *Yorta Yorta v Victoria* on First Peoples’ perception of native title in Victoria, creating self-doubt, anger and distrust in the system:

In my experience, it’s been that self-doubt that is created. How are we going to be able to prove our continuous connection, if we have to contest it in court? ... [I]t’s left a legacy of trauma around the fact that ... we’re having to prove something that the State has taken away from us, the fact that it’s taken us away the ability to practice culture over the generations, now we have to go back and prove to that State that we still do it despite everything you have done. ... [It’s] also fuelled anger, a lot of anger about that and therefore distrust in the State. ‘You did this to us — you have been doing this to us for generations, now ... you’ve attacked us in this legal process.’ ... [M]emories are long for people, so they are not always trusting that if a State officer comes and says, ‘Things are different now, we are going to do it differently, we are with you.’ Yes, that is good, but it is not always trusted at first.⁹³

TONY KELLY

Uncle Brendan Kennedy (Tati Tati) recounted to Yoorrook how he was told by Native Title Services that they saw the Tati Tati People’s native title claim as ‘shaky’.⁹⁴ Uncle Brendan Kennedy said that native title had been a ‘traumatic’ experience for Tati Tati.⁹⁵ Their identity was questioned, and white anthropologists’ and Western ways of knowing were prioritised over First Peoples’ oral history and knowledge.⁹⁶ This also has flow-on effects. For example, Tati Tati do not have seats on the First Peoples’ Assembly of Victoria.⁹⁷ This creates a chasm between groups with and groups without recognition.⁹⁸

Even where claims are successful, the process of proving native title takes a toll on First Peoples. Uncle Johnny Lovett (Gunditjmara, Boandik), who was a claimant in successful native title claims on behalf of the Gunditjmara People, reflected on the ongoing difficulties resulting from the connection requirement:

Even though it was successful, there were a lot of difficulties in bringing the native title claim. It took 11 years in total for native title to be agreed on. I couldn’t get my head around the fact that we had to prove connection to Country from 1788. We had to get reports from anthropologists, linguists, and historians to prove our connection to Country. We have stone structures on Lake Condah from around 7,000 years [ago], before the pyramids were built, and then we had to prove that to the people who stole all of that from us.⁹⁹

UNCLE JOHNNY LOVETT

Minister Hutchins told Yoorrook she was disappointed with the way the government at the time had approached the *Yorta Yorta v Victoria* case and contributed to the further dispossession of the Yorta Yorta people.¹⁰⁰

Minister Gabrielle Williams acknowledged that government policy has made it difficult to meet the legal test for establishing connection to Country under the *NTA*.¹⁰¹ Minister Williams recognised that this ‘threatened to, or in many instances did, sever ties to Country’.¹⁰² Surveyor-General Craig Sandy acknowledged that terra nullius had enabled dispossession, and the continuation of land systems in Victoria ‘has still not altered the underlying premise of terra nullius in any meaningful way, despite the High Court’s observation more than 30 years ago in the *Mabo* decision’.¹⁰³

Challenges of determining boundaries and group composition

As discussed in Chapter 8: Impacts of Country being stolen, the State’s dispossession of First Peoples makes reconstructing Country boundaries and group structures difficult. The same issue arises in all recognition systems (see Chapter 9: How we got here — overview of recognition systems) and in native title disputes.¹⁰⁴ Yoorrook heard that the process of reconstructing these connections and working through traumatic material about dispossession itself causes trauma, the Victorian Aboriginal Community Controlled Health Organisation (VACCHO) said:

The forced reconstruction of connections to Country, culture, and kin exacerbates the historical trauma inflicted by colonisation and genocide. The process is retraumatising for our people.¹⁰⁵

VICTORIAN ABORIGINAL COMMUNITY CONTROLLED HEALTH ORGANISATION

Yoorrook also heard evidence from FNLRS that defining boundaries is one of the most difficult elements of a native title claim.¹⁰⁶ First Nations societies did not have boundaries in a modern Western sense.¹⁰⁷ Tony Kelly said:

[T]he people who dispossessed them are now asking them to go through these hoops to demonstrate that they’ve still got connection to Country and then to define themselves in terms of an area with a boundary that really wouldn’t have sat culturally ... [It] adds to the difficulty and the trauma The process that we are working within creates more trauma.¹⁰⁸

TONY KELLY

FNLRS said that conflict between groups as to the rightful owners of Country is a legacy of settler colonialism.¹⁰⁹ Existing trauma combined with incomplete research and difficulty in substantiating connection makes the native title journey hard.¹¹⁰ FNLRS noted that while *TOSA* was intended to address some of the issues with tracing lineage and boundaries, in recent years there has been a pivot back to native title at the same time as pursuing a *TOSA* negotiation.¹¹¹

Wamba Wemba Aboriginal Corporation said:

Native title processes privilege a colonial worldview over Indigenous and Aboriginal knowledge traditions and require that we evidence our culture, connection to the Country and experiences of colonial violence and land dispossession to meet settler methods of knowledge transmission.¹¹²

WAMBA WEMBA ABORIGINAL CORPORATION

Native title only recognises limited rights

I think it's considered to be the lowest form of entitlement in this country. It's less than a pastoral lease.¹¹³

UNCLE ROBBIE THORPE (DJURAN BUNJILINEE)

Native title recognises a narrow set of rights often referred to as a ‘bundle of rights’.¹¹⁴ The determination of rights in the bundle are based on the specific traditional activities of the group. Rights usually include things like the right to hunt, fish, gather, perform ceremony, camp and enjoy the land. Uncle Robbie Thorpe (Krauatungalung Gunaikurnai), who is also known as Djuran Bunjilinee said native title is a low form of entitlement.¹¹⁵ Marcus Stewart said:

An NTA claim does not return stolen land. Instead, it only recognises some of our rights, allowing us to carry our traditional activities on the land such as hunting, fishing and gathering for our personal needs, and to access the land for the purposes of ceremony and to camp.¹¹⁶

MARCUS STEWART, INAUGURAL CO-CHAIR OF FIRST PEOPLES’ ASSEMBLY OF VICTORIA

Native title rights can be exclusive or non-exclusive:

- exclusive native title is held to the exclusion of all others. It does not amount to freehold title
- non-exclusive native title may include rights to access, remain and camp on Country but not rights to control access to and use of the area.

Non-exclusive native title rights do not allow rights-holders to prevent others accessing the land or waters. All native title rights recognised in Victoria to date are non-exclusive.¹¹⁷ Marcus Stewart said:

This means ... our rights are only recognised as existing alongside, and often as subservient to, the rights of the Crown or of settlers ... This means we are unable to control access to our lands, or to determine how they are used and developed.¹¹⁸

MARCUS STEWART, INAUGURAL CO-CHAIR OF FIRST PEOPLES’ ASSEMBLY OF VICTORIA

In general, there has not been a commercial component to native title rights, although courts have begun to recognise rights to take and use resources ‘for any purpose’, including commercial purposes.¹¹⁹ In the absence of a specific determination, First Peoples cannot use the land for economic development, resources or renewable energy, or build housing on the land. In limited circumstances where third parties seek to exploit resources there is the opportunity to negotiate some financial benefit through the ‘future acts’ regime. Uncle Johnny Lovett explained:

The native title determination recognises our land as being Gunditjmara Country ... But it is limited. Lake Condah is the only native title area where there are no Aboriginal people living on the land. I can’t go and live on Lake Condah. There are padlocks on the gates.¹²⁰

UNCLE JOHNNY LOVETT

Compensation under the NTA is inadequate

Limits on compensation

Under s 51(1) of the *NTA*, native title holders are entitled to compensation ‘on just terms’ for any activities which damage or diminish their native title rights and interests.¹²¹ This could include the building of a road or the grant of a pastoral lease. Activities may be classified as past acts (before 1 January 1994), intermediate acts (between 1 January 1994 and 23 December 1996) or future acts (future proposals or plans).¹²²

Yoorrook heard that compensation under the *NTA* is limited in various ways. Compensation is payable for state government acts which occurred on or after 31 October 1975, when the *Racial Discrimination Act 1975* (Cth) came into force. Prior to the introduction of the *Racial Discrimination Act 1975* (Cth), state governments could lawfully extinguish native title without providing any compensation to Traditional Owners. For acts after 1975, compensation is payable because it would be racially discriminatory under the *Racial Discrimination Act 1975* (Cth) to treat native title differently to other forms of property right.¹²³

FNLRS told Yoorrook that this has had unjust impacts, especially because the social justice package envisaged as part of the *NTA* was not proceeded with by the Howard government:

Another consequence ... is that there is no right of compensation or restitution where native title no longer exists. Thus, under the NTA scheme there is no redress for communities that have lost native title due to policies, such as forced removal of children. When the NTA was legislated in 1993 these issues were acknowledged and it was anticipated that the native title legislation would be followed by a social justice package, to include among other things, redress for communities that had lost their native title. Such a package might have gone some way to satisfying First Nations’ rights of redress, in the manner required under [the United Nations Declaration on the Rights of Indigenous Peoples (‘UNDRIP’)] Article 28. However, with the change of Commonwealth government in 1996 the social justice package was never enacted. Structurally the NTA foreshadows it, but it never came into being.¹²⁴

FIRST NATIONS LEGAL AND RESEARCH SERVICES

This is particularly problematic for Traditional Owners in Victoria, where the vast majority of native title was extinguished before 1975. This means that most of Victoria’s land mass is not eligible for compensation under the *NTA*.¹²⁵ Rainer Mathews of FNLRS told Yoorrook that this date is ‘wholly arbitrary’, ‘unjust’ and ‘not defensible legally when looked at through the lens of international law as articulated in *UNDRIP* [the *United Nations Declaration on the Rights of Indigenous Peoples*]’ (see also Chapter 4: Rights).¹²⁶

The Comhar Group submitted that compensation under the *NTA* ‘is an inappropriate mechanism to achieve land justice for Victorian Traditional Owners’ as it only compensates for limited property rights:

Native title compensation relates only to compensation for impacts on limited property rights (those native title rights and interests that can be recognised under Australian law). Further, the economic component of compensation under the *NTA* can only be assessed at a single point in time (being the date of the act that impacts native title). This means the methodology does not readily work for inter-generational impacts.¹²⁷

COMHAR GROUP

The *Timber Creek* case

The leading case on the calculation of compensation for the extinguishment of native title is *Northern Territory of Australia v Griffiths*¹²⁸ (*‘Timber Creek’*), which was decided in 2019. The native title rights and interests in the case related to an area of land 600 km south-west of Darwin in the township of Timber Creek, on the Country of the Ngaliwurru and Nungali Peoples. The Northern Territory was responsible for 53 acts (grants of tenure and public works) that impaired or extinguished native title rights and interests.¹²⁹

In *Timber Creek*, the High Court was asked to calculate the compensation for the loss of non-exclusive native title rights. The Court held that compensation requires consideration of three components:¹³⁰

- economic loss for disturbance of native title rights and interests, which was assessed in this case at 50% of the freehold value of the land¹³¹
- interest on economic loss, which was assessed as simple interest in this case, but might be calculated as compound interest in other cases in future¹³²
- non-economic cultural loss (loss or diminution of traditional attachment to the land or connection to Country and for loss of rights to gain spiritual sustenance from the land), including loss to future generations. Cultural loss in this case was assessed at approximately twice the freehold value of the land¹³³ as at the date of judgment, not the date of extinguishment.¹³⁴

While the grant of compensation for cultural loss was significant, on one view the approach taken in *Timber Creek* had the effect of limiting the compensation available because it depends on non-First Peoples ‘precepts’ of land valuation.¹³⁵ Edelman J warned that the ‘adoption of the same methodology in other cases could potentially lead to systematic undervaluing of awards of native title compensation’.¹³⁶

[T]he question on these appeals is how to calculate the reasonable price that should be paid to compensate native title claimants for the extinguishment of rights of immense cultural value. To say that the party obtaining the benefit of extinguishment, here the Northern Territory, should compensate a native title claimant, here the Ngaliwurru and Nungali peoples ... solely by reference to the ordinary value of the native title to non-Aboriginal persons is absurd.¹³⁷

JUSTICE JAMES EDELMAN, *TIMBER CREEK*

While *Timber Creek* provided guidance on valuing economic and cultural loss, there is still uncertainty in how to determine native title compensation.¹³⁸ The amount of compensation ‘will depend on the ... claim circumstances, including nature of the ... rights held, whether there was total extinguishment or partial extinguishment of native title rights, and the extent of “loss sustained and disadvantage experienced” by the claimants’.¹³⁹ This is a developing area with multiple cases currently before the courts.¹⁴⁰ Given that some Traditional Owner groups have active native title claims (or reviews of existing benefits) underway and Traditional Owner groups in Victoria continue to demonstrate an interest in obtaining recognition under the *NTA* (in parallel with *TOSA*), the State must continue to have regard to these developments in line with Yoorrook’s recommendations on compensation and redress.

Inconsistency with *UNDRIP*

As outlined below, article 28 of the United Nations Declaration on the Rights of Indigenous Peoples (*UNDRIP*) outlines how First Peoples have the right to restitution (return or restoration) (see also Chapter 4: Rights).¹⁴¹

ARTICLE 28 OF UNDRIP STATES:

Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

The preferred form of redress under article 28 of *UNDRIP* is restitution (return or restoration) of First Peoples’ lands.¹⁴² Where this is not possible, compensation should take the form of lands ‘equal in quality, size and legal status’.¹⁴³ When lands have been taken or damaged, compensation should be ‘just, fair and equitable’.¹⁴⁴ FNLRS told Yoorrook that ‘in order to achieve proper “redress”, the value of the loss to the First Nations People concerned (rather than economic value of the land) needs to be ascertained’.¹⁴⁵ And that, as ‘past acts of dispossession have an ongoing detrimental effect on First Nations Peoples ... future generations ... are entitled to redress’.¹⁴⁶

Financial reparations are not always an available or sufficient remedy for the loss of ownership and control of land by First Peoples.¹⁴⁷ At this stage, there is no Australian case law or legislation which provides compensation or redress to an *UNDRIP* standard.¹⁴⁸

Senior Lawyer at FNLRS, Will Crawford noted:

[T]he rationale for the compensation under the Native Title Act is designed to compensate for the loss of Native Title property rights, whereas reparation under Treaty should consider broader issues of collective loss of social, economic, political, cultural and spiritual values as a result of historic assimilation policies, forced removals and discrimination.¹⁴⁹

WILL CRAWFORD

Redress across all areas is further discussed in Chapter 39: Redress.

The future acts regime has provided little economic benefit

One of the intended purposes of the *NTA* was to drive economic development.¹⁵⁰ In other parts of Australia, native title has brought some economic benefits for First Peoples, but this has not been the case in Victoria. The Federation of Victorian Traditional Owner Corporations explained:

The Act’s inclusion of a ‘right to negotiate’ in relation to mining leases has had a well-documented impact in Australia’s remote regions through the negotiation of agreements with a wide range of benefits and opportunities to drive economic development within impacted communities.

Unfortunately, due to the limited application of the Act in Victoria and the nature of the Victorian economy, the same benefits have not accrued to groups in Victoria.¹⁵¹

FEDERATION OF VICTORIAN TRADITIONAL OWNER CORPORATIONS

Under the ‘future acts’ regime, native title claimants or holders must be notified of future acts that have the potential to affect native title rights and interests (such as mining or compulsory acquisition of land) (see box: The *NTA* and native title law). Yoorrook heard that the future acts regime provides ‘limited procedural protection, often only amounting to the right to receive notice of the activity or to make comment’.¹⁵² As Marcus Stewart explained: ‘Where the activities may significantly impact or extinguish native title rights, native title holders and claimants are provided with the right to negotiate’.¹⁵³

There is no right under the *NTA* to object or veto an activity. At most the group may be able to agree to some rules ‘around how the activity will occur and potentially receive some compensation for the impact on their [native title] rights’.¹⁵⁴ Marcus Stewart said these ‘processes have the potential to cause division and dispute’ within communities.¹⁵⁵ Marcus Stewart further highlighted that ‘in practice, governments and proponents have little to fear if native title parties attempt to oppose future acts before the Tribunal’.¹⁵⁶

The Federation of Victorian Traditional Owner Corporations submitted that land justice requires the recognition of proprietary rights that can support First Peoples’ economic goals:

[R]eal ‘Land Justice’ is not merely a function of land hand-backs, buy-backs and compensation. Real ‘Land Justice’ is achieved through the recognition and creation of proprietary rights, specifically applicable to the Victorian economic context, that ensure First Nations groups in Victoria are supported in their economic goals.¹⁵⁷

FEDERATION OF VICTORIAN TRADITIONAL OWNER CORPORATIONS

There should be a choice of legal provider

VICTORIA’S NATIVE TITLE LEGAL SERVICES PROVIDER

First Nations Legal and Research Services (FNLRS) is the native title service provider for Victoria.¹⁵⁸ FNLRS receives funding from the Commonwealth and State governments to provide free legal and research services to groups seeking recognition of native title or to negotiate a settlement agreement under the *Traditional Owner Settlement Act 2010* (Vic) (TOSA).¹⁵⁹ FNLRS has also received funding to support Traditional Owner groups without recognition towards appointment as a Registered Aboriginal Party (RAP) since 2019 under the *Aboriginal Heritage Act 2006* (Vic) (AHA).¹⁶⁰

Yoorrook heard concerns about the fact that there is only one native title services provider in Victoria, FNLRS. Participants submitted that claimant groups should have access to independent legal advice and be able to appoint their own representation, and that a pool of funds should be available to support this.¹⁶¹ Yoorrook notes that the root of this problem is not FNLRS but the way the recognition systems have been designed and the thresholds and processes that Traditional Owner groups must meet (see Chapter 8: Impacts of Country being stolen and Chapter 9: How we got here — overview of recognition systems).

Yoorrook heard from some Traditional Owner groups that working with FNLRS had been ‘frustrating and disappointing’.¹⁶² There are concerns that only having one native title service provider compromises the integrity of the organisation and its ability to provide fair and impartial advice to all Traditional Owner groups.¹⁶³ This can cause division between nations.¹⁶⁴ Concerns were also raised about poor quality genealogical research.¹⁶⁵ Wemba Wamba Aboriginal Corporation called for self-determination to be embedded ‘in all avenues towards formal recognition for Traditional Owner groups, including choice of Native Title service provider’.¹⁶⁶

Tony Kelly, CEO of FNLRS, acknowledged that some Traditional Owners have felt hurt or left behind by the native title system administered by FNLRS.¹⁶⁷ He explained that originally FNLRS was the only legal service that people would come to in Victoria to pursue native title.¹⁶⁸

Tony Kelly further accepted that groups would like to be able to choose their own representation and have access to research materials to assist in resolving disputes. This would allow them to self-determine their outcome through third-party lawyers rather than relying on FNLRS. Sometimes, FNLRS cannot represent Traditional Owner groups where there is a legal conflict or where the relationship may not be positive.¹⁶⁹ In these instances, FNLRS facilitates funding for alternative representation to the extent that it is able.¹⁷⁰ However, the funding is limited and FNLRS is responsible for deciding who receives it. FNLRS stated that it wants to ‘move to a more facilitative brokerage role rather than a direct representation model’, to the extent that it is able.¹⁷¹

The native title process is slow and costly

Native title claims take a long time to resolve and entail significant costs for all parties. In the *Yorta Yorta v Victoria* case, the court sat for 114 days and heard evidence from 201 witnesses.¹⁷²

The story is the same across Victoria. Of the Victorian native title determinations where native title was found to exist, in three of these cases the determination took more than ten years (see Table 10.3).

Table 10.3: Victorian native title determinations — timeframes¹⁷³

Group	Date filed	Determination date	Time
WJJWJ Peoples	28 December 1995	13 December 2005	10 years
Gunditjmara	9 July 1999	30 March 2007	7 years and 8 months
Gunaikurnai	4 April 1997	26 October 2010	13 years and 6 months
Gunditjmara/Eastern Marr	9 June 2006	27 July 2011	5 years and 1 month
Eastern Maar (2023)	14 December 2012	28 March 2023	11 years and 3 months

Even if the State consents to native title, there are often long delays in resolving a claim.¹⁷⁴ Yoorrook heard that being involved in an adversarial process for this amount of time takes a significant toll on communities. Elders may pass away before an outcome.¹⁷⁵ Uncle Graham Atkinson reflected that due to the traumatic and protracted process of NTA determinations, many people have been unable to continue due to ill-health, or have died during the process:

[S]ome people didn’t make it. They didn’t last the journey ... many of our Elders didn’t see positive outcomes, and that ... still chokes me up today. You know, good people that put their shoulder to the wheel to win, to gain our, you know, our rights, land justice rights ... didn’t last — last the journey ... I still think about that because it is a very emotional one ... there were quite a number of people who dropped off along the way because of ill health or because of age, and it was ... a very stressful journey. It takes a lot out of you, and I could see amongst people who were part of that journey, I could see the stress and the struggle they were having ... And it was — it was terrible to see the — the pressure; that was traumatising.¹⁷⁶

UNCLE GRAHAM ATKINSON

CEO of the Federation of Victorian Traditional Owner Corporations Paul Paton (Gunnai, Monaro, Gunditjmara), told Yoorrook that it is important to recognise the time these processes take and the trauma it causes to people and communities.¹⁷⁷ Paul Paton called for culturally safe, culturally informed processes that follow cultural protocols to ensure the interests of Traditional Owners and Country are at the centre of decision making.¹⁷⁸ Paul Paton said that in his experience ‘the State ... has limitless resources available to it and it only provides minimal resources to Traditional Owners to participate in that process’.¹⁷⁹

Minister Hutchins acknowledged the ‘significant costs borne by Aboriginal people in seeking land justice’ including ‘time, money and heartache’.¹⁸⁰ Minister Hutchins recognised:

Many [First Peoples] have devoted their entire lives to seeking justice but faced persistent delays and barriers, and many have passed away before witnessing change. I acknowledge the harm caused to Aboriginal communities when First Peoples’ voices have gone unheeded by the State.¹⁸¹

MINISTER NATALIE HUTCHINS MP

The way forward

The evidence gathered by Yoorrook demonstrates that change is required to reduce current inadequacies in the outcomes delivered by the native title system, some of which must occur at Commonwealth level. Current processes have been slow and costly and have not delivered consistently positive outcomes for Traditional Owners in Victoria or sufficient redress for the historic and ongoing impacts of colonisation.

Yoorrook nonetheless acknowledges:

- the hard-fought and proudly held recognition achieved by a number of Traditional Owner groups in Victoria under the NTA, which has built important foundations
- the State of Victoria’s generally favourable First Peoples land justice policy objectives after *Yorta Yorta v Victoria*, including in pursuing native title consent determinations, and in subsequently prioritising nation-leading reforms such as TOSA and more recently, truth and treaty.

Traditional Owners transitioned from full and unfettered ownership of their lands to being completely dispossessed. Yoorrook heard that native title represents a diluted version of colonial rights rather than the recognition of First Peoples’ inherent rights. Native title fails to provide true freehold ownership of land, waters or resources. Minister for Climate Action, Energy and Resources the Hon Lily D’Ambrosio MP acknowledged that native title ‘may not have fully translated into either self-determination ... nor ... prevented ongoing systemic injustices’.¹⁸²

Despite the High Court’s rejection of terra nullius in *Mabo*, the Victorian Government has continued to alienate land, water and resources without adequately consulting or obtaining the consent of First Peoples. The Surveyor-General’s evidence confirms that the end of terra nullius has not led to meaningful change in the State’s approach to land management and allocation.¹⁸³

The native title regime and outcomes are inconsistent with *UNDRIP* and international legal standards concerning indigenous rights. *UNDRIP* asserts that Indigenous peoples have the right to their lands, and if those lands have been taken, they have the right to their return or to seek compensation. According to FNLRS, native title creates a complex and opaque legal framework that contradicts the principles of *UNDRIP*.¹⁸⁴ Treaty is a key pathway in the next chapter of the journey towards land justice for First Peoples in Victoria (under the *Advancing the Treaty Process with Aboriginal Victorians Act 2018 (Vic)*: expressly building on and not impacting existing recognition of native title rights and interests under the NTA).

In the immediate term, changes must be made without delay to reduce the current disadvantage faced by Traditional Owners. These include State advocacy to the Commonwealth to reduce the burden of proof, adjust the test for connection, allow for revival of native title and reform the future acts regime. In addition, funding and sufficient resources must be provided to Traditional Owner groups to engage legal, research and other supports.

Recommendations

RECOMMENDATION 23

The First Peoples’ Assembly of Victoria must promote access to support and resources via the Self-Determination Fund for all Traditional Owner groups in Victoria, both recognised and not yet recognised. The Victorian Government must support and facilitate this objective.

RECOMMENDATION 24

In relation to native title, the Victorian Government must advocate to the Commonwealth Government to:

- a. Reverse the burden of proof for connection to Country so that the state is required to disprove an asserted connection, rather than Traditional Owners prove connection;
- b. Adjust the test to reflect the effects of colonisation. Connection must become a flexible concept rather than a bright-line test. A lesser degree of connection must be accepted where it results, for instance, from relocation from Country or removal of children; and
- c. Enact reforms so that the extinguishment of native title is not necessarily permanent but may revive once the extinguishing interest ends.

RECOMMENDATION 25

The Victorian Government must make a submission to the Australian Law Reform Commission supporting reform of the future acts regime.

Endnotes

1. Transcript of roundtable with Gunditj Mirring Traditional Owners Corporation, 19 January 2024, 10, served on the State of Victoria on 12 April 2024.

2. Uncle Wayne Atkinson, Submission 497 ('Land Justice for a Treaty Now Victoria'), 4.

3. Transcript of Tony Kelly, 16 April 2024, 63 [5].

4. See Uncle Wayne Atkinson, Submission 497 ('Land Justice for a Treaty Now Victoria'), 4.

5. First Peoples' Assembly of Victoria, Submission 378 (Land, Sky, Waters), 26.

6. Transcript of Rainer Mathews, 16 April 2024, 69 [40].

7. Transcript of Rainer Mathews, 16 April 2024, 69 [38]–[43].

8. Professor Libby Porter, Submission 335, 6, citing Glen Coulthard, *Red Skins, White Masks: Rejecting the Colonial Politics of Recognition* (Minneapolis: University of Minnesota Press, 2014); Irene Watson, 'Buried Alive' (2002) 13 *Law and Critique*, 253–69; Libby Porter and Janice Barry (eds), *Planning for Coexistence? Recognizing Indigenous rights through land-use planning in Canada and Australia* (Routledge, 1st Edition, 2016).

9. [1998] FCA 1606 ('Yorta Yorta'); (2002) 214 CLR 422.

10. Witness Statement of Surveyor-General Craig Sandy, 12 February 2024, 16 [54].

11. The Hon Gabrielle Williams was Minister for Aboriginal Affairs from March 2020 until June 2022, when this became known as Minister for Treaty and First Peoples (she held this Ministership from June 2022 to October 2023). The Hon Natalie Hutchins has been Minister for Treaty and First Peoples since October 2023. Natalie Hutchins was also the Minister for Aboriginal Affairs from December 2014 to December 2018. See Parliament of Victoria, '[The Hon. Gabrielle Williams](#)' (Webpage); See Parliament of Victoria, '[The Hon. Natalie Hutchins](#)' (Webpage); [Department of Premier and Cabinet Annual Report 2018–19](#).

12. Witness Statement of Minister Gabrielle Williams MP, 3 May 2022, 8 [59].

13. (1992) 175 CLR 1 ('Mabo').

14. Victoria, *Letters Patent*, [3(e)].

15. Victoria, *Letters Patent*, [3(e)].

16. Victoria, *Letters Patent*, [4(l)].

17. Victoria, *Letters Patent*, [4(m)].

18. Environmental Justice Australia, Submission 346 (Land Sky Waters 2), 9.

19. National Native Title Tribunal, '[National Native Title Register](#)' (Webpage).

20. *Clarke on behalf of the Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagulk Peoples v State of Victoria* [2005] FCA 1795.

21. *Lovett on behalf of the Gunditjmara People v State of Victoria* [2007] FCA 474.

22. *Mullett on behalf of the Gunai/Kurnai People v State of Victoria* [2010] FCA 1144.

23. *Lovett on behalf of the Gunditjmara People v State of Victoria* (No 5) [2011] FCA 932.

24. *Austin on behalf of the Eastern Maar People v State of Victoria* [2023] FCA 237.

25. *Austin on behalf of the Eastern Maar People v State of Victoria* (No 2) [2024] FCA 266.

The 2024 Eastern Maar native title determination was not included in information provided by the State to Yoorrook in 2023, so is not reflected in tables and figures in this chapter.

26. Department of Premier and Cabinet, Response to NTP-003-026 — 'Yoorrook Justice Commission – Land Justice Unit – Responses to RFI, 2 February 2024 – Response from Dean Cowie PSM', 19, produced by the State of Victoria in response to the Commission's Notice to Produce dated 2 February 2024. See also Department of Premier and Cabinet, Response to NTP-003-002 — 'Native Title Act 1993 and the Traditional Owner Settlement Act 2010', 14, produced by the State of Victoria in response to the Commission's Notice to Produce dated 8 November 2023.

Please note, the 2024 Eastern Maar native title determination was not included in information provided by the State to Yoorrook in 2023, so is not included in this table.

27. 'Figures provided by National Native Title Tribunal Geospatial Services on 27 September 2023 (with Crown Land calculated with reference to DEECA's Parcel Crown Approved dataset and Full Determination Area calculated with reference to the National Native Title Tribunal's custodial datasets)': Department of Premier and Cabinet, Response to NTP-003-026 — 'Yoorrook Justice Commission – Land Justice Unit – Responses to RFI, 2 February 2024 – Response from Dean Cowie PSM', 19, produced by the State of Victoria in response to the Commission's Notice to Produce dated 2 February 2024.

28. 'Figures provided by National Native Title Tribunal Geospatial Services on 27 September 2023 (with Crown Land calculated with reference to DEECA's Parcel Crown Approved dataset and Full Determination Area calculated with reference to the National Native Title Tribunal's custodial datasets)': Department of Premier and Cabinet, Response to NTP-003-026 — 'Yoorrook Justice Commission – Land Justice Unit – Responses to RFI, 2 February 2024 – Response from Dean Cowie PSM', 19, produced by the State of Victoria in response to the Commission's Notice to Produce dated 2 February 2024.

29. Department of Premier and Cabinet, Response to NTP-003-002 — 'Native Title Act 1993 and the Traditional Owner Settlement Act 2010', 4, produced by the State of Victoria in response to the Commission's Notice to Produce dated 8 November 2023.

Please note, the 2024 Eastern Maar native title determination was not included in information provided by the State to Yoorrook in 2023, so the figures in this table do not include the 2024 Eastern Maar determination. See Department of Premier and Cabinet, Response to NTP-003-002 — 'Native Title Act 1993 and the Traditional Owner Settlement Act 2010', 4, produced by the State of Victoria in response to the Commission's Notice to Produce dated 8 November 2023: 'Note that data pertaining to the most recent Eastern Maar Consent Determination (March 2023) is excluded from this total, as it is not currently available/is subject to change, due to anticipated s. 47C Agreements.'

30. 'Area of land (Crown land and freehold) in square kilometres provided by Department of Premier and Cabinet Heritage Information and Spatial Systems on 1 November 2023 (rounded to closest 10 square kilometres; Crown Land calculated with reference to DEECA's PLM25 dataset)': See Department of Premier and Cabinet, Response to NTP-003-002 — 'Native Title Act 1993 and the Traditional Owner Settlement Act 2010', 4, produced by the State of Victoria in response to the Commission's Notice to Produce dated 8 November 2023.

31. 'Area of land (Crown land and freehold) in square kilometres provided by Department of Premier and Cabinet Heritage Information and Spatial Systems on 1 November 2023 (rounded to closest 10 square kilometres; Crown Land calculated with reference to DEECA's PLM25 dataset)'. See Department of Premier and Cabinet, Response to NTP-003-002 — 'Native Title Act 1993 and the Traditional Owner Settlement Act 2010', 4, produced by the State of Victoria in response to the Commission's Notice to Produce dated 8 November 2023.

32. 'Area of Crown land in square kilometres provided by National Native Title Tribunal Geospatial Services on 27 September 2023 (with Crown Land calculated with reference to DEECA's Parcel Crown Approved dataset)': See Department of Premier and Cabinet, Response to NTP-003-002 — 'Native Title Act 1993 and the Traditional Owner Settlement Act 2010', 4, produced by the State of Victoria in response to the Commission's Notice to Produce dated 8 November 2023.

33. PBC Native Title website (managed by [Australian Institute of Aboriginal and Torres Strait Islander Studies \(AIATSIS\)](#)), '[Native title, rights and interests](#)' (Webpage).

34. See *Native Title Act 1993* (Cth) pt 4; PBC Native Title website (managed by [Australian Institute of Aboriginal and Torres Strait Islander Studies \(AIATSIS\)](#)), '[Native title, rights and interests](#)' (Webpage).

35. *Native Title Act 1993* (Cth) s 3.

36. PBC Native Title website (managed by [Australian Institute of Aboriginal and Torres Strait Islander Studies \(AIATSIS\)](#)), '[Native title, rights and interests](#)' (Webpage).

37. See *Native Title Act 1993* (Cth) s 223(1)(c) and *Mabo v Queensland (No 2)* (1992) 175 CLR 1, 68. See also Department of Transport and Planning, Response to NTP-003-003 — 'Native Title Guidance Note (transport projects)', 1–2, produced by the State of Victoria in response to the Commission's Notice to Produce dated 8 November 2023.

38. Department of Transport and Planning, Response to NTP-003-003 — 'Native Title Guidance Note (transport projects)', 1, produced by the State of Victoria in response to the Commission's Notice to Produce dated 8 November 2023.

39. Department of Transport and Planning, Response to NTP-003-003 — 'Native Title Guidance Note (transport projects)', 1–2, produced by the State of Victoria in response to the Commission's Notice to Produce dated 8 November 2023.

40. Department of Transport and Planning, Response to NTP-003-003 — 'Native Title Guidance Note (transport projects)', 2, produced by the State of Victoria in response to the Commission's Notice to Produce dated 8 November 2023.

41. Department of Transport and Planning, Response to NTP-003-003 — 'Native Title Guidance Note (transport projects)', 2, produced by the State of Victoria in response to the Commission's Notice to Produce dated 8 November 2023.

42. Department of Transport and Planning, Response to NTP-003-003 — 'Native Title Guidance Note (transport projects)', 2, produced by the State of Victoria in response to the Commission's Notice to Produce dated 8 November 2023.

43. Department of Premier and Cabinet, Response to NTP-003-026 — 'Land Justice Unit — Responses to RFI, 2 February 2024 – Response from Dean Cowie PSM', 2, produced by the State of Victoria in response to the Commission's Notice to Produce dated 2 February 2024.

44. See National Native Title Tribunal, '[About Indigenous Land Use Agreements \(ILUAs\)](#)' (Webpage). See also Department of Premier and Cabinet, Response to NTP-003-026 — 'Land Justice Unit — Responses to RFI, 2 February 2024 – Response from Dean Cowie PSM', 2, 16, produced by the State of Victoria in response to the Commission's Notice to Produce dated 2 February 2024.

45. Department of Premier and Cabinet, Response to NTP-003-026 — 'Land Justice Unit — Responses to RFI, 2 February 2024 – Response from Dean Cowie PSM', 2, 16, produced by the State of Victoria in response to the Commission's Notice to Produce dated 2 February 2024.

46. Department of Premier and Cabinet, Response to NTP-003-026 — 'Land Justice Unit — Responses to RFI, 2 February 2024 – Response from Dean Cowie PSM', 16, produced by the State of Victoria in response to the Commission's Notice to Produce dated 2 February 2024.

47. Department of Premier and Cabinet, Response to NTP-003-026 — 'Land Justice Unit — Responses to RFI, 2 February 2024 – Response from Dean Cowie PSM', 16, produced by the State of Victoria in response to the Commission's Notice to Produce dated 2 February 2024.

48. Department of Premier and Cabinet, Response to NTP-003-026 — 'Land Justice Unit — Responses to RFI, 2 February 2024 – Response from Dean Cowie PSM', 16, produced by the State of Victoria in response to the Commission's Notice to Produce dated 2 February 2024.

49. Department of Premier and Cabinet, Response to NTP-003-026 — 'Land Justice Unit — Responses to RFI, 2 February 2024 – Response from Dean Cowie PSM', 1, produced by the State of Victoria in response to the Commission's Notice to Produce dated 2 February 2024.

50. Department of Premier and Cabinet, Response to NTP-003-002 — 'Native Title Act 1993 and the Traditional Owner Settlement Act 2010', 9, produced by the State of Victoria in response to the Commission's Request for Information dated 2 February 2024.

51. Department of Premier and Cabinet, Response to NTP-003-002 — 'Native Title Act 1993 and the Traditional Owner Settlement Act 2010', 9, produced by the State of Victoria in response to the Commission's Request for Information dated 2 February 2024.

52. Department of Premier and Cabinet, Response to NTP-003-002 — 'Native Title Act 1993 and the Traditional Owner Settlement Act 2010', 13, produced by the State of Victoria in response to the Commission's Notice to Produce dated 8 November 2023; National Native Title Tribunal, '[National Native Title Register](#)' (Webpage).

53. Paul Keating, *Native Title Bill 1993*, Second Reading, House of Representatives (Commonwealth), 16 November 1993, 2882.

54. Transcript of Rainer Mathews, 16 April 2024, 61 [39]–[42].

55. Transcript of Rainer Mathews, 16 April 2024, 61 [40].

56. Department of Transport and Planning, Response to NTP-003-003 — 'Native Title Guidance Note (transport projects)', 1, produced by the State of Victoria in response to the Commission's Notice to Produce dated 8 November 2023.

57. Transcript of Rainer Mathews, 16 April 2024, 61 [40].

58. Transcript of Will Crawford, 16 April 2024, 81 [17]–[22].

59. Department of Transport and Planning, Response to NTP-003-003 — 'The role of land titling and land surveying in the historical dispossession of Traditional Owners from land and overview of contemporary land administration', 1, produced by the State of Victoria in response to the Commission's Notice to Produce dated 8 November 2023.

60. Department of Energy, Environment and Climate Action, Response to NTP-003-004 — ‘*The legal and policy frameworks concerning the ownership, management and administration of public land and natural resources*’, 3, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 8 November 2023.

61. Department of Energy, Environment and Climate Action, Response to NTP-003-004 — ‘*The legal and policy frameworks concerning the ownership, management and administration of public land and natural resources*’, 3, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 8 November 2023.

62. Federation of Victorian Traditional Owner Corporations, *A Framework for Traditional Owner Treaties: Lessons from the Settlement Act* (Discussion Paper 5, 2021), 12.

63. In correspondence, the State informed Yoorrook that since the 2023 Eastern Maar native title consent determination, the State’s practice is now to request parties agree to the use of generic clauses rather than to conduct detailed tenure analyses. However, where a generic exclusion clause cannot be agreed, the default is a ‘determination area table’ based on tenure analysis of Crown land parcels claimed: Correspondence from the Victorian Government Solicitors Office to King & Wood Mallesons (Solicitors Assisting) dated 13 December 2024.

See also Federation of Victorian Traditional Owner Corporations, *A Framework for Traditional Owner Treaties: Lessons from the Settlement Act* (Discussion Paper 5, 2021), 12.

64. Federation of Victorian Traditional Owner Corporations, *A Framework for Traditional Owner Treaties: Lessons from the Settlement Act* (Discussion Paper 5, 2021), 12.

65. Federation of Victorian Traditional Owner Corporations, *A Framework for Traditional Owner Treaties: Lessons from the Settlement Act* (Discussion Paper 5, 2021), 12.

66. See Chapter 9: How we got here — overview of recognition systems; that legislation was the *Land Titles Validation Act 1994* (Vic) which was amended in 1998 by the *Land Titles Validation Amendment Bill 1998* (Vic).

67. See e.g. Transcript of Minister Steve Dimopoulos MP, 16 April 2024, 43 [20]–44 [4]; Transcript of Minister Natalie Hutchins, 18 April 2024, 36 [38]–37 [35]; Taungurung Land and Waters Council Aboriginal Corporation, Submission 572 (Land Sky Waters, ‘specific issues arising out of the hearings’), 5–7.

68. [Victorian Plantations Corporation Act 1993](#) (Vic); See also Taungurung Land and Waters Council Aboriginal Corporation, Submission 572 (Land Sky Waters, ‘specific issues arising out of the hearings’), 5–7.

69. The State has said: ‘Crown land vested in the Victorian Plantations Corporation under the Victorian Plantations Corporation Act 1993 (Vic) is perpetually licensed to Hancock Victorian Plantations to use as plantation. It is regulated by the Code of Practice for Timber Production 2014 (Timber Code), which deals with the management of timber plantations ... While it remains public land, the State has no role in its management (aside from regulatory oversight)’. Department of Environment, Land, Water and Planning, ‘Overview of Victoria’s Forest Management System’ (December 2019), 8.

70. Minister Dimopoulos confirmed this figure in: Transcript of Minister Steve Dimopoulos MP, 16 April 2024, 40 [41]–41 [8].

71. Minister Dimopoulos confirmed this in: Transcript of Minister Steve Dimopoulos MP, 16 April 2024, 41 [4]–[8].

72. Minister Dimopoulos agreed with statements put to him by Sarala Fitzgerald (Counsel Assisting) in Transcript of Minister Steve Dimopoulos MP, 16 April 2024, 43 [1]–44 [4].

73. Taungurung Land and Waters Council Aboriginal Corporation, Submission 572 (Land Sky Waters, ‘specific issues arising out of the hearings’), 5–7.

74. Minister Hutchins agreed with the statement put to her by Tony McAvoy SC (Senior Counsel Assisting) ‘Do you accept that treating Aboriginal people in such a way has, at its heart, a racist approach to Aboriginal people, First Peoples and First Peoples’ rights?’: Transcript of Minister Natalie Hutchins MP, 18 April 2024, 38 [19]–[23].

75. Transcript of Minister Steve Dimopoulos MP, 16 April 2024, 42 [40]–[45]; Department of Energy, Environment and Climate Action, Response to NTP-003-012 — ‘*Department of Conservation and Natural Resources Memorandum — Mabo Case Implications*’, 24 March 1993, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 17 November 2023.

76. Department of Energy, Environment and Climate Action, Response to NTP-003-012 — ‘Department of Conservation and Natural Resources Memorandum — Mabo Case Implications’, 24 March 1993, 5 [15], produced by the State of Victoria in response to the Commission’s Notice to Produce dated 17 November 2023.

77. Minister Dimopoulos agreed with statements put to him by Sarala Fitzgerald (Counsel Assisting) in Transcript of Minister Steve Dimopoulos MP, 16 April 2024, 45 [33]–46 [5].

78. Transcript of Minister Steve Dimopoulos MP, 16 April 2024, 46 [4]–[9].

79. Wamba Wemba Aboriginal Corporation, Submission 349, 10.

80. *Native Title Act 1993* (Cth) s 223(1).

81. *Native Title Act 1993* (Cth) s 223(1)(b).

82. *Members of the Yorta Yorta Aboriginal Community v Victoria* (2002) 214 CLR 422 at [87] (Gleeson CJ, Gummow and Hayne JJ).

83. *Members of the Yorta Yorta Aboriginal Community v Victoria* (2002) 214 CLR 422, 456 [87]–[89] (Gleeson CJ, Gummow and Hayne JJ). See Department of Premier and Cabinet, Response to NTP-003-002 — ‘*Native Title Act 1993 and the Traditional Owner Settlement Act 2010*’, 8–9, produced by the State of Victoria in response to the Commission’s Request for Information dated 8 November 2023.

84. Uncle Wayne Atkinson stated that although ‘the British crown tried to claim land and remove traditional owners to reserves, the traditional connection with country was maintained. Cummeragunja like other reserves enabled traditional owners to maintain their connections with the Apical ancestors who were on country before the British invasion’. Uncle Wayne Atkinson, Submission 406 (‘Truth Justice Submission’), 6.

85. Witness Statement of Marcus Stewart, inaugural Co-Chair of the First Peoples’ Assembly of Victoria, 29 April 2022, 28.

86. Transcript of Uncle Graham Atkinson, 15 April 2024, 24 [40].

87. First Nations Legal and Research Services, Submission 345, 3.

88. Transcript of Tony Kelly, 16 April 2024, 72 [15].

89. Witness Statement of Uncle Colin Walker, 27 May 2022, 7 [45].

90. Transcript of Uncle Graham Atkinson, 15 April 2024, 21 [30]–[40].

91. Transcript of Aunty Marjorie Thorpe, 22 [25]–[40].

92. Transcript of Karen Jackson, 15 April 2024, 23 [3]–[7].

93. Transcript of Tony Kelly, 16 April 2024, 64 [14]–[33].

94. Witness Outline of Uncle Brendan Kennedy, 23 April 2024, 6 [57].

95. Witness Outline of Uncle Brendan Kennedy, 23 April 2024, 6 [63].

96. Witness Outline of Uncle Brendan Kennedy, 23 April 2024, 6–7.

97. Witness Outline of Uncle Brendan Kennedy, 23 April 2024, 6 [60].

98. Witness Outline of Uncle Brendan Kennedy, 23 April 2024, 6–7.

99. Witness Statement of Uncle Johnny Lovett, 27 April 2022, 20 [119].

100. Transcript of Minister Natalie Hutchins MP, 18 April 2024, 62 [35]–[45].

101. Witness Statement of Minister Gabrielle Williams MP, 3 May 2022, 7–8 [58].

102. Witness Statement of Minister Gabrielle Williams MP, 3 May 2022, 7–8 [58].

103. Witness Statement of Surveyor-General Craig Sandy, 2 [7].

104. Transcript of Rainer Mathews, 16 April 2024, 63 [25].

105. Victorian Aboriginal Community Controlled Health Organisation, Submission 340, 9.

106. Transcript of Rainer Mathews – FNLRs, 16 April 2024, 63 [25].

107. Transcript of Tony Kelly, 16 April 2024, 62 [15]–[35].

108. Transcript of Tony Kelly, 16 April 2024, 62 [28]–[42].

109. Transcript of Tony Kelly, 16 April 2024, 60 [28]–[42].

110. Transcript of Tony Kelly, 16 April 2024, 60 [28]–[42].

111. Transcript of Tony Kelly, 16 April 2024, 59 [32]–[40].

112. Wamba Wemba Aboriginal Corporation, Submission 349, 9.

113. Transcript of Uncle Robbie Thorpe (Djuran Bunjilinee), 27 March 2024, 71 [4]–[6].

114. *Western Australia v Ward* (2002) 213 CLR 1 [95].

115. Transcript of Uncle Robbie Thorpe (Djuran Bunjilinee), 27 March 2024, 71 [4]–[6].

116. Witness Statement of Marcus Stewart, inaugural Co-Chair of the First Peoples’ Assembly of Victoria, 29 April 2022, 29.

117. Department of Premier and Cabinet, Response to NTP-003-026 — ‘*Land Justice Unit — Responses to RFI, 2 February 2024 — Response from Dean Cowie PSM*’, 21 [4], produced by the State of Victoria in response to the Commission’s Notice to Produce 2 February 2024.

118. Witness Statement of Marcus Stewart, inaugural Co-Chair of the First Peoples’ Assembly of Victoria, 29 April 2022, 29.

119. Cf *Akiba on behalf of the Torres Strait Regional Seas Claim Group v Commonwealth of Australia* (2013) 250 CLR 209, where the High Court of Australia found for the first time that native title rights included commercial rights. The claimant group had the right ‘to take for any purpose resources in the native title areas’. This meant that the native title holders could continue to sell and trade fish as they had done under their traditional laws. See also *Western Australia v Willis on behalf of the Pilki People* (2015) 329 ALR 562.

120. Witness Statement of Uncle Johnny Lovett, 27 April 2022, 20 [121]–[122].

121. *Native Title Act 1993* (Cth) s 51(1).

122. PBC Native Title website (managed by [Australian Institute of Aboriginal and Torres Strait Islander Studies \(AIATSIS\)](#)), ‘*Compensation*’ (Webpage).

123. Transcript of Will Crawford, 16 April 2024, 81 [17]–[22].

124. First Nations Legal and Research Services, Submission 354, 17.

125. Transcript of Will Crawford, 16 April 2024, 81 [17]–[22].

126. Transcript of Rainer Mathews, 16 April 2024, 83 [1]–[6].

127. Comhar Group, Submission 338, 3.

128. (D1-D3/2018) (2019) 269 CLR 1.

129. (2019) 269 CLR 1, [6].

130. (2019) 269 CLR 1, [3] (Kiefel CJ, Bell, Keane, Nettle and Gordon JJ).

131. (2019) 269 CLR 1 [70], [74], [76], [87] (Kiefel CJ, Bell, Keane, Nettle and Gordon JJ). The majority opinion assessed the economic loss by comparing the native title rights and interests to the value of freehold land.

132. (2019) 269 CLR 1, [113] (Kiefel CJ, Bell, Keane, Nettle and Gordon JJ).

133. (2019) 269 CLR 1, [3(3)] (Kiefel CJ, Bell, Keane, Nettle and Gordon JJ).

134. (2019) 269 CLR 1, [254] (Edelman J).

135. First Nations Legal and Research Services, Submission 345 (Addendum: Methods of Calculating Economic Compensation and Reparations), 23(c).

136. (2019) 269 CLR 1, [254] (Edelman J).

137. (2019) 269 CLR 1, [252] (Edelman J).

138. First Nations Legal and Research Services, Submission 345 (Addendum: Methods of Calculating Economic Compensation and Reparations), 23.

139. First Nations Legal and Research Services, Submission 345 (Addendum: Methods of Calculating Economic Compensation and Reparations), 12.

140. First Nations Legal and Research Services, Submission 345 (Addendum: Methods of Calculating Economic Compensation and Reparations), 12.

141. *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007) (UNDRIP), art 28.

142. *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007) (UNDRIP), art 28; First Nations Legal and Research Services, Submission 345 (Addendum — ‘Technical Paper on the Methods of Calculating Economic Compensation and Reparations’), 7.

143. First Nations Legal and Research Services, Submission 345 (Addendum — ‘Technical Paper on the Methods of Calculating Economic Compensation and Reparations’), 6, citing *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007) (UNDRIP), art 8.

144. First Nations Legal and Research Services, Submission 345 (Addendum — ‘Technical Paper on the Methods of Calculating Economic Compensation and Reparations’), 6.

145. First Nations Legal and Research Services, Submission 345 (Addendum — ‘Technical Paper on the Methods of Calculating Economic Compensation and Reparations’), 8.

146. First Nations Legal and Research Services, Submission 345 (Addendum — ‘Technical Paper on the Methods of Calculating Economic Compensation and Reparations’), 7.

147. Transcript of Will Crawford, 16 April 2024, 80 [30]–[45]. See also Commonwealth of Australia, Aboriginal Land Rights Commission — Second Report 1974, 10 [53]–[61], where chair Justice Edward Woodward found that ‘the only appropriate direct recompense for those who have lost their traditional lands is other land — together with finance to enable that land to be used appropriately, either for housing or for some economic purpose’.

148. First Nations Legal and Research Services, Submission 345 (Addendum — ‘Technical Paper on the Methods of Calculating Economic Compensation and Reparations’), 8 [6.2].

149. Transcript of Will Crawford, 16 April 2024, 81 [2]–[6].

150. Australian Human Rights Commission, [Native Title Report 2004, Annexure 2: Promoting Economic and Social Development through Native Title](#) (Report, 2004).

151. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 21.

152. Witness Statement of Marcus Stewart, inaugural Co-Chair of the First Peoples’ Assembly of Victoria, 29 April 2022, 29–30 [82].

153. Witness Statement of Marcus Stewart, inaugural Co-Chair of the First Peoples’ Assembly of Victoria, 29 April 2022, 29–30 [82]. See *Native Title Act 1993* (Cth) ss 25–44.

154. Witness Statement of Marcus Stewart, inaugural Co-Chair of the First Peoples’ Assembly of Victoria, 29 April 2022, 30 [82].

155. Witness Statement of Marcus Stewart, inaugural Co-Chair of the First Peoples’ Assembly of Victoria, 29 April 2022, 30 [82].

156. Witness Statement of Marcus Stewart, inaugural Co-Chair of the First Peoples’ Assembly of Victoria, 29 April 2022, 30 [82], citing Tony Corbett and Ciaran O’Faircheallaigh, ‘Unmasking the Politics of Native Title: The National Native Title Tribunal’s Application of the NTA’s Arbitration Provisions’ (2006) 33 *The University of Western Australia Law Review* 153, 160.

157. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 21.

158. These functions are detailed in pt 11 div 3 of the *Native Title Act 1993* (Cth). These are summarised in s 203B and include facilitation and assistance functions, certification functions, dispute resolution functions, notification functions, an agreement-making function, internal review functions.

159. Department of Premier and Cabinet, Response to NTP-003-026 — ‘*Land Justice Unit — Responses to RFI, 2 February 2024 — Response from Dean Cowie PSM*’, 5, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 2 February 2024.

160. Department of Premier and Cabinet, Response to NTP-003-026 — ‘*Land Justice Unit — Responses to RFI, 2 February 2024 – Response from Dean Cowie PSM*’, 5, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 2 February 2024.

161. Wamba Wemba Aboriginal Corporation, Submission 349, 8.

162. Wamba Wemba Aboriginal Corporation, Submission 349, 7. See also Transcript of Uncle Gary Murray, 26 April 2024, 27 [6]–28 [25].

163. Wamba Wemba Aboriginal Corporation, Submission 349, 7; Transcript of Uncle Gary Murray, 26 April 2024, 35 [26]–35[19], 39 [25]–[30]; Transcript of roundtable with Dja Dja Wurrung Clans Aboriginal Corporation, 25 November 2023, 19, served on the State of Victoria on 1 April 2024; Transcript of roundtable with Tati Tati Kaiejin Aboriginal Corporation, 6 December 2023, 8, 10, 11–12, 23, 25, served on the State of Victoria on 12 April 2024.

164. Transcript of Uncle Gary Murray, 26 April 2024, 30 [35]–31 [6], 35 [26]–36 [19]; Dale Wandin, Submission 506, 11.

165. Wamba Wemba Aboriginal Corporation, Submission 349, 8.

166. Wamba Wemba Aboriginal Corporation, Submission 349, 14.

167. Transcript of Tony Kelly, 16 April 2024, 89 [45].

168. Transcript of Tony Kelly, 16 April 2024, 59 [45].

169. Transcript of Tony Kelly, 16 April 2024, 59 [44]–[46]–60 [1]–[6].

170. Transcript of Tony Kelly, 16 April 2024, 59 [44]–[46]–60 [1]–[6].

171. Transcript of Tony Kelly, 16 April 2024, 90 [35]–[45].

172. Seidel, Peter, ‘[Native title: The struggle for justice for the Yorta Yorta Nation](#)’ (2004) 29(2) *Alternative Law Journal* 70.

173. National Native Title Tribunal, ‘[National Native Title Register](#)’ (Webpage).

Please note, the 2024 Eastern Maar native title determination is not included in this table.

174. Transcript of Tony Kelly, 16 April 2024, 73 [36]–74 [4].

175. Transcript of Uncle Graham Atkinson, 15 April 2024, 29 [25]–[45].

176. Transcript of Uncle Graham Atkinson, 15 April 2024, 29 [25]–[35].

177. Transcript of Paul Paton, 17 April 2024, 56 [15]–[24].

178. Transcript of Paul Paton, 17 April 2024, 56 [26]–[30].

179. Transcript of Paul Paton, 17 April 2024, 56 [46]–57 [3].

180. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 21 [92].

181. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 21 [92].

182. Witness Statement of Minister Lily D’Ambrosio MP, 8 March 2024, 12 [57].

183. Witness Statement of Surveyor-General Craig Sandy, 12 February 2024, 18 [59].

184. Transcript of Rainer Mathews, 16 April 2024, 80 [1]–[10].

Chapter 11: Traditional Owner settlements

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In 2010, in recognition that Traditional Owner groups had no concrete avenue for recognition of their rights to land in Victoria, the State enacted the Traditional Owner Settlement Act 2010 (Vic) (Settlement Act) [TOSA]. [TOSA] attempted to develop a flexible approach to prior extinguishment and address issues of connection ... However, over a decade later, and with only four agreements with Traditional Owners negotiated to date, [TOSA] has failed to live up to expectations and has largely replicated the NTA [Native Title Act 1993 (Cth)] processes. It ... has continued the legacy of only recognising a narrow concept of traditional rights and interests. Efforts to reform [TOSA] have been hampered by the State.¹

FIRST PEOPLES' ASSEMBLY OF VICTORIA

Introduction

The *Traditional Owner Settlement Act 2010* (Vic) ('TOSA') was intended to be a more fair and efficient framework than native title for the State to recognise Traditional Owners' land rights.² As discussed in Chapter 9: How we got here — overview of recognition systems, TOSA was introduced in 2010 following sustained advocacy by the Victorian Traditional Owners Land Justice Group in response to the unsuccessful native title claim by the Yorta Yorta people.³ Almost 15 years later, although it has enabled significant advances for some groups, TOSA has not delivered land justice for Traditional Owners in Victoria.

Yoorrook heard that TOSA has not fulfilled its goals 'to overcome the inadequacies and injustices of native title'⁴ and to allow for the efficient resolution of claims through negotiation.⁵ TOSA's operation has been severely flawed and unsuccessful in addressing these issues. Only four agreements have been made in 14 years. The State has returned little 'usable' land to Traditional Owners and has paid very little compensation to the relevant Traditional Owner groups. The processes for determining the right people to form a claimant group have proven ineffective and susceptible to dispute. State and local government compliance with TOSA agreements has sometimes been poor, which has further eroded Traditional Owners' practical rights and confidence in the system.⁶ Yoorrook heard evidence that TOSA's recognition of Traditional Owner rights falls short of the minimum standards in the *United Nations Declaration on the Rights of Indigenous Peoples* ('UNDRIP').⁷

Yoorrook also heard that where groups have been able to negotiate agreements under TOSA, land has been predominantly returned in 'Aboriginal title', which is effectively a joint management arrangement between Traditional Owners and the State.⁸ There are significant limitations on how Traditional Owners can use Aboriginal title land.⁹ For example, the land cannot be used to build homes, for commercial activities or to borrow against.¹⁰ Yoorrook heard that some freehold land that the State has offered to First Peoples is poor quality, includes old government assets that no longer have value, or is contaminated.¹¹ Rights to natural resources awarded in TOSA agreements to date have been largely non-commercial in nature.¹²

State failure to return land promised under TOSA reveals a stark disparity between commitment and implementation. Since 2010, the State has promised to return 1,265,937 hectares to Traditional Owners in Aboriginal title and approximately 400 hectares of land in the form of freehold title. However, to date, the State has only returned 59,075 hectares in Aboriginal title and 65 hectares in freehold title.¹³

TOSA was intended to make it easier for a claimant group to be established and obtain recognition. TOSA does not require claimant groups to prove a continuous connection to Country in the period since colonisation.¹⁴ However, it also does not include a clear process for resolving disputes between claimant groups as to group composition or boundaries (see section below: 'TOSA does not include a non-adversarial process for determining competing claims'). TOSA's shortcomings have made it more difficult for some groups to establish claims.¹⁵

Since TOSA's introduction, there have been important advances in native title case law, including on compensation for past acts. However, these advances have not been reflected in TOSA, relevant State guidelines or the individual agreements reached.¹⁶ This is despite the fact that, in entering into agreements under TOSA, the State requires binding promises from Traditional Owner groups not to bring any further native title claims, including for compensation.¹⁷

First Peoples and the State agree that TOSA should be improved. In October 2019, the Attorney-General commissioned the First Principles Review of TOSA (First Principles Review). Traditional Owner and State representatives jointly undertook the Review, which commenced in early 2020. A report was published in April 2024.¹⁸ The First Principles

Review Report made 36 recommendations in relation to compensation for economic and cultural losses, reforms to Natural Resource Agreements and the land use activity regime. Thirteen of these, including key recommendations regarding compensation, were Traditional Owners’ recommendations without the support of State representatives.

Yoorrook has not seen evidence that the State is making timely progress towards implementing the First Principles Review’s recommendations, including those that were jointly agreed. Yoorrook considers that jointly agreed recommendations should be actioned immediately.¹⁹ The Victorian Government acknowledged that they need to do more.²⁰

This chapter considers the limitations of TOSA and aspects requiring immediate reform.

How TOSA agreements work

TOSA allows Traditional Owner groups to negotiate a Recognition and Settlement Agreement (RSA), which is an umbrella agreement with different components that recognise rights and interests over land.²¹ First Nations Legal and Research Services (FNLRS) explained that RSAs come with a ‘package of benefits’, including conferral of rights in land (including in Aboriginal title), ‘establishment of joint management arrangements over parks and reserves’ and ‘procedural rights for Traditional Owners for activities undertaken on Crown land’.²²

TOSA agreements do not directly affect native title rights and interests in the relevant land, but Traditional Owners must agree not to make any future native title or related compensation claims.²³ TOSA agreements include money in a trust account (known as Victorian Traditional Owners Trusts²⁴) to fund Traditional Owner corporations to administer the agreements and to enhance economic prosperity.²⁵ The Victorian Traditional Owners Funds Limited, a not-for-profit public company limited by guarantee, is the trustee for each of the Victorian Traditional Owners Trusts. The trusts publish annual reports and report cards accounting for the activities and funds the trusts hold.

While payments under TOSA agreements may have a compensatory effect, First Principles Review stated they ‘are not expressed as being compensation ... and act as consideration for Traditional Owners agreeing to bring no further claims under the NTA [Native Title Act 1993 (Cth)]’.²⁶ Critically, the Department of Premier and Cabinet told Yoorrook that: ‘some funding to implement RSAs is retained and administered by State agencies (i.e., funding to implement joint management arrangements’ which are administered by the Department of Energy, Environment and Climate Action].²⁷ In correspondence to Yoorrook, the Department of Energy, Environment and Climate Action said that joint management arrangements are also administrated by Parks Victoria.²⁸ This means that Traditional Owners do not receive the full benefits of funding agreements under TOSA.

Table 11.1 sets out the different types of agreements that make up RSAs under TOSA.

Table 11.1: Recognition and Settlement Agreements (RSAs) under TOSA

Types of Recognition and Settlement Agreements (RSAs) under TOSA ²⁹	
Land Agreement ³⁰	Land Agreements allow for the return of land to Traditional Owners in either freehold title (for unreserved public land) ³¹ or Aboriginal title (for all public land). See box: Aboriginal title and freehold title for definitions of Aboriginal title.
	All four RSAs to date have included a Land Agreement, in which the State has made a commitment to return relatively small areas of public land by grant of fee simple title. ³²
Land Use Activity Agreement ³³	Land Use Activity Agreements provide Traditional Owners with procedural rights in relation to proposed activities on public land covered by the agreement.
	They are a simplified alternative to the NTA ‘future acts’ regime ³⁴ (see Chapter 10: Native title), which establishes a hierarchy of procedural rights for Traditional Owners to be advised of, negotiate conditions for, or require an agreement for proposed activities or uses of public land in the agreement area. ³⁵ The more substantial the activity, the more rights Traditional Owners have in relation to the activity.
	Part 4 of TOSA provides a dispute resolution process in relation to Land Use Activity Agreements. The Victorian Civil and Administrative Tribunal (VCAT) can make orders regarding the classification of activities, resolving negotiations, and enforcing the agreement where a person has not complied. ³⁶
Funding Agreement ³⁸	Land Use Activity Agreements must form part of a settlement package that includes an Indigenous Land Use Agreement (ILUA), unless native title has been determined not to exist in relation to the land, subject to the agreement (TOSA s 30(4)). ³⁷
	Funding Agreements provide funding to the ‘traditional owner group entity’ ³⁹ (also known as a ‘Traditional Owner corporation’) ‘for the purpose of giving effect to’ the RSA. ⁴⁰
Natural Resource Agreement ⁴²	The Funding Agreements for all four RSAs to date have consisted of an upfront grant to the Traditional Owner corporation and a deposit into a trust account providing an annuity. ⁴¹
	Natural Resource Agreements allow the State and Traditional Owners to agree to permit individual group members to carry out ‘agreed activities’ on land in relation to ‘natural resources’, including:
	• accessing, occupying and using the land • accessing, hunting, taking, using or interfering with natural resources • taking or using water • camping on the land • conducting cultural activities on the land.⁴³ The resources covered by these agreements include land, flora, fauna, water, stone, gravel, limestone and other similar earth materials. Most activities may only be carried out for ‘traditional purposes’.⁴⁴
Traditional Owner Land Natural Resource Agreements ⁴⁵	Traditional Owner Land Natural Resource Agreements allow Traditional Owners to carry out agreed activities on land in the agreement area that the Traditional Owner corporation or a member of the Traditional Owner group owns in freehold. ⁴⁶

ABORIGINAL TITLE AND FREEHOLD TITLE

What is Aboriginal title?

Aboriginal title is a limited form of property interest that can only be granted subject to a Traditional Owner Land Management Agreement with the State under Part 8A of the *Conservation, Forests and Lands Act 1987* (Vic) (discussed further in Chapter 13: Joint management).⁴⁷ A Traditional Owner group cannot sell, transfer, lease or license Aboriginal title to any other person.⁴⁸ Traditional Owners must also transfer a right ‘to occupy, use, control and manage the land’ back to the State.⁴⁹

What is freehold title?

Freehold is the strongest type of private land ownership in Australian law and includes a right to exclusive possession of land. A Land Agreement may grant a freehold interest with no conditions.⁵⁰ Traditional Owners and the State may, however, negotiate conditions that restrict Traditional Owners’ ability to deal with the land in future.⁵¹ The parties may also agree that freehold land is subject to entering into a land management cooperative agreement under the *Conservation, Forests and Lands Act 1987* (Vic).⁵²

In addition to the sub-agreements set out in Table 11.1, RSAs incorporate two other forms of agreement from other pieces of legislation: Indigenous Land Use Agreements (ILUAs) and Traditional Owner Land Management Agreements. These agreements are explained in Table 11.2.

Table 11.2: Other agreements entered into as part of a Recognition and Settlement Agreement

Other agreements entered into as part of a Recognition and Settlement Agreement	
Indigenous Land Use Agreement (ILUA) ⁵³	The State cannot enter into a Land Use Activity Agreement unless: - the agreement forms part of a settlement package that includes an ILUA capable of being registered under the <i>NTA</i>, or - the Federal Court has determined that native title does not exist in relation to the land that is subject to the agreement.⁵⁴ Consistent with the original intent behind <i>TOSA</i>, the State’s policy ‘remains that [<i>TOSA</i>] agreements would include ILUAs to settle compensation claims and liabilities’.⁵⁵ As a matter of practice, in return for entering into a <i>TOSA</i> settlement with the State, Traditional Owners must agree (in an ILUA) to: - withdraw any native title claim pursuant to the <i>NTA</i> - not make any future native title claims or native title compensation applications.
Traditional Owner Land Management Agreement ⁵⁶	An agreement under Part 8A of the <i>Conservation, Forests and Land Act 1987</i> (Vic) that provides for the joint management of parks and reserves held under Aboriginal title. These agreements are discussed further in Chapter 13: Joint management.

CASE STUDY: OVERVIEW OF THE GUNAIKURNAI RSA

The Gunaikurnai people were the first Traditional Owner group to obtain recognition under *TOSA*. The agreement was signed in October 2010, shortly after the State enacted *TOSA*.

The Gunaikurnai RSA included a ‘land agreement’ for the transfer of 10 parks and reserves in Aboriginal title, totalling 47,235 hectares of land. To jointly manage this land, the State established a Traditional Owner Land Management Board under Part 8A of the *Conservation, Forests and Land Act 1987* (Vic).

The State paid a settlement of \$18,923,472 over four years, and \$1,730,868 in ongoing funding, as part of a ‘funding agreement’. Of these funds, the State placed \$10 million in a trust account to fund the Gunaikurnai Land and Waters Aboriginal Corporation to administer the agreement. As is typical, State agencies retained and administered some of these funds.⁵⁷ The agreement did not include a Natural Resource Agreement that would permit Gunakurnai people to use natural resources on the land (e.g. hunt animals or take plants).⁵⁸

Shortly before signing the RSA in 2010, the State consented to a native title claim the Gunaikurnai people had lodged around 13 years earlier. This was on the condition that Gunaikurnai also enter into an ILUA that addressed their *NTA* procedural rights to influence decisions about activities on their land (‘future acts’). The ILUA confirmed that the monies awarded constitute full and final compensation.⁵⁹

TOSA agreements: facts and figures

The State and Traditional Owner groups have only reached four RSAs since *TOSA* came into operation. The components of these agreements are set out in Table 11.3. It is important to note that the amounts recorded in Table 11.3 are not all handed over to Traditional Owner groups. The ‘settlement package quantum’ described in the table is not an upfront payment. It includes ‘a deposit into the Victorian Traditional Owners Trust held for the Traditional Owner Group, funding to the Traditional Owner Corporation’ and also ‘the value of any public land returned by freehold grant and funding for joint management of Aboriginal title land’.⁶⁰ Traditional Owners cannot develop or generate revenue from land returned in Aboriginal title (for example by commercial use or building houses), which limits its economic value.

Table 11.3: Traditional Owner groups with a Recognition and Settlement Agreement under *TOSA*⁶¹

Traditional Owner group	Gunaikurnai people	Dja Dja Wurrung people	Taungurung people	Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagulk peoples
Traditional Owner corporation	Gunaikurnai Land and Waters Aboriginal Corporation	Dja Dja Wurrung Clans Aboriginal Corporation	Taungurung Land and Waters Council Aboriginal Corporation	Barengi Gadjin Land Council Aboriginal Corporations

Traditional Owner group	Gunaikurnai people	Dja Dja Wurrung people	Taungurung people	Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagulk peoples
Date executed	October 2010	March 2013	October 2018	October 2022
Date commenced	February 2011	October 2013	August 2020	December 2022
Variations to agreement executed	October 2014 and October 2022	October 2014, April 2017, November 2021 and October 2022	March 2020	Not applicable
Settlement package	RSA, comprising: • Funding Agreement • Traditional Owner Land Management Agreement • ILUAs (2010 and 2022)	RSA, comprising: • Land Use Activity Agreement • Traditional Owner Land Natural Resource Agreement • Victorian Traditional Owners Trust Participation Agreement • Grant Funding Agreement • Traditional Owner land management agreement • ILUA	RSA, comprising: • Land Use Activity Agreement • Natural Resource Agreement • Traditional Owner Land Natural Resource Agreement • Victorian Traditional Owners Trust Participation Agreement • Traditional Owner Land Management Agreement • ILUA	RSA, comprising: • Natural Resource Agreement • Traditional Owner Land Natural Resource Agreement • Victorian Traditional Owners Trust Participation Agreement • Traditional Owner Land Management Agreement • ILUA (2005)
Settlement package quantum	2010: • \$18,923,472 over 4 years • \$1,730,868 ongoing 2022: • \$18,866,000 over 4 years • \$2,850,000 ongoing	2013: • \$12,050,000 over 4 years • \$640,000 ongoing 2022: • \$36,305,000 over 5 years • \$2,852,000 ongoing	2018: • \$29,380,250 over 4 years • \$1,594,000 ongoing	2005: • \$2,400,000 over 5 years 2022: • Up to \$47,060,000 over 5 years • \$2,570,000 ongoing
Aboriginal title land	Approx 349,913 hectares and New Guinea Cave within Snowy River National Park	Approx 47,485 47,204 hectares	Approx 185,345 hectares	Approx 683,473 hectares and a portion of Wail State Forest/Ararat Regional Park
Freehold title land	Approx 159 hectares and option for 26–89 hectares at Newmerella	Approx 65 hectares	Approx 63 hectares	Approx 22 hectares and right of first refusal to purchase 3 hectares

Note that the land areas in this table have been rounded down to the nearest whole number.

The Gunaikurnai people and Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagulk peoples have native title in addition to RSAs. This means these groups have procedural rights under the ‘future acts’ regime of the *NTA* and have not entered into Land Use Activity Agreements that would replace this regime.⁶²

What Yoorrook heard

TOSA rights are limited and not self-determining

This section outlines how land returns to Traditional Owners under *TOSA* agreements are largely symbolic and flawed. Most land that the State has transferred does not include rights to use and is commonly of limited value. Even within these parameters, the State has failed to transfer the majority of land that was promised.

The State has mostly returned land in Aboriginal title, not freehold

Most of the land transferred or committed to be transferred under *TOSA* agreements to date has been in Aboriginal title, which does not include a right to use the land for self-determined commercial or economic development opportunities. Aboriginal title is essentially an avenue for Traditional Owners to jointly manage land with State authorities.

The State told Yoorrook that the total area of land that the State has committed to return in Aboriginal title is approximately 1,265,937 hectares.⁶³ By contrast, the State has only committed to return ‘up to approximately 400 hectares’ in freehold title.⁶⁴ As noted in Table 11.1, freehold title is the strongest type of private land ownership in Australian common law. Freehold property can be sold, leased or mortgaged. The land can be developed and built on. Conversely, First Peoples cannot sell, transfer, lease or license Aboriginal title land.⁶⁵ The State can only grant Aboriginal title subject to transferring rights to occupy, use, control and manage the land back to the State.⁶⁶

The Taungurung Land and Waters Council Aboriginal Corporation (Taungurung Land and Waters Council) told Yoorrook that they hold very little freehold land and that this includes land they have purchased for themselves:

[T]he Taungurung corporation has full and unfettered ownership of very little traditional land as freehold title — and that is made up of either those few land parcels for which government had no further use, or land purchased by [Taungurung] from its own financial resources.⁶⁷

TAUNGURUNG LAND AND WATERS COUNCIL

The First Peoples’ Assembly of Victoria also criticised the limitations on First Peoples’ land rights. They submitted that First Peoples’ rights and interests in land are ‘overwhelmingly nonexclusive’ and examples of the State providing First Peoples with exclusive rights to Country are rare. This limits First Peoples’ ability to use Country ‘for commercial enterprises and economic development’.⁶⁸

Denying First Peoples the right to participate and benefit economically from their land and resources continues the colonialist tradition of denying First Peoples the ability to accumulate assets and generate intergenerational wealth.⁶⁹

FIRST PEOPLES’ ASSEMBLY OF VICTORIA

Traditional Owner groups also told Yoorrook that Aboriginal title does not allow them to pursue economic opportunities, for example a participant at a roundtable with Barengi Gadjin Land Council said:

Aboriginal title over public land is kind of extremely limited in terms of what you can do, in terms of economic development. So it always gets back to the same story we’re saying over and over again, is the opportunities we get aren’t sustainable. They don’t provide us with the opportunity to get ourselves above where we are now.⁷⁰

PARTICIPANT, BARENGI GADJIN LAND COUNCIL ROUNDTABLE

Similarly, Aboriginal Housing Victoria told Yoorrook that NTA and TOSA are limited:

[NTA] and [TOSA] are limited because they don’t necessarily provide freehold title back. They might provide land back, but it’s not land that’s going to be able to provide housing necessarily ... And if you think about what housing does in the modern world, housing is the primary vehicle for wealth creation for most of the people in society. If you’re not providing the land back and you’re not providing the opportunities to participate in the economy, then Aboriginal people are not being restored to where they were prior to being dispossessed.⁷¹

ABORIGINAL HOUSING VICTORIA

The Dja Dja Wurrung Clans Aboriginal Corporation (DJAARA) told Yoorrook that the State still requires them to go through standard planning procedures to use their Aboriginal title land for cultural activities and maintenance works, despite being land managers:

State and local governments fail to understand and facilitate DJAARA’s inherent rights to carry out works on Aboriginal Title land, as a public land (or ‘Crown land’) manager, exempt from these standard processes.⁷²

DJA DJA WURRUNG CLANS ABORIGINAL CORPORATION

FNLRS submitted that grants of Aboriginal title under TOSA fall short of the right to self-determination under UNDRIP. While ‘joint management gives Traditional Owners some control over the jointly managed land, the limited nature and extent of that control is not consistent with a right of self-determination or self-government’.⁷³

Minister for Treaty and First Peoples the Hon Natalie Hutchins MP told Yoorrook ‘I feel disappointed that the land holdings are so low’.⁷⁴ Despite these remarks, Yoorrook is concerned that there is no apparent plan to take immediate action to improve the amount of land being returned to Traditional Owners. Minister Hutchins went on to say that landholdings could be improved. She said: ‘Do I think we could improve [land holdings]? Yes, that’s why we agreed to [the First Principles Review], and that’s why we are on the path to treaty’.⁷⁵

The State has not met its obligations to return and transfer land

Even within TOSA’s limited framework for land returns, Yoorrook is troubled that the State has failed to transfer land to Traditional Owners in a timely way. Yoorrook heard that there are large areas of land that the State still has not transferred under TOSA agreements, sometimes years after the State entered into those agreements.

The Department of Premier and Cabinet told Yoorrook:

- out of the total of 1,265,937 hectares, the State has committed to return in Aboriginal title since 2010, only 59,075 hectares has been returned to date.⁷⁶
- out of the total of 400 hectares, the State has committed to return in freehold title since 2013, only 65 hectares has been returned to date.⁷⁷

This means that after 14 years and four separate agreements, the State has only returned 65 hectares of freehold title to Traditional Owners under TOSA. This is an extremely poor outcome.

The State’s reasons for the delay are also concerning. The reasons given for these delays, summarised in Table 11.4, show that complex administrative obstacles and other hurdles are creating a lag between RSA settlements announcing benefits and Traditional Owners realising those benefits.

It may also be that the Victorian Government is not properly expediting transfers of land to Traditional Owners. DJAARA told Yoorrook that ‘[u]nderlying the failure of some government agencies to comply’ with TOSA agreements, is ‘a sense that the RSA is a “gift” to Djaara [Dja Dja Wurrung people] rather than a modest recognition of pre-existing rights recognised by the High Court of Australia, and the State of Victoria’.⁷⁸

Table 11.4: Land committed to be returned vs land actually returned to Traditional Owners

Agreement	Land committed to be returned in Aboriginal title ⁷⁹ and freehold ⁸⁰	Land returned to date in Aboriginal title ⁸¹ and freehold ⁸²	Reasons for delay provided by Department of Premier and Cabinet ⁸³
Gunaikurnai RSA 2010	Aboriginal title: 47,235 ha (10 parks and reserves)	Aboriginal title: 29,440 ha	Gippsland Lakes Coastal Park: ‘DEECA [Department of Energy, Environment and Climate Action] discovered in 2014 that the easement for the existing ESSO gas pipeline ... traversed the Park’ and would not survive a grant of Aboriginal title. This took six years to resolve ‘enabling the Aboriginal title plan to be certified in December 2023’. A ‘small remaining part of’ Lake Tyers State Park: ‘subject to a telecommunications lease’.
	Aboriginal title: 302,678 ha (4 parks and reserves)	Aboriginal title: 0 ha	Department of Transport and Planning ‘commenced work in 2023 in preparation for Aboriginal title plans’. Department of Premier and Cabinet said ‘passage of legislation ... for some of these parks is required before plans can be certified’.
	Freehold: 159 hectares	Freehold: 0 hectares	These lands ‘are subject to ongoing consideration and due diligence by [Gunaikurnai Lands and Waters Aboriginal Corporation] before the corporation makes its decision ... whether or not to accept the grant of freehold title’.
	Newmerella freehold option Approx 159 hectares and option for 26–89 hectares		Gunaikurnai Lands and Waters Aboriginal Corporation did not exercise this option.

Agreement	Land committed to be returned in Aboriginal title ⁷⁹ and freehold ⁸⁰	Land returned to date in Aboriginal title ⁸¹ and freehold ⁸²	Reasons for delay provided by Department of Premier and Cabinet ⁸³
Dja Dja Wurrung RSA 2013	Aboriginal title: 47,204 ha (6 parks and reserves)	Aboriginal title: 29,634	Greater Bendigo National Park: ‘successive changes to the Park’s area since the RSA was signed in 2013’, requiring legislative amendment. Amendments to <i>TOSA</i> also required to ‘remove any legal ambiguity about the validity of grants of Aboriginal title to public land that is depth-limited’.
	Freehold: 65 ha	Freehold: 65 ha	
Taungurung RSA 2018	Aboriginal title: 185,345 ha (9 parks and reserves)	Aboriginal title: 0 ha	Transfer in Aboriginal title suspended by agreement between the parties following the de-registration of the ILUA in 2021.
	Freehold: 63 ha	Freehold: 0 ha	In 2023, the State and the Taungurung Land and Waters Council agreed to suspend grants of freehold title following the de-registration of the ILUA in 2021.
Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagulk Peoples RSA 2022	Aboriginal title: 683,473 ha (12 parks and reserves)	Aboriginal title: 0 ha	Preparation of Aboriginal title plans will proceed in accordance with time frames agreed with Barengi Gadjin Land Council.
	Freehold: 22 ha (In addition to a right of first refusal to purchase 3 hectares)	Freehold: 0 ha	‘[T]he relevant parcels of public land are subject to ongoing consideration and due diligence by the Barengi Gadjin Land Council Aboriginal Corporation, before the Corporation makes its decision ... whether or not to accept the grant of freehold title’.

Note that the figures in this table have been rounded down to the nearest whole number.

Minister for Environment the Hon Steve Dimopoulos MP said:

The common causes in the length of time taken to finalise Aboriginal Title include the time required for boundary surveying, and consequential legislative amendments ... this work is costly and time intensive. Where the survey reveals a misalignment of the park boundary with that described in the legislation, the legislation (i.e. National Parks Act) must be amended by Parliament.⁸⁴

MINISTER STEVE DIMOPOULOS MP

DJAARA shared concerns with Yoorrook about the delays in returning land under RSAs. In relation to Greater Bendigo National Park, ‘[i]t is not clear to DJAARA whether the Minister has taken reasonable steps to action this as required by the RSA’.⁸⁵

The time taken for the State to deliver land that has been committed under RSAs calls into question the State’s commitment and willingness to deliver on its promises.

The State returns land that is not healthy or useful

In the limited cases where the State has returned land to Traditional Owners in freehold (either under *TOSA* or otherwise), Yoorrook heard a pattern of evidence that the land is sometimes not healthy or useful and Traditional Owners cannot use it to realise their goals (see Chapter 8: Impacts of Country being stolen). Inaugural Co-Chair of the First Peoples’ Assembly of Victoria Marcus Stewart (Taungurung) told Yoorrook that land returned through *TOSA* is ‘of no economic value and surplus that the Crown doesn’t want’.⁸⁶

Participants at a roundtable with Barengi Gadjin Land Council told Yoorrook that as part of their RSA, the State offered to return contaminated land and would investigate ‘how to remove that contamination subject to capacity and budget’.⁸⁷

[A]nother thing I’m really, really cross about is what they did at Lemon Springs. The dump out there. That’s disgusting. And the worst toxic dump in Australia, it’s 36 dump sites, it covers over 30 hectares of dump land. I’m not sure if you guys have seen it, but when they dig through the cutaway, it goes through the layers of ... it’s as purple That’s what the soil looks like. That’s the human waste, the toxicity there. And they’re saying oh, we’ll just cover it up, it’ll be fine, we’ll hand it back to you. No. Hand us back the rest. ... And hand us back the healthy, good Country that we can heal quicker. Not this sick, sick stuff that all the resources will go into.⁸⁸

PARTICIPANT, BARENGI GADJIN LAND COUNCIL ROUNDTABLE

The Victorian Aboriginal Community Controlled Health Organisation (VACCHO) similarly submitted that Aboriginal Community Controlled Organisations (ACCOs) have obtained land that has limited value or has ‘existing degraded infrastructure that hold trauma for Community’. This includes ‘old landfill sites in industrial areas being offered for a health clinic or a police station being offered to Community organisations’.⁸⁹

[Transfer of] land, only occurs with unwanted land sites that may also contain dated, complex existing infrastructure. The consequence of which means Aboriginal Communities are often left trying to figure out how to best utilise the land or renovate infrastructure without funding or support from Government.⁹⁰

VICTORIAN ABORIGINAL COMMUNITY CONTROLLED HEALTH ORGANISATION

CEO of FNLRS Tony Kelly told Yoorrook that some land the State offered for return is not useful:

[S]ome of the land that is offered with the transfer, it’s not land that is necessarily useful, and then with ownership there comes cost of maintaining the land ... You are only offering this because [the land] was not useful for the State. So it is not always as good as what it can appear.⁹¹

TONY KELLY

In hearings, Minister Hutchins was asked whether she was aware that ‘the leftover pieces of land that are difficult to manage might be forming part of the Traditional Owner settlement package’. She responded, ‘No, I’m not. I’m not aware of that, that is some sort of internal policy, no’.⁹²

TOSA does not sufficiently recognise inherent rights to natural resources

Traditional Owners’ rights to access natural resources through *TOSA* agreements do not translate to meaningful economic benefits. Yoorrook heard that the State needs to do more to improve Traditional Owners’ access to natural resources, including commercial access.

Currently, Traditional Owner groups may negotiate for individual group members to access natural resources (land, flora, fauna, water and some minerals) on land covered by RSAs, by negotiating a Natural Resource Agreement (see Table 11.1).

The State and Traditional Owner groups may agree to certain activities under a Natural Resource Agreement, including the right to access land, hunt, remove or sell natural resources, camp or gather to conduct cultural activities.⁹³ This is limited to ‘traditional purposes’, except in the case of access to:

- vegetation (including flora and forest produce)
- stone, gravel, limestone, lime salt, sand, loam, clay, brick, earth, salt, guano, shell grit, soil and other similar materials.⁹⁴

The fact that TOSA does not permit commercial use of other valuable resources, including fish and animals, is another example of the State handing back land rights that have little practical value to Traditional Owners, while maintaining control of land and resources.

DEFINITION OF ‘TRADITIONAL PURPOSES’

‘Traditional purposes’ is defined in TOSA s 79⁹⁵:

traditional purposes, in relation to a traditional owner group, means the purposes of providing for—

- (a) any personal or domestic needs of the members of the traditional owner group; or
- (b) any non-commercial communal needs of the members of the traditional owner group.

The TOSA definition of ‘traditional purposes’ does not reflect First Peoples’ long history of complex and sophisticated clan systems, songlines, economies and trade routes discussed in Chapter 6: Country.

The First Principles Review recommended that the State should amend TOSA and the National Resources Agreement template to accommodate the commercial use of animals (other than fish), which would bring it in line with the provisions providing for commercial use of vegetation and stone. This was a joint recommendation of First Peoples and State representatives, but First Peoples representatives would have recommended that commercial use also include fish.⁹⁶

CEO of the Federation of Victorian Traditional Owner Corporations Paul Paton (Gunnai, Monaro, Gunditjmarra) told Yoorrook that he was ‘[e]xtremely disappointed’ that the State did not agree to commercial use of fish, and said: ‘[I]t seems to me that the State is kind of protecting those assets ... knowing the value that that provides to the State’.⁹⁷

Minister Hutchins told Yoorrook that the Victorian Government did not agree to allow the commercial use of fish ‘as these resources are fully allocated for commercial use or nearly so’.⁹⁸ The Department of Energy, Environment and Climate Action, on behalf of Minister Steve Dimopoulos MP, told Yoorrook that the Minister has ‘requested that the Victorian Fisheries Authority develop a plan for commercial fishing opportunities for Traditional Owners in Victoria, by 30 July 2024’.⁹⁹ The department wrote that this plan ‘will seek to deliver tangible commercial fishing actions and outcomes for Victorian Traditional Owners, in a manner consistent with the Victorian Government’s commitment to self-determination’.¹⁰⁰ As of April 2025, Yoorrook has not seen a copy of this plan.

The State should return surplus land

There are opportunities for the State to return freehold land in other ways, rather than under TOSA agreements. Submissions have called for the State to return surplus land without charge or to fund Traditional Owners to purchase privately owned land with cultural significance.

Yoorrook heard that the State should increase efforts to return land without charge to Traditional Owners.¹⁰¹ The Taungurung Land and Waters Council told Yoorrook that the State should establish a ‘Land Acquisition Fund’ that would allow Traditional Owner organisations to ‘apply for assistance to acquire parcels of private land with particular cultural significance’.¹⁰² Taungurung Land and Waters Council suggested that this could allow ‘the re-establishment of important cultural landscapes’.¹⁰³

Similarly, the International Commission of Jurists and RMIT University suggested the establishment of a State entity to ‘seek out and register Indigenous land rights claims since colonisation’, including over private land.¹⁰⁴ This could include establishing a fund ‘to enable Traditional Owner groups to purchase private land with which they have a connection’.¹⁰⁵

The return of Acheron to the Taungurung people in freehold title in 2022 is one example of land being ‘gifted’ back to Traditional Owners outside of TOSA.¹⁰⁶ This land was first promised for return to the Taungurung people in December 1859, but this offer was withdrawn after a ‘barrage of squatter correspondence’ objected to the settlement.¹⁰⁷ At the time of return, the land was a former youth justice facility. The Department of Premier and Cabinet also told Yoorrook that the State returned Camp Jungai to the Taungurung people in freehold in 2018.¹⁰⁸

Currently, the State deals with transactions involving surplus government land under the Victorian Government Land Transactions Policy. This policy provides an exemption to allow for transfers of land under a TOSA agreement, but otherwise does not reference or involve First Peoples.¹⁰⁹ The Victorian Government Landholding Policy requires surplus land to first be offered to Victorian Government agencies, local government and the Commonwealth through the ‘First Right of Refusal’ process.¹¹⁰ The Department of Transport and Planning acknowledged that ‘Traditional Owners are not currently included in the First Right of Refusal process’ but did not set out an immediate plan to address this.¹¹¹ There is an exemption under the policy for transfers of land under a TOSA agreement.¹¹²

DJAARA told Yoorrook that excluding Traditional Owners from the First Right of Refusal Process is ‘another act of disregarding First Nations’ rights and interests in their land’:

[T]he State continues to regularly declare parcels of ‘Crown land’ as ‘surplus’ and offer them to departments and the broader community for sale. DJAARA are only made aware of this upon the listing of a property as being prepared for sale on the State government’s website, or when DJAARA receives a notification under the [Land Use Activity Agreement] of the proposed sale.¹¹³

DJA DJA WURRUNG CLANS ABORIGINAL CORPORATION

The First Principles Review recommended that Traditional Owner corporations should be included as part of the First Right of Refusal process.¹¹⁴ DJAARA recommended that First Peoples should have the option to recover surplus land ‘at no cost’ before the State offers the land to State departments or for public sale.¹¹⁵

Consistent with submissions from DJAARA and Taungurung Land and Waters Council, Yoorrook considers that any amendments to the Victorian Government Landholding Policy and the Victorian Government Land Transactions Policy should provide mechanisms for:

- the State to transfer surplus government land to Traditional Owners where appropriate (without any requirement for consideration to be paid)
- a first right of refusal for Traditional Owners to purchase that land, as a bare minimum.

TOSA does not include a non-adversarial process for determining competing claims

Unlike for proof of native title, Traditional Owners do not need to prove continuing connection to the land in order to enter into a settlement package with the State, however they do need to establish that they are the ‘right people for country’.¹¹⁶

FIRST NATIONS LEGAL AND RESEARCH SERVICES

Yoorrook heard that TOSA does not establish a process for managing multiple Traditional Owner claims to a single area or issues around group membership. First Peoples have repeatedly called for the State to establish this process. The *2008 Report of the Steering Committee for the Development of a Victorian Native Title Settlement Framework* recommended ‘that a transparent, respectful and non-adversarial process be established to identify the “right people for country”’.¹¹⁷ In the First Principles Review, Traditional Owner representatives recommended that the State ‘establish an independent office or body to oversee the implementation of ... agreements between Traditional Owners and the State’, including disputes and ongoing review.¹¹⁸

Yoorrook heard that it has become ‘increasingly difficult to finalise a RSA’, and a ‘key problem has been the lack of a determinative process for resolving issues of group composition and boundary disputes’.¹¹⁹

WHO CAN NEGOTIATE AN RSA?

Unlike a native title claim, there is no need for a claimant group under TOSA to prove that they have had an unbroken connection with the land since the start of colonisation.¹²⁰

Under TOSA, the State recognises a ‘traditional owner group’ in relation to an area of public land if they are:

- a group of Aboriginal persons who may authorise an Indigenous land use agreement
- native title holders
- a group of persons who the Attorney-General has recognised as the Traditional Owners of the land, based on Aboriginal traditional land cultural associations with the land.¹²¹

A Traditional Owner group appoints a ‘traditional owner group entity’ (TOGE) to represent them in negotiating an RSA with the State.¹²²

Yoorrook was told that key State supports for determining competing claims and issues around group membership are no longer operational or will soon end. The Right People for Country program was designed to assist groups with boundary agreements and representation, with \$6.243 million allocated since 2009.¹²³ The State told Yoorrook that funding for the Right People for Country program would end in June 2024 ‘in line with

the role and function of government changing to better align and support stronger self-determination through the treaty process’.¹²⁴

In 2013, the State introduced Threshold Guidelines requiring Traditional Owners to prove cultural and traditional association to their Country for settlement under TOSA.¹²⁵ A 2017 review recommended 10 changes, but the State did not implement the key recommendation for revised guidelines due to legal concerns about simultaneous native title and TOSA claims.¹²⁶

Yoorrook heard that there are limited ways to resolve disputes when Traditional Owners disagree about who should be able to enter an RSA for a part of Country. As a result, some groups are turning to the courts.¹²⁷ FNLRs told Yoorrook that court processes failed to fully resolve challenges to the 2018 Taungurung RSA by a group of Traditional Owner objectors:¹²⁸

The litigation relates to issues of administrative process rather than factual dispute. The underlying disputes around questions of group composition, group membership and boundary have not been directly addressed, and almost five years after the State and Taungurung agreed to enter into an RSA, the Taungurung group and the Traditional Owner objectors remain in a state of limbo.¹²⁹

FIRST NATIONS LEGAL AND RESEARCH SERVICES

Minister Hutchins told Yoorrook that since 2010, five Traditional Owner groups have started TOSA negotiations with the State but have not reached a settlement because they were not able to determine the right group to move forward with a claim.

[G]roups either sought to prosecute their native title recognition via the Federal Court ... or there were ongoing difficulties in resolving questions about the appropriate Traditional Owner group for Country based on a traditional and cultural association to the area proposed for settlement.¹³⁰

MINISTER NATALIE HUTCHINS MP

FNLRs explained that using the courts in contested claims is problematic because it takes ‘control and responsibility for disputes ... out of the hands of First Peoples and [puts it] into the hands of a judge who by the nature of their position is ill-suited to make a determination of matters of [I]ndigenous culture, identity, law and custom’.¹³¹ The First Peoples’ Assembly of Victoria told Yoorrook that under existing land justice regimes the State and courts determine Traditional Owners’ connection to Country, which ‘has resulted in protracted disputes that have often further entrenched division within Community’.¹³²

Using the Federal Court’s native title jurisdiction to adjudicate ‘intra-mural [I]ndigenous disputes may be inconsistent with the principle of self-determination’ and articles 27 and 40 of UNDRIP.¹³³ Article 40 of UNDRIP provides that decisions give due recognition to First Peoples’ customs, traditions, rules and legal systems:

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the [I]ndigenous peoples concerned and international human rights.¹³⁴

Treaty may provide a future solution but does not solve the immediate issue. The First Peoples’ Assembly of Victoria told Yoorrook that the Treaty Authority will ‘help resolve disputes between First Peoples’.¹³⁵ They said:

Transferring this function to the Treaty Authority resets existing power dynamics and provides Traditional Owner groups with the ability to determine, assert and have their identity validated independent of State recognition processes.¹³⁶

FIRST PEOPLES' ASSEMBLY OF VICTORIA

Similarly, FNLRS submitted that the 'Treaty framework may be able to provide resources to First Peoples to allow them to navigate [intra-First Nations disputes]'.¹³⁷ Minister Hutchins hoped that 'the formation of Treaty Delegations ... will provide a more culturally appropriate process for identifying the right people for Country'.¹³⁸ Yoorrook notes that this is addressed in the *Treaty Negotiation Framework*.¹³⁹

Poor State compliance with Land Use Activity Agreements

Traditional Owners told Yoorrook that State agencies and local governments have failed to comply with their procedural obligations under Land Use Activity Agreements. There is also a lack of adequate dispute resolution mechanisms available under these agreements.

Failure to notify Traditional Owners of land use activities

Yoorrook heard evidence that State departments and local governments are failing to notify Traditional Owners of activities occurring on their land, which is in breach of their obligations under Land Use Activity Agreements.¹⁴⁰

These agreements are intended to be a simplified alternative to the 'future acts' regime in the *NTA*. The 'future acts' regime establishes a hierarchy of procedural rights for Traditional Owners to be notified of, negotiate conditions for, or require an agreement for proposed activities in the agreement area.

Under Land Use Activity Agreements, the State is required to notify Traditional Owners when carrying out an activity specified in the agreement (e.g. granting a Crown lease of land, selling Crown land, or granting licences in relation to land covered by an agreement). Depending on what the agreement says, Traditional Owners have different procedural rights, ranging from a right to be notified or consulted (an 'advisory' activity), to a right to withhold their consent and refuse to allow an activity to go ahead (an 'agreement' activity).

Land Use Activity Agreements are failing at the first threshold because Traditional Owners can only exercise their rights if they are aware that Land Use Activity Agreements are taking place. FNLRS told Yoorrook that they are noticing a 'really significant issue that some of the local governments are not even lodging notifications' in accordance with Land Use Activity Agreements.¹⁴¹ Similarly, Taungurung Land and Waters Council reported that to ensure Land Use Activity Agreement compliance, they regularly check local government websites for upcoming projects on Taungurung land. Taungurung Land and Waters Council estimates that 'more than 20 times last year' they had to contact local government to advise them of their obligations.¹⁴²

DJAARA told Yoorrook that when they are 'notified of a Land Use Activity, it is often late in the project timeline when the proponent is facing tight deadlines for works to commence which places undue pressure on DJAARA in the negotiation'.¹⁴³ This inhibits their right to free, prior and informed consent.¹⁴⁴ DJAARA also pointed out that it is not resourced to monitor Land Use Activity Agreement compliance and cannot compel the State and others to comply with the Land Use Activity Agreement. Consequently, DJAARA 'has great difficulty in pursuing what [it] is lawfully owed'.¹⁴⁵ Yoorrook finds these failures deeply concerning.

Taungurung Land and Waters Council submitted that there is a general 'lack of awareness and training of the LUAA [Land Use Activity Agreement] processes' among state departments, local governments and others.¹⁴⁶ They are concerned that staff 'often lack the skills and ability' to differentiate between routine, advisory and negotiation activities, which may partly explain the low number of notifications.¹⁴⁷

The Department of Government Services, which supports the local government portfolio, echoed that there is a general lack of awareness among councils regarding the RSAs and the council's role in implementation.¹⁴⁸ The department reported that councils have said that they have limited resources to enable implementation of the RSAs, particularly in small rural municipalities.¹⁴⁹ The Department of Premier and Cabinet acknowledged that 'greater resources and training are needed to improve government awareness of their obligations under Land Use Activity Agreements and further compliance audits may be necessary'.¹⁵⁰

Taungurung Land and Waters Council said that one remedy for Land Use Activity Agreement compliance could be to fund Traditional Owners 'to provide regular training to government departments, local government and proponents on the [Land Use Activity Agreement] application and requirements'.¹⁵¹ This would have 'ancillary benefits of strengthening working relationships'.¹⁵²

Yoorrook heard troubling evidence about the scale of non-compliance with the DJAARA Land Use Activity Agreement set out in a 2021 audit of the agreement, as explained in the box below.

DJA DJA WURRUNG LAND USE ACTIVITY AGREEMENT AUDIT

In December 2020, in response to concerns of the Dja Dja Wurrung Clans Aboriginal Corporation (DJAARA) about Land Use Activity Agreement compliance, the Department of Justice and Community Safety commissioned the Public Land Consultancy to conduct an independent review into compliance with the agreement.¹⁵³ The Public Land Consultancy set out its findings in a December 2021 report.¹⁵⁴ The report identified at least 47 possible breaches by eight State and local government agencies, in addition to 55 breaches that DJAARA reported prior to the audit.¹⁵⁵

The auditors reported:

- non-compliance is ‘most likely to occur where there is a lack of understanding at the operational level within entities, as a result of inadequate systems, information, guidelines, procedures and training, and an absence of penalties for non-compliance’.¹⁵⁶
- there was a lack of recognition among agencies that Crown land has ‘two owners’ – Traditional Owners and the Crown.¹⁵⁷
- many entities do not keep consolidated records of relevant activities and compliance¹⁵⁸ — some reporting was ‘haphazard’ and interpretations of compliance were ‘self-serving’.¹⁵⁹
- ‘it is disturbing that, for some entities, the relevant administrative systems are still not in place after eight years’.¹⁶⁰

DJAARA told Yoorrook that they sent a letter to the Attorney-General in December 2021 setting out how the report’s recommendations could be implemented, but at the date of their submission they had not received a response from the State.¹⁶¹ The Department of Premier and Cabinet wrote that they are working with DJAARA to improve compliance, including by developing guidance materials for local government agencies.¹⁶² Portfolio responsibility for this matter was transferred to the Department of Premier and Cabinet in January 2023.

Traditional Owners face barriers to enforcing compliance

Traditional Owners face difficulty in enforcing Land Use Activity Agreements because the dispute resolution mechanisms are ineffective and the relevant government authorities are not notifying Traditional Owners of land use activities. There is scope to improve dispute resolution mechanisms, including by adopting the recommendations of the First Principles Review.

The existing dispute resolution processes for Land Use Activity Agreements under TOSA are slow and costly. The Taungurung Land and Waters Council told Yoorrook that the dispute resolution process under the Taungurung Land Use Activity Agreement is ‘very time consuming, involved, costly and ultimately in our view unworkable and unsustainable’.¹⁶³

FNLRS told Yoorrook that Traditional Owners may enforce their Land Use Activity Agreement rights by going to the Victorian Civil and Administrative Tribunal (VCAT), noting that this is ‘obviously a costly and time consuming process’.¹⁶⁴ There is also an

informal internal dispute resolution process that parties can go through prior to VCAT.¹⁶⁵ The Department of Premier and Cabinet told Yoorrook that ‘[n]o party has used VCAT’s jurisdiction since the commencement of [TOSA]’.¹⁶⁶

Yoorrook has seen a number of recommendations as to how Land Use Activity Agreement disputes could be handled differently.

The DJAARA Land Use Activity Agreement Audit recommended that the Department of Justice and Community Safety, in consultation with DJAARA and key Crown land management agencies, develops alternate quick, efficient and authoritative dispute resolution mechanisms for Land Use Activity Agreement issues. The Audit also recommended that the department continues to work with DJAARA and the other entities on a mutual understanding on interpreting the Land Use Activity Agreement. To assist future land use activity categorisation decisions, the Audit recommended that the department establish a system to centrally capture and share agreement interpretations.¹⁶⁷ In correspondence, the State advised Yoorrook that in response to the DJAARA Land Use Activity Agreement Audit, it has established a central portal system to assist land use activity categorisation decisions. However, at the time of writing, the State has not provided further details.

The Taungurung Land and Waters Council proposed that when there are disagreements regarding activity categorisation, they should ‘be adequately resourced to make a categorisation determination for all land use activities and, prior to the proponent making a categorisation determination’.¹⁶⁸

The First Principles Review Report contained recommendations from the Traditional Owner party for establishing a penalty regime and an independent oversight body for Land Use Activity Agreements. The State party to the Review did not support this recommendation.

TOSA does not provide compensation

TOSA is failing to provide real compensation for the State’s interference with First Peoples’ land rights. Unlike the NTA, TOSA does not specifically provide for compensation to Traditional Owners. Instead, Traditional Owners and the State negotiate certain payments that are made to Traditional Owners under RSAs. Yoorrook heard that payments under RSAs have not kept up with legal developments and they are not consistent with *UNDRIP*. This does not enable Traditional Owners to meet their aspirations for Country or achieve self-sufficiency, for example, roundtable participants at Barengi Gadjin Land Council said:

Economic independence, it’s not leading to that direction. It’s ... just creating dependence. ... It’s keeping us attached to the strings of government for funding and nothing’s really leading to that independence or self-determination. Like real self-determination, not the gammin self-determination government talks about.¹⁶⁹

PARTICIPANT, BARENGI GADJIN LAND COUNCIL ROUNDTABLE

Current payments under TOSA

Payments made to Traditional Owners under RSAs fall into two main categories:¹⁷⁰

- **payments under a funding agreement:** The funding agreements under all four RSAs to date have included an upfront sum for operating costs to establish a TOGE and a trust account annuity for the TOGE to administer the RSA.¹⁷¹ Further, as noted above, the Department of Premier and Cabinet told Yoorrook that ‘[s]ome funding to implement RSAs is retained and administered by State agencies (i.e., funding to implement joint management arrangements ...)’¹⁷² (see Table 11.1).

- **paying community benefits under a Land Use Activity Agreement:** A person or entity (e.g. a local government) who carries out certain agreed ‘land use activities’ or ‘public land authorisations’ on land covered by a Land Use Activity Agreement must pay community benefits to Traditional Owners.¹⁷³ ‘Land use activities’ include planned burning or carrying out works.¹⁷⁴ ‘Public land authorisations’ include granting leases or permits.¹⁷⁵ There are formulae in the template for Land Use Activity Agreements that set out different payments for different types of land use activity.

The Department of Premier and Cabinet told Yoorrook that ‘[n]either [of these amounts] are intended to compensate Traditional Owners for the historic and ongoing impacts of colonisation. This was not an objective of [TOSA]’.¹⁷⁶ Instead, settlement under an RSA ‘is intended to provide a fair and attractive alternative to settling native title via the courts’ and to ‘enable the achievement of Traditional Owner corporate sustainability’.¹⁷⁷ Again, the State anticipates that treaty will be the path forward, rather than using existing laws to take immediate action. Dean Cowie, Executive Director of Traditional Owner Rights and Land Justice at the Department of Premier and Cabinet, wrote that ‘Treaty negotiations in Victoria will provide a pathway for Traditional Owner delegations to pursue their aspirations through formal negotiations’.¹⁷⁸

The calculation of community benefits under the land use activity regime does not align with the High Court decision on compensation for loss of non-exclusive native title in *Northern Territory of Australia v Griffiths*¹⁷⁹ (*‘Timber Creek’*) (see Chapter 10: Native title for full discussion). In *Timber Creek*, the High Court held that compensation under the NTA requires consideration of three components:

- economic loss for disturbance of native title rights, which was assessed at 50 per cent of the freehold value of the land in that case¹⁸⁰
- interest on economic loss, which was assessed as simple interest in that case
- non-economic cultural loss, which was assessed at approximately twice the freehold value of the land¹⁸¹ at the date of judgment.

The value of community benefits under Land Use Activity Agreements are much more limited under current arrangements. In one example Yoorrook has seen, the benefits for granting fee simple estates on Crown land operate in stepped percentages — from 50 per cent of the unimproved net market value for sales between \$0 and \$100,000, decreasing to 2 per cent for sales over \$1 million.

The modest value of community benefits paid under current Land Use Activity Agreements does not reflect the State’s policy that *TOSA* should be a ‘fair and attractive alternative’ to native title.¹⁸² The lack of compensation for economic and cultural loss also does not reflect that policy. DJAARA submitted to Yoorrook that the community benefits formulae produce compensation amounts ‘well below those required by the methodology of the High Court in *Timber Creek*’. They said that ‘this has the effect of short-changing Djaara [Dja Dja Wurrung people] every day when their rights are harmed or extinguished as a result of activities on Country’.¹⁸³

Minister Hutchins acknowledged that ‘formulae for compensation offered under [TOSA] to date have not kept pace with the High Court *Timber Creek* decision’.¹⁸⁴ She told Yoorrook that an outcome of the First Principles Review is that ‘the Government has now agreed to offer negotiations formulae that are consistent with the economic loss methodology set out in *Timber Creek* and with a commitment to develop policy on how compensation for cultural loss should be valued’.¹⁸⁵ Lack of progress towards implementing the recommendations of the First Principles Review is outlined below.

RSA reviews are ineffective

Reviews of *TOSA* agreements are ineffective and are failing to improve outcomes for First Peoples. Every RSA includes an obligation for the parties to jointly undertake an ‘implementation review’ (after 18 months), an ‘initial outcomes review’ (after five years), then a ‘periodic outcomes review’ (every five years or as otherwise agreed). The State and Traditional Owners jointly commission these reviews, and independent reviewers perform them. The Department of Premier and Cabinet told Yoorrook that the review reports ‘form a basis for the parties to negotiate revised settlement packages to align with changes in Traditional Owner aspirations and priorities’.¹⁸⁶

Yoorrook heard that reviews of existing RSAs are under-resourced and that the State is slow to action changes. Minister Natalie Hutchins told Yoorrook that all four RSAs to date have included ‘an obligation on the parties to undertake regular reviews, where the renegotiation of the terms of the original settlement can be explored in good faith’.¹⁸⁷ The revised settlement package quantum for the three reviewed RSAs are set out in Table 11.3.¹⁸⁸

DJAARA reported that Emeritus Professor Mick Dodson’s 2018 review of their RSA led to 30 recommendations, but only a few were actioned in the five ensuing years. DJAARA called this a ‘systemic failure’ that curtails their land rights.¹⁸⁹ Tony Kelly noted that delays often stem from disputes over community benefits, land use and natural resources.¹⁹⁰ Yoorrook also heard that there is ‘a lack of resources [for] both Traditional Owner Groups and the State’ to effectively negotiate and renegotiate settlement packages.¹⁹¹

Inconsistency with UNDRIP

Yoorrook heard that *TOSA* is not consistent with the minimum standards set out in *UNDRIP*.¹⁹² FNLRS submitted that *TOSA* falls short of UNDRIP for three reasons:¹⁹³

- ***TOSA* provides insufficient scope for self-determination:** In particular, *TOSA* does not recognise First Peoples’ laws and customs as a separate body of law, nor First Peoples as self-governing. Instead, it confers statutory rights and benefits on them.
- **the *TOSA* regime does not provide for fair compensation for dispossession:** *TOSA* ‘does not involve any process for complying with *UNDRIP* Article 28 by objectively assessing “just, fair and equitable compensation, for the lands, territories and resources which [I]ndigenous people] have traditionally owned”’.¹⁹⁴ Under international law the primary form of redress for unlawful interference with land is ‘restitution’ of that land, rather than economic compensation in place of restitution (see Chapter 39: Redress).¹⁹⁵
- **the *TOSA* regime does not incorporate the principle of free, prior and informed consent:** FNLRS recommended that ‘the State of Victoria should work with First Peoples to reform the *TOSA* regime to bring it into alignment with *UNDRIP*’.¹⁹⁶

The First Principles Review of TOSA

As set out in the introduction, the First Principles Review Report contained 36 recommendations to improve *TOSA*. Of these, 23 were joint Traditional Owner and State recommendations. Thirteen Traditional Owner party recommendations, including key recommendations regarding compensation, were not supported by the State party to the Review. Many of the recommendations set out in the Review would directly address the issues discussed in this chapter. At the time of writing, Traditional Owner groups have been waiting for the recommendations to be actioned for more than five years (since the Review was commissioned). Its public release was also significantly delayed. The Review’s key recommendations in relation to natural resources, public land, land use activities and compensation are set out below.

Recommendations regarding use of natural resources

The First Principles Review made eight recommendations in relation to broadening Traditional Owners’ use of natural resources, including commercial use of animals, and types of land where rights to natural resources can be exercised (recommendations 14 to 21).

Regarding the deficiencies in First Peoples’ rights to resources, the Review recommended that the Natural Resource Agreement template include the commercial use of animals (other than fish) (recommendation 18). This was a joint recommendation, but Traditional Owner representatives would have recommended that commercial use extend to fish.¹⁹⁷ Another joint recommendation was to replace the term ‘traditional purposes’ in section 79 of *TOSA* with ‘non-commercial purposes’ but retain the existing definition, until commercial rights to natural resources are recognised (recommendation 17).

Recommendations in relation to public land

The First Principles Review Report contained two key recommendations relating to transactions involving public land.

Firstly, the Review recommended that Traditional Owner corporations should be included as part of the First Right of Refusal process, and ‘at minimum ... should be notified of proposed surplus public land and have the option to purchase this land under full or restricted title, before it goes to public auction’.¹⁹⁸ Yoorrook supports this recommendation, but adds that wherever possible the State should hand back freehold title to land for no charge, provided that it does not extinguish native title.

Secondly, the First Principles Review Report contained a Traditional Owner party recommendation of a moratorium on Crown land sales in all areas where Traditional Owner groups do not have rights to either provide or withhold consent to a sale.¹⁹⁹ The State party to the Review did not support this recommendation.

Recommendations regarding Land Use Activity Agreements

This chapter has highlighted State and local governments’ failures to notify Traditional Owners when carrying out land use activities, and concerns that there is no appropriate dispute resolution process for categorising land use activities.

The First Principles Review Report contained a Traditional Owner party recommendation that the State appoints an independent lawyer to provide advice to the State and local governments on Land Use Activity Agreement matters, and to initiate a penalty regime for failure to comply with Land Use Activity Agreements. The State party to the Review did not support this recommendation. Considering the evidence above regarding a lack of education on Land Use Activity Agreements and concerning issues in government attitudes, an enforcement and penalty system is an appropriate response.

The First Principles Review Report also contained a Traditional Owner party recommendation that the State ‘establish an independent office or body to oversee the implementation of ... agreements between Traditional Owners and the State’, including disputes and ongoing reviews.²⁰⁰ The State party to the Review did not support this recommendation. Yoorrook supports a new dispute resolution mechanism but notes that it should be consistent with Article 40 of *UNDRIP* in that it should provide a fair procedure to resolve disputes with the State, provide ‘effective remedies’ for infringement of rights, and have regard to First Peoples’ customs, traditions and laws.²⁰¹

Recommendations regarding compensation

As set out earlier in this chapter, *TOSA* does not provide meaningful compensation for the State’s interference with First Peoples’ land. Funding agreements under *TOSA* do not weigh up the value of First Peoples’ land rights or consider how much money Traditional Owners need to pursue their economic goals. Instead, the funding agreements are limited to providing a Traditional Owner corporation with enough money to administer the agreement with small amounts included for economic development.

Funding agreements under TOSA should include compensation

The First Principles Review made several recommendations that would improve the difficulties with compensation identified in this chapter. As an underlying principle, Traditional Owner and State Representatives jointly recommended that *TOSA* agreements should represent ‘a fair and just settlement’ for Traditional Owners,²⁰² measured against the following criteria:

- the compensation is consistent with *UNDRIP*.
- the compensation meets or exceeds the rights of compensation under a positive native title determination.
- the settlement is consistent with the principles of self-determination and provides sufficient resources for the Traditional Owners.
- during negotiations, the Traditional Owner group has an adequate opportunity to advance its individual aims and aspirations.²⁰³

Paul Paton explained the term ‘just’ in this context:

[W]e need to ... address the injustices of colonisation and Traditional Owners’ ability to have power, authority and actively manage Country, and therefore that term ‘just’ needs to recognise the significance of the impact in the settlement that is agreed to ultimately.²⁰⁴

PAUL PATON

To address immediate concerns that payments under existing *TOSA* agreements are not on par with those available under native title, the Review recommended a revised interim community benefits formulae under Land Use Activity Agreements (recommendation 12). The new formulae propose compensation of 60% of unimproved market value or rental received for most land use activities.

The First Principles Review Report contained a Traditional Owner party recommendation of a new ‘compensation model’ for funding agreements. The State party to the Review limited its support to ‘further exploration’ of this idea (noting its position that additional information was required).²⁰⁵ Under the proposed new model, the economic portion of an RSA would include the renegotiated community benefits formulae, a settlement sum and a minimum sum payable in any event (recommendation 11). *TOSA* agreements should also include compensation for loss of rights and ongoing operational funding for both Traditional Owners and government departments (Recommendation 3).

Adopting these recommendations would be a shift away from using funding agreements to establish Traditional Owner corporations, and a move towards a model where *TOSA* recognises the economic value of First Peoples’ land rights.

Compensation for historical harms, including pre-1975

Traditional Owner representatives made other important recommendations regarding increasing compensation for historical disturbance of land rights. They recommended that compensation should include pre-1975 disturbance of rights (recommendation 2) and that the State should compensate for historical impairment by retrospectively applying the community benefits formulae (recommendation 5). There is a ‘conventional understanding’ that compensation is not available for disturbance of native title rights prior to 1975 because that was the year the *Racial Discrimination Act 1975* (Cth) came into effect. Traditional Owner Representatives noted, however, that ‘all aspects of this question have not yet being directly determined’.²⁰⁶ The State’s position is that pre-1975 compensation should be dealt with through future treaty negotiations.²⁰⁷

It is very concerning that the State is choosing to defer compensation for historical impairment until future treaties are negotiated, where those matters can and should be dealt with immediately.

Lack of progress implementing the First Principles Review recommendations

The State was slow to finalise the First Principles Review and there is very little evidence that it has made any progress towards implementing any of the jointly agreed recommendations (see Chapter 5: Accountability).

Yoorrook heard that after Traditional Owner representatives gave their final report to the Government for consideration in March 2022, the State took more than two years to finalise the First Principles Review. The State did not respond until November 2023²⁰⁸ and the report was not published until Yoorrook’s public hearings were underway in April 2024. When asked to explain the delay in public hearings, Minister Natalie Hutchins said that COVID-19 and a change of ministerial portfolios had contributed to delays.²⁰⁹ She acknowledged that the ‘State failed to meet the expectations of Traditional Owners in this instance through its failure to meet the Terms of Reference of the Review’.²¹⁰

Although more than two years has passed since the report was handed to the State in 2022, the State does not appear to be making timely progress towards implementing any of the First Principles Review’s recommendations and has not provided a timeline for their implementation. Minister Hutchins told Yoorrook that her department has established an ‘interdepartmental committee’ to ‘further consider policy, financial and community implications of the proposed changes’ in the First Principles Review.²¹¹ She said that the interdepartmental committee ‘will work with Traditional Owner representatives on the development and implementation’ of the First Principles Review recommendations.²¹² Minister Hutchins said that costing of some of the recommendations has commenced but could not otherwise explain whether any progress has been made or whether a budget has been allocated.²¹³

The lack of timely progress and transparency in implementing the First Principles Review’s recommendations is another example of how often the State delays First Peoples’ land rights in Victoria or disappoints Traditional Owners’ expectations.

Traditional Owners participated in the First Principles Review process in good faith, with a reasonable expectation of their perspectives leading to prioritised action and reform. Submissions from key stakeholders, including the Federation of Victorian Traditional Owner Corporations,²¹⁴ the First Peoples’ Assembly of Victoria²¹⁵ and FNLRS²¹⁶ expressed frustration at the lack of progress and supported the immediate implementation of the First Principles Review recommendations. Yoorrook concludes that the State should implement the First Principles Review recommendations as an immediate priority.

The way forward

That’s what we keep getting offered ... unsustainable opportunities. ... So it always gets back to the same story we’re saying over and over again, is the opportunities we get aren’t sustainable. They don’t provide us with the opportunity to get ourselves above where we are now.²¹⁷

PARTICIPANT, BARENGI GADJIN LAND COUNCIL ROUNDTABLE

TOSA provides an important framework for recognising Traditional Owners’ rights and has been a foundation for some Traditional Owner groups to make significant advances and leverage opportunities. However, the State must urgently make reforms to provide better recognition and protection of Traditional Owners’ rights. This includes by delivering more and better-quality land in freehold, speeding up the process of transferring land back to Traditional Owners, allowing commercial use of natural resources, and providing real economic compensation. The State must recognise that TOSA is a regime to recognise legal rights, rather than a gift to Traditional Owners. Accordingly, the State must improve compliance with TOSA agreements and promote better understandings of and respect for First Peoples’ rights under these agreements. The First Principles Review provides a clear and actionable pathway to modernise TOSA.

Improvements to TOSA agreements, including actioning the First Principles Review recommendations, must proceed immediately. Yoorrook has identified priority recommendations for implementation. There is no need to wait for treaty. This is consistent with submissions from key stakeholders, including the First Peoples’ Assembly of Victoria²¹⁸ and the Federation of Victorian Traditional Owner Corporations, which said:

While the Treaty process may be seen as the ideal vehicle to progress these goals, it is imperative that the Victorian government be deeply considering these matters and designing responses as part of its day-to-day functions and commitment to supporting Aboriginal self-determination.²¹⁹

FEDERATION OF VICTORIAN TRADITIONAL OWNER CORPORATIONS

When the State denies Traditional Owners the right to participate in and benefit from their land and resources, it prevents them from building assets and creating intergenerational wealth.²²⁰ The State does not show commitment to or understanding of First Peoples self-determination, nor consistency with the minimum standards set by UNDRIP.²²¹ Land justice is not just about addressing historical wrongs.²²² It is also about looking forward and supporting the economic development and independence of Traditional Owners and the realisation of self-determination.²²³

Recommendation

RECOMMENDATION 26

Taking into account the changed context of the treaty process and the aim of enhancing rights, the Victorian Government must implement all of the recommendations of the *First Principles Review of the Traditional Owner Settlement Act 2010* (Vic) in full, including prioritising the following key areas:

- a. Just and fair settlements;
- b. The calculation of compensation;
- c. Funding for Traditional Owner groups; and
- d. Land Use Activity Agreement compliance.

Endnotes

1. First Peoples' Assembly of Victoria, Submission 378 (Land, Sky, Waters), 26–27.

2. See Chapter 9: How we got here — overview of recognition systems.

3. *Members of the Yorta Yorta Aboriginal Community v Victoria* (2002) 214 CLR 422. See Federation of Victorian Traditional Owner Corporations, *A Framework for Traditional Owner Treaties: Lessons from the Settlement Act* (Discussion Paper No 5, 2021), 5; Uncle Graham Atkinson, Submission 256 ('The Victorian Traditional Owner Land Justice Group'), 2.

4. Federation of Victorian Traditional Owner Corporations, *A Framework for Traditional Owner Treaties: Lessons from the Settlement Act* (Discussion Paper No 5, 2021), 6; Uncle Graham Atkinson, Submission 256 ('The Victorian Traditional Owner Land Justice Group'), 2.

5. Uncle Graham Atkinson, Submission 330 ('How we got there: The Traditional Owner Settlement Act'), 6.

6. See, eg, Dja Dja Wurrung Clans Aboriginal Corporation, Dja Dja Wurrekatjalangu (RSA) Team, Submission 504 (Land, Sky, Waters), 4–5.

7. *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007); First Nations Legal and Research Services, Submission 345, 17.

8. *Traditional Owner Settlement Act 2010* (Vic), ss 19(2) and 20; Transcript roundtable with of Barengi Gadjin Land Council, 26 October 2023, 29, served on the State of Victoria on 1 April 2024.

9. Environmental Justice Australia, Submission 346 (Land Sky Waters 1), 10.

10. *Traditional Owner Settlement Act 2010* (Vic), ss 19(2).

11. Transcript of roundtable with Barengi Gadjin Land Council, 26 October 2023, 18, served on the State of Victoria on 1 April 2024.

12. *Traditional Owner Settlement Act 2010* (Vic) ss 79, 84(b). See also Victorian Government, *First Principles Review of the Traditional Owner Settlement Act 2010: Joint Report of the First Principles Review Committee and the Executive Policy Owners Forum* (Report, 11 April 2024), 45.

13. Department of Energy, Environment and Climate Action, 'Yoorrook Justice Commission Land Injustice Inquiry Additional information provided by the Hon Steve Dimopoulos MP, Minister for Environment, and Outdoor Recreation', 13 August 2024, 2–3, produced by the State of Victoria in response to the Commission's Notices to Attend dated 12 April 2024; Department of Premier and Cabinet, Response to NTP-003-026 — 'Yoorrook Justice Commission – Land Justice Unit – Response to RFI, 2 February 2024 – Response from Dean Cowie PSM', 19, 22, produced by the State of Victoria in response to the Commission's Notice to Produce dated 2 February 2024; Department of Premier and Cabinet, Response to NTP-003-002 — 'Native Title Act 1993 (Cth) and the Traditional Owner Settlement Act 2010 (Vic)', 25, produced by the State of Victoria in response to the Commission's Notice to Produce dated 8 November 2023.

14. Cf *Native Title Act 1993* (Cth) s 223(1). See Chapter 10: Native title.

15. First Nations Legal and Research Services, Submission 345, 5.

16. *Northern Territory v Griffiths* (2019) 269 CLR 1.

17. Department of Premier and Cabinet, Response to NTP-003-002 – 'Native Title Act 1993 (Cth) and the Traditional Owner Settlement Act 2010 (Vic)', 17, produced by the State of Victoria in response to the Commission's Notice to Produce dated 8 November 2023.

18. Victorian Government, *First Principles Review of the Traditional Owner Settlement Act 2010: Joint Report of the First Principles Review Committee and the Executive Policy Owners Forum* (Report, 11 April 2024), 41.

The First Principles Review Report refers to the Traditional Owner representatives as the 'First Principles Review Committee', and the State representatives as the 'Executive Policy Owners' Forum'.

19. The State told Yoorrook in correspondence that it is not currently progressing recommendations that did not achieve support from both State and Traditional Owner partners. The State has committed to progress unresolved issues via a Settlement Act forum, which is also a recommendation of the Review. A number of recommendations that were 'considered to fall outside the scope of the Review as they did not relate to rights, interests or financial payments available to Traditional Owners under [TOSA]' are proposed for potential progression through the treaty process: Correspondence from the Victorian Government Solicitors Office to King & Wood Mallesons (Solicitors Assisting) dated 13 December 2024.

20. Witness Statement of Premier Jacinta Allan MP, 18 March 2024, 29–30 [208], [212].

21. *Traditional Owner Settlement Act 2010* (Vic) ss 4–9.

22. First Nations Legal and Research Services, Submission 345, 4–5.

23. Department of Premier and Cabinet, Response to NTP-003-002 — 'Native Title Act 1993 and the Traditional Owner Settlement Act 2010', 17, produced by the State of Victoria in response to the Commission's Notice to Produce dated 8 November 2023.

24. Victorian Traditional Owners Trusts, '[Victorian Traditional Owners Settlements](#)' (Webpage).

25. Department of Premier and Cabinet, Response to NTP-003-026 — 'Yoorrook Justice Commission – Land Justice Unit – Responses to RFI, 2 February 2024 – Response from Dean Cowie PSM', 18 [13], produced by the State of Victoria in response to the Commission's Request for Information dated 2 February 2024.

26. *Joint report of the First Principles Review Committee and the Executive Policy Owners Forum, First Principles Review of the Traditional Owner Settlement Act 2010* (Report, 11 April 2024), 22, produced by the State of Victoria in response to the Commission's Notice to Produced dated 2 April 2024.

27. Department of Premier and Cabinet, Response to NTP-003-026 — 'Yoorrook Justice Commission – Land Justice Unit – Responses to RFI, 2 February 2024 – Response from Dean Cowie PSM', 18 [16], produced by the State of Victoria in response to the Commission's Request for Information dated 2 February 2024.

28. Correspondence from the Victorian Government Solicitors Office to King & Wood Mallesons (Solicitors Assisting) dated 13 December 2024.

29. *Traditional Owner Settlement Act 2010* (Vic) pt 2 div 1.

30. *Traditional Owner Settlement Act 2010* (Vic) s 12.

31. *Traditional Owner Settlement Act 2010* (Vic) s 12(2).

32. Department of Premier and Cabinet, Response to NTP-003-002 – 'Native Title Act 1993 and Traditional Owner Settlement Act 2010', 30, produced by the State of Victoria in response to the Commission's Notice to Produce.

33. *Traditional Owner Settlement Act 2010* (Vic) s 30.

34. *Native Title Act 1993* (Cth) pt 2 div 3.

35. *Traditional Owner Settlement Act 2010* (Vic) s 32(2).

36. *Traditional Owner Settlement Act 2010* (Vic) pt 4 div 4.

37. *Traditional Owner Settlement Act 2010* (Vic) s 30(4).

38. *Traditional Owner Settlement Act 2010* (Vic) s 78.

39. *Traditional Owner Settlement Act 2010* (Vic) s 3.

40. *Traditional Owner Settlement Act 2010* (Vic) s 78(1).

41. Department of Premier and Cabinet, Response to NTP-003-026 — 'Yoorrook Justice Commission – Land Justice Unit – Responses to RFI, 2 February 2024 – Response from Dean Cowie PSM', 18 [13], produced by the State of Victoria in response to the Commission's Request for Information dated 2 February 2024.

42. *Traditional Owner Settlement Act 2010* (Vic) s 80.

43. *Traditional Owner Settlement Act 2010* (Vic) ss 82(1).

44. *Traditional Owner Settlement Act 2010* (Vic) ss 82(1), and 84. See also Department of Premier and Cabinet, Response to NTP-003-026 — 'Yoorrook Justice Commission – Land Justice Unit – Responses to RFI, 2 February 2024 – Response from Dean Cowie PSM', 33 [5], produced by the State of Victoria in response to the Commission's Request for Information dated 2 February 2024.

45. *Traditional Owner Settlement Act 2010* (Vic) s 81A.

46. *Traditional Owner Settlement Act 2010* (Vic) s 81A(1).

47. *Traditional Owner Settlement Act 2010* (Vic) s 12(3), and (5).

48. *Traditional Owner Settlement Act 2010* (Vic) s 19(2).

49. *Traditional Owner Settlement Act 2010* (Vic) ss 19(2) (c), and 20.

50. *Traditional Owner Settlement Act 2010* (Vic) s 13(b), pt 3 div 3.

51. *Traditional Owner Settlement Act 2010* (Vic) s 15.

52. *Traditional Owner Settlement Act 2010* (Vic) s 12(7); *Conservation, Forests and Lands Act 1987* (Vic) s 69.

53. *Traditional Owner Settlement Act 2010* (Vic) s 10(a).

54. *Traditional Owner Settlement Act 2010* (Vic) s 30(4).

55. Department of Premier and Cabinet, Response to NTP-003-002 — 'Native Title Act 1993 and the Traditional Owner Settlement Act 2010', 6, produced by the State of Victoria in response to the Commission's Notice to Produce dated 8 November 2023.

56. *Traditional Owner Settlement Act 2010* (Vic) s 10(b).

57. Department of Premier and Cabinet, Response to NTP-003-002 — 'Native Title Act 1993 and the Traditional Owner Settlement Act 2010', 21, 28–30, produced by the State of Victoria in response to the Commission's Notice to Produce dated 8 November 2023.

58. *Traditional Owner Settlement Act 2010* (Vic) ss 82, 84.

59. Department of Premier and Cabinet, Response to NTP-003-002 — 'Native Title Act 1993 and the Traditional Owner Settlement Act 2010', 6, produced by the State of Victoria in response to the Commission's Notice to Produce dated 8 November 2023.

60. Department of Premier and Cabinet, Response to NTP-003-002 — 'Native Title Act 1993 and the Traditional Owner Settlement Act 2010', 28, produced by the State of Victoria in response to the Commission's Notice to Produce dated 8 November 2023.

61. This table is adapted from Table 11 in Department of Premier and Cabinet, Response to NTP-003-002 — 'Native Title Act 1993 and the Traditional Owner Settlement Act 2010', 29–30, produced by the State of Victoria in response to the Commission's Notice to Produce dated 8 November 2023.

62. Department of Premier and Cabinet, Response to NTP-003-002 — 'Native Title Act 1993 and the Traditional Owner Settlement Act 2010', 24, produced by the State of Victoria in response to the Commission's Notice to Produce dated 8 November 2023.

63. Department of Energy, Environment and Climate Action, 'Yoorrook Justice Commission Land Injustice Inquiry Additional information provided by the Hon. Steve Dimopoulos MP, Minister for Environment, and Outdoor Recreation', 13 August 2024, 2–3.

64. Department of Premier and Cabinet, Response to NTP-003-002 – 'Native Title Act 1993 (Cth) and the Traditional Owner Settlement Act 2010 (Vic)', 25, produced by the State of Victoria in response to the Commission's Notice to Produce dated 8 November 2023.

65. *Traditional Owner Settlement Act 2010* (Vic), s 19(2).

66. *Traditional Owner Settlement Act 2010* (Vic), ss 19(2) (c), 20.

67. Taungurung Land and Waters Council Aboriginal Corporation, Submission 596 (Land, Sky, Waters), 15.

68. First Peoples' Assembly of Victoria, Submission 378 (Land, Sky, Waters), 21.

69. First Peoples' Assembly of Victoria, Submission 378 (Land, Sky, Waters), 21.

70. Transcript of Barengi Gadjin Land Council, 26 October 2023, 29, served on the State of Victoria on 1 April 2024.

71. Aboriginal Housing Victoria, Submission 351 (Land, Sky, Waters), 3.

72. Dja Dja Wurrung Clans Aboriginal Corporation, Dja Dja Wurrekatjalangu (RSA) Team, Submission 504, 4.

73. First Nations Legal and Research Services, Submission 345, 18.

74. Transcript of Minister Natalie Hutchins MP, 18 April 2024, 73 [33]–[34].

75. Transcript of Minister Natalie Hutchins MP, 18 April 2024, 73 [31]–[37].

76. Department of Energy, Environment and Climate Action, 'Yoorrook Justice Commission Land Injustice Inquiry Additional information provided by the Hon. Steve Dimopoulos MP, Minister for Environment, and Outdoor Recreation', 13 August 2024, 2–3, produced by the State of Victoria in response to the Commission's Notices to Attend dated 12 April 2024.

77. Department of Premier and Cabinet, Response to NTP-003-026 — 'Yoorrook Justice Commission – Land Justice Unit – Responses to RFI, 2 February 2024 – Response from Dean Cowie PSM', 19–22, 31, produced by the State of Victoria in response to the Commission's Request for Information dated 2 February 2024.

78. Dja Dja Wurrung Clans Aboriginal Corporation, Dja Dja Wurrekatjalangu (RSA) Team, Submission 504, 4–5.

79. Department of Energy, Environment and Climate Action, 'Yoorrook Justice Commission Land Injustice Inquiry Additional information provided by the Hon. Steve Dimopoulos MP, Minister for Environment, and Outdoor Recreation', 13 August 2024, 2–3.

80. Department of Premier and Cabinet, Response to NTP-003-026 — 'Yoorrook Justice Commission – Land Justice Unit – Responses to RFI, 2 February 2024 – Response from Dean Cowie PSM', 19, produced by the State of Victoria in response to the Commission's Request for Information dated 2 February 2024.

81. Department of Energy, Environment and Climate Action, 'Yoorrook Justice Commission Land Injustice Inquiry Additional information provided by the Hon. Steve Dimopoulos MP, Minister for Environment, and Outdoor Recreation', 13 August 2024, 2–3.

82. Department of Premier and Cabinet, Response to NTP-003-026 — ‘Yoorrook Justice Commission – Land Justice Unit – Responses to RFI, 2 February 2024 – Response from Dean Cowie PSM’, 22, produced by the State of Victoria in response to the Commission’s Request for Information dated 2 February 2024.

83. Department of Premier and Cabinet, Response to NTP-003-026 — ‘Yoorrook Justice Commission – Land Justice Unit – Responses to RFI, 2 February 2024 – Response from Dean Cowie PSM’; Further response under NTP-003-026 from Dean Cowie PSM, 26 March 2024, 3–5, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 2 February 2024.

84. Department of Energy, Environment and Climate Action, ‘Yoorrook Justice Commission Land Injustice Inquiry Additional information provided by the Hon. Steve Dimopoulos MP, Minister for Environment, and Outdoor Recreation’, 13 August 2024, 2.

85. Dja Dja Wurrung Clans Aboriginal Corporation, Dja Dja Wurrekatjalangu (RSA) Team, Submission 504, 4.

86. Transcript of Marcus Stewart, inaugural Co-Chair of the First Peoples’ Assembly of Victoria, 5 May 2022, 263 [3]–[4].

87. Transcript of roundtable with Barengi Gadjin Land Council, 26 October 2023, 23, served on the State of Victoria on 1 April 2024.

88. Transcript of roundtable with Barengi Gadjin Land Council Roundtable, 26 October 2023, 18, served on the State of Victoria on 1 April 2024.

89. Victorian Aboriginal Community Controlled Health Organisation, Submission 340 (Land, Sky, Waters), 9.

90. Victorian Aboriginal Community Controlled Health Organisation, Submission 340 (Land, Sky, Waters), 9.

91. Transcript of Tony Kelly, 16 April 2024, 68 [36]–[39].

92. Transcript of Minister Natalie Hutchins MP, 18 April 2024, 80 [15]–[16].

93. *Traditional Owner Settlement Act 2010* (Vic) s 82.

94. *Traditional Owner Settlement Act 2010* (Vic) ss 79, 84(b).

95. *Traditional Owner Settlement Act 2010* (Vic) ss 79.

96. Victorian Government, *First Principles Review of the Traditional Owner Settlement Act 2010: Joint Report of the First Principles Review Committee and the Executive Policy Owners Forum* (Report, 11 April 2024), 45.

97. Transcript of Paul Paton, 17 April 2024, 73 [15]–[25].

98. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 57 [280].

99. Department of Energy, Environment and Climate Action, ‘Yoorrook Justice Commission Land Injustice Inquiry Additional information provided by the Hon. Steve Dimopoulos MP, Minister for Environment, and Outdoor Recreation’, 6, produced by the State of Victoria in response to the Commission’s Notices to Attend dated 12 April 2024.

100. Department of Energy, Environment and Climate Action, ‘Yoorrook Justice Commission Land Injustice Inquiry Additional information provided by the Hon. Steve Dimopoulos MP, Minister for Environment, and Outdoor Recreation’, 6, produced by the State of Victoria in response to the Commission’s Notices to Attend dated 12 April 2024.

101. In correspondence to Yoorrook, the State noted that the *Aboriginal Heritage Act 2006* (Vic) ss 31 and 32 AHA empowers the Minister for Treaty and First Peoples in certain circumstances to compulsorily or by agreement acquire land containing an Aboriginal place and for the Governor in Council to grant for an estate in fee simple this land to a Recognised Aboriginal Party (RAP) or any Aboriginal body or person: Correspondence from the Victorian Government Solicitors Office to King & Wood Mallesons (Solicitors Assisting) dated 13 December 2024.

102. Taungurung Land and Waters Council Aboriginal Corporation, Submission 596 (Land, Sky, Waters), 15.

103. Taungurung Land and Waters Council Aboriginal Corporation, Submission 596 (Land, Sky, Waters), 15.

104. International Commission of Jurists Victoria and RMIT University, Submission 391, 19.

105. International Commission of Jurists Victoria and RMIT University, Submission 391, 21.

106. Department of Justice and Community Safety, ‘Speaking Notes: Meeting with Matthew Burns, Chief Executive Officer, Taungurung Land and Waters Council Aboriginal Corporation’, 1, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 27 November 2023.

107. Dr Jennifer Jones, ‘[Acheron: Land That ‘Ever Should Be Theirs’](#)’ (La Trobe University), in Roy Henry Patterson and Jennifer Jones (eds), *On Taungurung Land: Sharing History and Culture* (ANU Press, 2020).

108. Department of Premier and Cabinet, Response to NTP-003-002 — ‘*Native Title Act 1993* and the *Traditional Owner Settlement Act 2010*’, 21, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 8 November 2023.

109. Department of Transport and Planning, ‘*Victorian Government Land Transactions Policy*’, 11, 68, 111, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 17 November 2023.

110. Department of Transport and Planning, ‘*Government Land Acquisitions and Sales*’, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 8 November 2023.

The Minister for Precincts the Hon Colin Brooks MP told Yoorrook that he has asked the Department of Transport and Planning to report on the proposed strategy for engaging with Traditional Owners as part of a review into the State’s land policies. The Minister said that this review is ‘envisaged to proceed through 2024’ but did not give an indication of when the Review would be completed: Witness Statement of Minister Colin Brooks MP, 1 March 2024, 6–7 [35]–[38].

111. Department of Transport and Planning, ‘*Government Land Acquisitions and Sales*’, 3, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 8 November 2023.

112. Department of Transport and Planning, ‘*Victorian Government Land Transactions Policy*’, 68, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 17 November 2023.

113. Dja Dja Wurrung Clans Aboriginal Corporation, Dja Dja Wurrekatjalangu (RSA) Team, Submission 504, 4.

114. Victorian Government, *First Principles Review of the Traditional Owner Settlement Act 2010: Joint Report of the First Principles Review Committee and the Executive Policy Owners Forum* (Report, 11 April 2024), 41.

115. Dja Dja Wurrung Clans Aboriginal Corporation, Dja Dja Wurrekatjalangu (RSA) Team, Submission 504, 9.

116. First Nations Legal and Research Services, Submission 345 (Main Submission), 5.

117. Department of Premier and Cabinet, Response to NTP-003-002 — ‘*Native Title Act 1993* and the *Traditional Owner Settlement Act 2010*’, 16, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 8 November 2023.

118. Victorian Government, *First Principles Review of the Traditional Owner Settlement Act 2010: Joint Report of the First Principles Review Committee and the Executive Policy Owners Forum* (Report, 11 April 2024), 63–4.

119. First Nations Legal and Research Services, Submission 345 (Main Submission), 5.

120. *Traditional Owner Settlement Act 2010* (Vic) s 4; Cf *Native Title Act 1993* (Vic) s 223(1) and *Members of the Yorta Yorta Aboriginal Community v Victoria and Others* (2002) 214 CLR 422, 493 [188]. See Chapter 10: Native title.

121. *Traditional Owner Settlement Act 2010* (Vic) s 3 (definition of ‘traditional owner group’).

122. *Traditional Owner Settlement Act 2010* (Vic) s 4(1), and see the definition of ‘traditional owner group entity’ in s 3.

123. Department of Premier and Cabinet, Response to NTP-003-026 — ‘Yoorrook Justice Commission – Land Justice Unit – Responses to RFI, 2 February 2024 – Response from Dean Cowie PSM’, 7, produced by the State of Victoria in response to the Commission’s Request for Information dated 2 February 2024.

124. Department of Premier and Cabinet, Response to NTP-003-026 — ‘Yoorrook Justice Commission – Land Justice Unit – Responses to RFI, 2 February 2024 – Response from Dean Cowie PSM’, 7, produced by the State of Victoria in response to the Commission’s Request for Information dated 2 February 2024.

In correspondence to Yoorrook, the State also noted that the cessation of the Right People for Country Program was related to removing the State from decisions about who the right people for Country are and placing such decision-making in the hands of Traditional Owners themselves through: (a) the First Peoples’ Assembly’s ‘Additional Pathway’ to recognition and (b) participation in Traditional Owner Treaty delegations: Correspondence from the Victorian Government Solicitors Office to King & Wood Mallesons (Solicitors Assisting) dated 13 December 2024.

125. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 53 [265]; Department of Premier and Cabinet, Response to NTP-003-002 — ‘*Native Title Act 1993* and the *Traditional Owner Settlement Act 2010*’, 17, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 8 November 2023.

126. Department of Premier and Cabinet, Response to NTP-003-002 — ‘*Native Title Act 1993* and the *Traditional Owner Settlement Act 2010*’, 17, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 8 November 2023.

127. First Nations Legal and Research Services, Submission 345 (Main Submission), 5.

128. First Nations Legal and Research Services, Submission 345 (Main Submission), 5; *Atkinson v Victoria* [2013] FCA 1460; *Gardiner v Taungurung Land and Waters Council* [2021] FCA 80.

129. First Nations Legal and Research Services, Submission 345 (Main Submission), 5.

130. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 53 [264].

131. First Nations Legal and Research Services, Submission 345 (Main Submission), 19.

132. First Peoples’ Assembly of Victoria, Submission 378 (Land, Sky, Waters), 30.

133. First Nations Legal and Research Services, Submission 345 (Main Submission), 19.

134. *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007) art 40.

135. First Peoples’ Assembly of Victoria, Submission 378 (Land, Sky, Waters), 30.

136. First Peoples’ Assembly of Victoria, Submission 378 (Land, Sky, Waters), 30.

137. First Nations Legal and Research Services, Submission 345 (Main Submission), 19.

138. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 55 [271].

139. First Peoples’ Assembly of Victoria and State Government of Victoria, *Treaty Negotiation Framework* (20 October 2022) cl 35, which sets out a resolution process for ‘[d]isputes arising in Treaty negotiations or incidental to or in connection with Treaty negotiations’, including in relation to the Minimum Standards for Traditional Owner groups under cl 8.

140. See Transcript of Will Crawford, 16 April 2024, 76 [37]–[40]; Taungurung Land and Waters Council Aboriginal Corporation, Submission 572 (‘specific issues arising out of the hearings’), 2; Dja Dja Wurrung Clans Aboriginal Corporation, Dja Dja Wurrekatjalangu (RSA) Team, Submission 504, 5; The Public Land Consultancy, *Independent Audit of Compliance of the Dja Dja Wurrung Land Use Activity Agreement; by the Public Land Consultancy for the Land Justice Unit, Department of Justice and Community Safety. Final Report* (Report, December 2021), 36. See also Department of Government Services, Response to NTP-003-007 – ‘*Local Government Recognition and Settlement Agreements with Traditional Owners*’, 3, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 8 November 2024.

141. Transcript of Will Crawford, 16 April 2024, 76 [37]–[40].

142. Taungurung Land and Waters Council Aboriginal Corporation, Submission 572 (‘specific issues arising out of the hearings’), 2.

143. Dja Dja Wurrung Clans Aboriginal Corporation, Dja Dja Wurrekatjalangu (RSA) Team, Submission 504, 5.

144. Dja Dja Wurrung Clans Aboriginal Corporation, Dja Dja Wurrekatjalangu (RSA) Team, Submission 504, 5.

145. Dja Dja Wurrung Clans Aboriginal Corporation, Dja Dja Wurrekatjalangu (RSA) Team, Submission 504, 5.

146. Taungurung Land and Waters Council Aboriginal Corporation, Submission 572 (‘specific issues arising out of the hearings’), 2.

147. Taungurung Land and Waters Council Aboriginal Corporation, Submission 572 (‘specific issues arising out of the hearings’), 2.

148. Department of Government Services, Response to NTP-003-007 – ‘*Local Government Recognition and Settlement Agreements with Traditional Owners*’, 3, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 8 November 2024.

149. Department of Government Services, Response to NTP-003-007 – ‘*Local Government Recognition and Settlement Agreements with Traditional Owners*’, 3, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 8 November 2024.

150. Department of Premier and Cabinet, Response to NTP-003-026 — ‘Yoorrook Justice Commission – Land Justice Unit – Responses to RFI, 2 February 2024 – Response from Dean Cowie PSM’, 24, produced by the State of Victoria in response to the Commission’s Request for Information dated 2 February 2024.

151. Taungurung Land and Waters Council Aboriginal Corporation, Submission 572 (‘specific issues arising out of the hearings’), 2.

152. Taungurung Land and Waters Council Aboriginal Corporation, Submission 572 (‘specific issues arising out of the hearings’), 2.

153. Dja Dja Wurrung Clans Aboriginal Corporation, Dja Dja Wurrekatjalangu (RSA) Team, Submission 504, 7. See also The Public Land Consultancy, *Independent Audit of Compliance of the Dja Dja Wurrung Land Use Activity Agreement; by the Public Land Consultancy for the Land Justice Unit, Department of Justice and Community Safety. Final Report* (Report, December 2021), 36.

154. Department of Energy, Environment and Climate Action, Response to NTP-003-012 — ‘Public Land Consultancy, *‘Independent Audit of Compliance of the Dja Dja Wurrung Land Use Activity Agreement; by the Public Land Consultancy for the Land Justice Unit, Department of Justice and Community Safety: Final Report’*, 6, produced by the State of Victoria in response to the Commissioner’s Notice to Produce dated 17 November 2023.

155. Department of Energy, Environment and Climate Action, Response to NTP-003-012 — ‘Public Land Consultancy, *‘Independent Audit of Compliance of the Dja Dja Wurrung Land Use Activity Agreement; by the Public Land Consultancy for the Land Justice Unit, Department of Justice and Community Safety: Final Report’*, 8, produced by the State of Victoria in response to the Commissioner’s Notice to Produce dated 17 November 2023.

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158. Department of Energy, Environment and Climate Action, Response to NTP-003-012 — ‘Public Land Consultancy, *‘Independent Audit of Compliance of the Dja Dja Wurrung Land Use Activity Agreement; by the Public Land Consultancy for the Land Justice Unit, Department of Justice and Community Safety: Final Report’*, 57, produced by the State of Victoria in response to the Commissioner’s Notice to Produce dated 17 November 2023.

159. Department of Energy, Environment and Climate Action, Response to NTP-003-012 — ‘Public Land Consultancy, *‘Independent Audit of Compliance of the Dja Dja Wurrung Land Use Activity Agreement; by the Public Land Consultancy for the Land Justice Unit, Department of Justice and Community Safety: Final Report’*, 9, produced by the State of Victoria in response to the Commissioner’s Notice to Produce dated 17 November 2023.

160. Department of Energy, Environment and Climate Action, Response to NTP-003-012 — ‘Public Land Consultancy, *‘Independent Audit of Compliance of the Dja Dja Wurrung Land Use Activity Agreement; by the Public Land Consultancy for the Land Justice Unit, Department of Justice and Community Safety: Final Report’*, 9, produced by the State of Victoria in response to the Commissioner’s Notice to Produce dated 17 November 2023.

161. Dja Dja Wurrung Clans Aboriginal Corporation, Dja Dja Wurrekatalangu (RSA) Team, Submission 504, 8.

162. Department of Premier and Cabinet, Response to NTP-003-026 — ‘Yoorrook Justice Commission – Land Justice Unit – Responses to RFI, 2 February 2024 – Response from Dean Cowie PSM’, 24, produced by the State of Victoria in response to the Commission’s Request for Information dated 2 February 2024.

163. Taungurung Land and Waters Council Aboriginal Corporation, Submission 572 (‘specific issues arising out of the hearings’), 3.

164. Transcript of Will Crawford, 16 April 2024, 77 [5].

165. Transcript of Will Crawford, 16 April 2024, 77 [40].

166. Department of Premier and Cabinet, Response to NTP-003-002 — ‘Native Title Act 1993 and the Traditional Owner Settlement Act 2010’, 23, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 8 November 2023.

167. Public Land Consultancy, *‘Independent Audit of Compliance of the Dja Dja Wurrung Land Use Activity Agreement: Final Report’*, 47, produced by the State of Victoria in response to the Commissioner’s Notice to Produce dated 17 November 2023.

Due to Machinery of Government changes in January 2023, the portfolio responsibility for this matter is now held by the Department of Premer and Cabinet, supporting the Minister for Treaty and First Peoples.

168. Taungurung Land and Waters Council Aboriginal Corporation, Submission 572 (‘specific issues arising out of the hearings’), 2.

169. Transcript of roundtable with Barengi Gadjin Land Council, 26 October 2024, 29–30, served on the State of Victoria on 1 April 2024.

170. Department of Premier and Cabinet, Response to NTP-003-026 — ‘Yoorrook Justice Commission – Land Justice Unit – Responses to RFI, 2 February 2024 – Response from Dean Cowie PSM’, 4–5, produced by the State of Victoria in response to the Commission’s Request for Information dated 2 February 2024.

171. Department of Premier and Cabinet, Response to NTP-003-026 — ‘Yoorrook Justice Commission – Land Justice Unit – Responses to RFI, 2 February 2024 – Response from Dean Cowie PSM’, 18, produced by the State of Victoria in response to the Commission’s Request for Information dated 2 February 2024.

172. Department of Premier and Cabinet, Response to NTP-003-026 — ‘Yoorrook Justice Commission – Land Justice Unit – Responses to RFI, 2 February 2024 – Response from Dean Cowie PSM’, 18, produced by the State of Victoria in response to the Commission’s Request for Information dated 2 February 2024.

173. *Traditional Owner Settlement Act 2010* (Vic) ss 40, 40A.

174. *Traditional Owner Settlement Act 2010* (Vic) s 28.

175. *Traditional Owner Settlement Act 2010* (Vic) s 27.

176. Department of Premier and Cabinet, Response to NTP-003-026 — ‘Yoorrook Justice Commission – Land Justice Unit – Responses to RFI, 2 February 2024 – Response from Dean Cowie PSM’, 4, produced by the State of Victoria in response to the Commission’s Request for Information dated 2 February 2024.

177. Department of Premier and Cabinet, Response to NTP-003-026 — ‘Yoorrook Justice Commission – Land Justice Unit – Responses to RFI, 2 February 2024 – Response from Dean Cowie PSM’, 4, produced by the State of Victoria in response to the Commission’s Request for Information dated 2 February 2024.

178. Department of Premier and Cabinet, Response to NTP-003-026 — ‘Yoorrook Justice Commission – Land Justice Unit – Responses to RFI, 2 February 2024 – Response from Dean Cowie PSM’, 4, produced by the State of Victoria in response to the Commission’s Request for Information dated 2 February 2024.

179. (2019) 269 CLR 1.

180. *Northern Territory v Griffiths* (2019) 269 CLR 1, 29 (Kiefel CJ, Bell, Keane, Nettle and Gordon JJ).

181. *Northern Territory v Griffiths* (2019) 269 CLR 1, 29 (Kiefel CJ, Bell, Keane, Nettle and Gordon JJ).

182. Department of Premier and Cabinet, Response to NTP-003-026 — ‘Yoorrook Justice Commission – Land Justice Unit – Responses to RFI, 2 February 2024 – Response from Dean Cowie PSM’, 4, produced by the State of Victoria in response to the Commission’s Request for Information dated 2 February 2024.

183. Dja Dja Wurrung Clans Aboriginal Corporation, Dhelkunya Dja Policy Team, Submission 594 (Economic Prosperity), 6.

184. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 56 [278].

185. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 56 [278].

186. Department of Premier and Cabinet, Response to NTP-003-026 — ‘Yoorrook Justice Commission – Land Justice Unit – Responses to RFI, 2 February 2024 – Response from Dean Cowie PSM’, 22, produced by the State of Victoria in response to the Commission’s Request for Information dated 2 February 2024.

187. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 52 [259].

188. Department of Premier and Cabinet, Response to NTP-003-002 — ‘Native Title Act 1993 and the Traditional Owner Settlement Act 2010’, 29–30, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 8 November 2023.

189. Dja Dja Wurrung Clans Aboriginal Corporation, Dja Dja Wurrekatalangu (RSA) Team, Submission 504, 5–6.

190. Transcript of Tony Kelly, 16 April 2024, 75 [40]–[45].

191. First Nations Legal and Research Services, Submission 345 (Main Submission), 6.

192. In correspondence to Yoorrook, the State noted that in November 2023, as an outcome of the First Principles Review the Victorian Government agreed that settlement offers should be consistent with UNDRIP: Correspondence from the Victorian Government Solicitors Office to King & Wood Mallesons (Solicitors Assisting) dated 13 December 2024.

193. First Nations Legal and Research Services, Submission 345 (Main Submission), 17–18.

194. First Nations Legal and Research Services, Submission 345 (Main Submission), 18.

195. International Commission of Jurists Victoria and RMIT University, Submission 391, 5–6; First Nations Legal and Research Services, Submission 345 (Main Submission), 25.

196. First Nations Legal and Research Services, Submission 345 (Main Submission), 23.

197. *Joint report of the First Principles Review Committee and the Executive Policy Owners Forum, First Principles Review of the Traditional Owner Settlement Act 2010* (11 April 2024), 45, produced by the State of Victoria in response to the Commission’s Notice to Produced dated 2 April 2024 (Recommendation 18).

198. *Joint report of the First Principles Review Committee and the Executive Policy Owners Forum, First Principles Review of the Traditional Owner Settlement Act 2010* (11 April 2024), 41, produced by the State of Victoria in response to the Commission’s Notice to Produced dated 2 April 2024.

199. *Joint report of the First Principles Review Committee and the Executive Policy Owners Forum, First Principles Review of the Traditional Owner Settlement Act 2010* (11 April 2024), 36, produced by the State of Victoria in response to the Commission’s Notice to Produced dated 2 April 2024.

200. *Joint report of the First Principles Review Committee and the Executive Policy Owners Forum, First Principles Review of the Traditional Owner Settlement Act 2010* (11 April 2024), produced by the State of Victoria in response to the Commission’s Notice to Produced dated 2 April 2024 (Recommendation 35).

201. *United Nations Declaration on the Rights of Indigenous peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007), art 40.

202. *Joint report of the First Principles Review Committee and the Executive Policy Owners Forum, First Principles Review of the Traditional Owner Settlement Act 2010* (11 April 2024), 27–28, produced by the State of Victoria in response to the Commission’s Notice to Produced dated 2 April 2024, Recommendation 1.

203. *Joint report of the First Principles Review Committee and the Executive Policy Owners Forum, First Principles Review of the Traditional Owner Settlement Act 2010* (11 April 2024), 27–28, produced by the State of Victoria in response to the Commission’s Notice to Produced dated 2 April 2024.

204. Transcript of Paul Paton, 17 April 2024, 70 [27–30].

205. *Joint report of the First Principles Review Committee and the Executive Policy Owners Forum, First Principles Review of the Traditional Owner Settlement Act 2010* (11 April 2024), 27–28, 104, produced by the State of Victoria in response to the Commission’s Notice to Produced dated 2 April 2024.

206. See *Commonwealth of Australia v. Yunupingu (on behalf of the Gumatj Clan or Estate Group) and Ors* (Case No. D5/2023); Joint report of the First Principles Review Committee and the Executive Policy Owners Forum, *First Principles Review of the Traditional Owner Settlement Act 2010* (Report, 11 April 2024), 28, produced by the State of Victoria in response to the Commission’s Notice to Produced dated 2 April 2024.

207. *Joint report of the First Principles Review Committee and the Executive Policy Owners Forum, First Principles Review of the Traditional Owner Settlement Act 2010* (Report, 11 April 2024), 29, produced by the State of Victoria in response to the Commission’s Notice to Produced dated 2 April 2024.

208. Transcript of Minister Natalie Hutchins MP, 18 April 2024, 54 [25]–[30], 58 [10]–[35].

209. Transcript of Minister Natalie Hutchins MP, 18 April 2024, 55 [20]–[25].

210. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 56 [275].

211. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 56 [279].

212. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 56 [279].

213. Transcript of Minister Natalie Hutchins MP, 18 April 2024, 58 [15].

214. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 9.

215. First Peoples’ Assembly of Victoria, Submission 378 (Land, Sky, Waters), 5.

216. First Nations Legal and Research Services, Submission 345 (Main Submission), 23.

217. Transcript of roundtable with Barengi Gadjin Land Council, 26 October 2024, 29, served on the State of Victoria on 1 April 2024.

218. First Peoples’ Assembly of Victoria, Submission 378 (Land, Sky, Waters), 34.

219. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 22.

220. First Peoples’ Assembly of Victoria, Submission 378 (Land, Sky, Waters), 21.

221. Transcript of Paul Paton, 17 April 2024, 74 [5]–[40].

222. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 20; Transcript of Paul Paton, 17 April 2024, 74 [5]–[40].

223. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 20.

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Content warning

Please be aware that this chapter discusses material that may be distressing. It discusses theft of, and damage to, First Peoples' cultural heritage, including discussion of Ancestor remains.

This chapter contains stories and mention of First Peoples who have passed away.

We suggest readers consider their wellbeing before, during and after reading. If you are distressed by material in this report, or if you or a loved one require support, there are services to support you. Please see the support resources at [Keeping You Safe & Strong – Yoorrook Justice Commission](#).

This land is full of our heritage.¹

NGARRA MURRAY, CO-CHAIR OF FIRST PEOPLES’
ASSEMBLY OF VICTORIA

Aboriginal heritage is not just based on sites, it is based on the whole environment. The totems come from the environment — so do the tools and the food. If you destroy the environment, you are actually destroying heritage.²

UNCLE LARRY WALSH

Introduction

First Peoples in Victoria have the right to maintain, control, protect and develop their cultural heritage. Cultural heritage refers to First Peoples’ ‘knowledge and lore, practices and people, objects and places that are valued, culturally meaningful and connected to identity and Country’.³ This long archive of knowledge, rights and responsibilities continues to be carried by Traditional Owners and embodied in Country. Since colonisation, it has been systematically and progressively destroyed by the State, local government, private developers, farmers and public use. What remains must be better protected in law and practice.⁴

The *Aboriginal Heritage Act 2006* (Vic) (*‘AHA’*) establishes a framework to recognise and protect First Peoples’ tangible and intangible cultural heritage while also enabling land use and development.⁵ It confers some decision-making powers on Traditional Owners through the Victorian Aboriginal Heritage Council (VAHC) and the Registered Aboriginal Party (RAP) process.⁶ The *AHA* sits within the recognition landscape alongside the *Native Title Act 1993* (Cth) and *Traditional Owner Settlement Act 2010* (Vic) (*‘TOSA’*) (see Chapter 9: How we got here — overview of recognition systems).

The evidence Yoorrook heard in relation to cultural heritage and the *AHA* reveals systemic failures for which the State is responsible. The State has failed to ensure the *AHA* is fit for purpose and has neglected to inform landowners and agencies of their obligations under the law. This is despite clear acknowledgments from ministers during hearings and the comprehensive findings of the VAHC’s *Taking Control of Our Heritage* report (2021), which explicitly identified the deficiencies of the *AHA*.

The inadequacies in the administration of the *AHA* perpetuate a culture of non-compliance. This is further exacerbated by the State’s own agencies failing to adhere to the laws designed to protect Aboriginal heritage.⁷ First Peoples are forced to witness the continuing destruction of their cultural heritage, often intentionally and without consequences. The low rate of prosecutions and penalties for those who violate these laws (with only six successful prosecutions under the *AHA* in Victoria at the time of writing⁸) displays a troubling lack of accountability, suggesting the State prioritises bureaucratic processes and development activities over the protection of First Peoples’ rights and cultural heritage.

While the *AHA* allows First Peoples some authority and control in relation to land use and development, these powers are limited.⁹ Government still retains control over resourcing and administering systems, enforcement and appointing VAHC members.¹⁰ Moreover, where the State has handed over rights, it has done so in a piecemeal way that falls far short of true self-determination. Yoorrook also heard that the process for determining RAPs has given rise to disputes and caused harm to First Peoples — an issue that cuts across all land rights recognition systems (see also Chapter 9: How we got here — overview of recognition systems, Chapter 10: Native title and Chapter 11: Traditional Owner settlements).

This chapter examines the shortcomings of current protections for cultural heritage and outlines necessary improvements to strengthen this system.

How cultural heritage laws work

As previously outlined, in Victoria the primary legislation relating to heritage is the AHA. The TOSA also provides limited protection relating to heritage in land use activity agreements (see Chapter 11: Traditional Owner settlements). Typically, states are responsible for cultural heritage laws and protection. The Commonwealth also provides some heritage protections, including:

- *Native Title Act 1993* (Cth): see Chapter 10: Native title.
- *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth): can provide emergency declarations to protect heritage ‘as a last resort when ... state ... processes have been exhausted’.¹¹
- *Environment Protection and Biodiversity Conservation Act 1999* (Cth): protects natural and cultural places of significance.¹² Under this Act and the *Australian Heritage Council Act 2003* (Cth), the Australian Heritage Council, manages the National and Commonwealth Heritage Lists.¹³
- Indigenous Protected Areas (IPA): The National Indigenous Agency (NIAA) is responsible for the IPA program. In Victoria there are several dedicated IPAs ([Tae Rak \(Lake Condah\)](#), [Kurtonitj](#), [Tyrendarra](#), [Deen Maar](#), [Framlingham Forest](#)) and sites currently in consultation for IPA status (Wurdi Youang, Gunditjmara Sea Country, Nanjit to Mallacoota Sea Country).

Additionally, there are international protections and recognition for cultural heritage under the [World Heritage List](#) administered by the United Nations Educational, Scientific and Cultural Organisation (UNESCO). For example, Budj Bim Cultural Landscape is inscribed on the World Heritage List¹⁴ (see Chapter 14: Water).

THE ABORIGINAL HERITAGE ACT 2006 (VIC)

The *Aboriginal Heritage Act 2006* (Vic) (‘AHA’) seeks to protect Aboriginal cultural heritage in Victoria and empower Traditional Owners as protectors of their cultural heritage on private and public land by establishing:

- the Victorian Aboriginal Heritage Register.¹⁵
- Registered Aboriginal Parties (RAPs) as the primary decision-makers about Aboriginal cultural heritage¹⁶
- The Victorian Aboriginal Heritage Council (VAHC) to provide a voice for Aboriginal people in Victoria and to provide advice to the government on cultural heritage management.¹⁷
- Cultural Heritage Management Plans (CHMPs)¹⁸ and Cultural Heritage Permits (CHPs)¹⁹ to enable Traditional Owners to manage activities that may cause harm or impact Aboriginal places. A CHMP is only required if a development activity is proposed to be a ‘high impact activity’ and in an ‘area of cultural heritage sensitivity’.²⁰ Both ‘high impact activity’ and ‘area of cultural heritage sensitivity’ have specified statutory definitions under the *Aboriginal Heritage Regulations 2018* (Vic). Under the AHA, a RAP must make a decision to approve or refuse to approve a CHMP within 30 days of receiving an application.²¹
- powers to Authorised Officers and Aboriginal Heritage Officers to enforce the AHA.²²

DEFINING CULTURAL HERITAGE UNDER THE ABORIGINAL HERITAGE ACT 2006 (VIC)

Under the *Aboriginal Heritage Act 2006* (Vic) (‘AHA’), ‘Aboriginal cultural heritage’ refers to ‘Aboriginal places, Aboriginal objects and Aboriginal ancestral remains’.²³ The AHA defines each of these.

- an Aboriginal place is ‘an area in Victoria or the coastal waters of Victoria that is of cultural heritage significance to Aboriginal people’, including: a building or structure; land; water; a natural feature, formation or landscape; an archaeological site, feature or deposit; and the area immediately surrounding these.²⁴ An Aboriginal place ‘can be a cultural landscape with purely intangible values, such as a place where a traditional spiritual being performed a significant act, or an individual culturally-scarred tree’.²⁵
- an Aboriginal object is an object in Victoria or the coastal waters of Victoria that relates to Aboriginal people. It includes objects which are secret or sacred in accordance with Aboriginal tradition and does not include objects made for sale.²⁶
- Aboriginal ancestral remains are Aboriginal human remains not buried in a currently operating cemetery (with limited further exclusions).²⁷

The definitions of both ‘Aboriginal place’ and ‘Aboriginal object’ state that they must be of collective importance to Aboriginal people and be of ‘cultural heritage significance’. The latter is defined in the AHA as including archaeological, anthropological, contemporary, historical, scientific, social or spiritual significance and significance in accordance with Aboriginal tradition.²⁸

The State acknowledged that a key limitation of the AHA is that protection focuses on physical or tangible heritage, that is ‘objects and places that can be touched and seen’.²⁹ It does not adequately protect intangible heritage, including ‘stories, knowledge of plants and animals and artistic traditions’, though Aboriginal places and objects with such values are protected.³⁰ Intangible heritage is only protected against ‘unauthorised commercial use’ by the Aboriginal intangible heritage provisions in the AHA.³¹

ABORIGINAL INTANGIBLE HERITAGE UNDER THE ABORIGINAL HERITAGE ACT 2006 (VIC)

The *Aboriginal Heritage Act 2006* (Vic) ('AHA') defines 'Aboriginal intangible heritage' as 'any knowledge of or expression of Aboriginal tradition', including 'oral traditions, performing arts, stories, rituals, festivals, social practices, craft, visual arts and environmental and ecological knowledge'.³² Aboriginal intangible heritage also includes 'any intellectual creation or innovation based on or derived from' any of these things.³³ It does not include anything that is widely known to the public.³⁴

Aboriginal intangible heritage is protected through registration on the Victorian Aboriginal Heritage Register.³⁵ A RAP, registered native title holder or Traditional Owner corporation may either apply to the Secretary of the Department of Premier and Cabinet to register Aboriginal intangible heritage, or enter into an intangible heritage agreement which may then be registered.³⁶ Agreements must be registered with the Secretary to the Department of Premier and Cabinet,³⁷ who is responsible for approving the registration of intangible heritage on the Victorian Aboriginal Heritage Register.³⁸ It is an offence for a party not to comply with a registered agreement³⁹ or to use registered Aboriginal intangible heritage for commercial purposes without consent of the Traditional Owner party.⁴⁰

PROTECTION DECLARATIONS

The Minister for Treaty and First Peoples can make protection declarations over areas of land containing Aboriginal cultural heritage of particular significance.⁴¹ There are two kinds of protection declarations:

- an Interim Protection Declaration is a temporary protection declaration which operates for 3 months (and can only be extended once for a further 3 months);
- an Ongoing Protection Declaration, is a permanent declaration that applies maximum penalties for contravention.⁴²

The State told Yoorrook that '[t]hese declarations effectively quarantine areas of Victoria and place enforceable conditions on any activities'.⁴³ However, the State noted '[these] powers are exercised rarely'.⁴⁴ As of November 2023, there was one Interim Protection Declaration⁴⁵ and three Ongoing Protection Declarations in Victoria:

- Garradha Molwa Aboriginal Place (2011): an area of 15.59 hectares in Barmah National Park on Yorta Yorta Country⁴⁶
- Moyjil Aboriginal Place (2013): an area of 1.36 hectares in Moyjil (Point Ritchie) near Warrnambool on Eastern Maar Country⁴⁷
- Ghow/Kow Swamp Aboriginal Place (2022): an area of 3177 hectares in Northern Victoria on Yorta Yorta Country. This site includes the world's largest known grouping of Late Pleistocene Aboriginal Ancestral Remains dated to 13,000 years old.⁴⁸

Key bodies responsible for the administration of the AHA are outlined in Table 12.1.

Table 12.1: Key bodies responsible for the administration of the AHA

The Victorian Aboriginal Heritage Council (VAHC) is an independent statutory body established in 2007 under the AHA, which requires all members to be Traditional Owners.⁴⁹ VAHC responsibilities include:

- being the central coordinating body for overseeing, monitoring, managing, reporting and returning of Aboriginal remains
- providing advice to the Minister on the protection of Aboriginal cultural heritage
- promoting public awareness and understanding of cultural heritage
- making decisions on RAP applications.⁵⁰

Registered Aboriginal Parties (RAPs) are Traditional Owner groups registered under the AHA and are responsible for the protection and management of Aboriginal cultural heritage on their Country.⁵¹ They are the primary source of advice and knowledge on matters relating to Aboriginal places or objects in their regions.⁵² The core functions of RAPs include:⁵³

- evaluating and approving Cultural Heritage Management Plans (CHMPs)
- deciding applications for Cultural Heritage Permits (CHPs)
- participating in and advising on applications for interim or ongoing Protection Declarations
- entering into Aboriginal Cultural Heritage Land Management Agreements with public land managers
- nominating Aboriginal intangible heritage to the Victorian Aboriginal Heritage Register and managing intangible heritage agreements.

First Peoples — State Relations branch in the Department of Premier and Cabinet is responsible for progressing self-determination, treaty and cultural rights. They provide support to the VAHC 'to fulfil its independent statutory functions to achieve its functions under the [AHA]'.⁵⁴

The Secretary to the Department of Premier and Cabinet (First Peoples — State Relations branch) is responsible for functions including:

- maintaining the Victorian Aboriginal Heritage Register
- in certain circumstances granting CHPs and approving CHMPs
- enforcing the AHA, including prosecutions
- promoting public awareness and understanding of Aboriginal cultural heritage.⁵⁵

Rights to culture

First Peoples’ rights to cultural heritage are enshrined in international and domestic law. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)⁵⁶ affirms First Peoples’ rights to practise, revitalise and protect cultural traditions.

Article 11 of UNDRIP states:

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.⁵⁷

Article 12 provides:

1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

Article 31 provides:

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

2. In conjunction with Indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.⁵⁸

The *Charter of Human Rights and Responsibilities Act 2006* (Vic) protects cultural rights under s 19:

- (1) All persons with a particular cultural, religious, racial or linguistic background must not be denied the right, in community with other persons of that background, to enjoy their culture, to declare and practise their religion and to use their language.

(2) Aboriginal persons hold distinct cultural rights and must not be denied the right, with other members of their community —

(a) to enjoy their identity and culture; and

(b) to maintain and use their language; and

(c) to maintain their kinship ties; and

(d) to maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs.⁵⁹

Despite these clear rights, the Victorian Government has failed to fully implement them. Yoorrook considers that the AHA goes some way to meeting UNDRIP standards, but ultimately falls short and does not meet the expectations of First Peoples for the reasons outlined in this chapter, including in particular:

- although the AHA gives Traditional Owners (via RAPs) certain decision-making powers over their heritage, the AHA does not provide adequate safeguards against the destruction of Aboriginal cultural heritage. In addition, RAPs are obliged to focus on minimising harm to country.⁶⁰ Authorisations under the AHA are required for high-impact activities in sensitive areas (e.g. CHMPs) but are not required for most development activities.⁶¹
- state ministers are responsible for appointing members of the Victorian Aboriginal Heritage Council (VAHC) and may approve a CHMP if there is no RAP for an area. Although the Council is composed entirely of First Peoples, they are not appointed under a self-determined process.⁶²
- the power to commence enforcement action (prosecution) in respect of alleged offences, and the responsibility for managing the Aboriginal heritage register, rests with the State, and laws are not being properly enforced.⁶³
- the AHA does not adequately protect intangible cultural heritage.⁶⁴

Taking Control of Our Heritage report

The issues raised in this chapter are not new. All are well known to the Minister for Treaty and First Peoples, First Peoples — State Relations, the Department of Premier and Cabinet and to the Victorian Government. Many of the issues and ways to improve the AHA were identified in VAHC’s *Taking Control of Our Heritage* report released in 2021,⁶⁵ which made 24 recommendations. The object of VAHC’s review was ‘to have a genuine conversation with Traditional Owners, land managers, the broader community and the government on the operation of the Act’.⁶⁶ Several of the recommendations were directed at aligning the AHA with UNDRIP.⁶⁷

The *Taking Control of Our Heritage* report’s recommendations were structured in three categories. The recommendations of relevance to Yoorrook’s inquiry were⁶⁸:

- theme one: Furthering self-determination for RAPs, including expansion of the legislative and consultative functions of RAPs (Recommendation 1) and ability for RAPs to give and withhold consent for harm to cultural heritage (veto power) (Recommendation 4).

- theme two: Increasing the autonomy of VAHC, including appointment of members by Traditional Owner institutions rather than Government (Recommendation 5); transferring responsibility for the Victorian Aboriginal Heritage Register, prosecution powers and other functions to VAHC (Recommendations 7, 8 and 10); and empowering VAHC to employ its own staff (Recommendation 13).
- theme three: Recognising, protecting and conserving Aboriginal cultural heritage, including compulsory consultation with RAPs during the CHMP process (Recommendation 15); clarifying that the rightful owner of secret or sacred objects are Traditional Owners (Recommendation 19); search and seizure powers for secret and sacred objects for the purposes of preventing an offence (Recommendation 20); civil damages provisions (Recommendation 22); and prohibition on use of culturally significant sites where there has been unlawful destruction (Recommendation 24).⁶⁹

The Victorian Government has, at the time of writing, failed to implement any of the recommendations or put in place a timetable for their implementation.⁷⁰ The Department of Premier and Cabinet said that a review of the *AHA* is planned and will be progressed with First Peoples including the First Peoples’ Assembly of Victoria and VAHC.⁷¹ The department indicated that ‘of 24 recommendations, 14 may be options for legislative reform, and ten require additional discussion with [VAHC]’.⁷² The Minister for Treaty and First Peoples the Hon Natalie Hutchins MP said while some recommendations are ‘practical and can be considered now’, others that require ‘more significant changes’, such as ‘the transfer of decision-making powers’, should be considered as part of treaty negotiations.⁷³ The Minister could not confirm which of the recommendations the State considers should be left for treaty and said that it would communicate this to VAHC ‘in the near future’.⁷⁴ At the time of writing, no update had been provided to Yoorrook on this and the State has failed to implement these reforms.

Yoorrook heard that these reforms do not need to wait for treaty negotiations to be finalised and can be implemented now.⁷⁵ This would be a powerful step that would advance self-determination and the independence of VAHC.⁷⁶ For example, Rueben Berg (Gunditjmara), Co-Chair of the First Peoples’ Assembly of Victoria said:

[T]here is a risk that by delaying some of these reforms, we are going to see some of our cultural heritage lost. You don’t get that back. Once it is gone, it is gone forever.⁷⁷

RUEBEN BERG, CO-CHAIR OF FIRST PEOPLES’ ASSEMBLY OF VICTORIA

What Yoorrook heard

First Peoples should independently manage cultural heritage

Under UNDRIP, First Peoples’ management and control of their own cultural heritage is recognised as an inherent right.⁷⁸ Traditional Owners have repeatedly called for VAHC and administration of the *AHA* to be independent from the Victorian Government. While VAHC is an independent statutory authority, its secretariat is based in First Peoples — State Relations in the Department of Premier and Cabinet.⁷⁹ VAHC members are appointed by the Minister.⁸⁰

The Victorian Government retains control over resourcing and administering the cultural heritage system.⁸¹ This includes enforcing the *AHA* and having broad powers to approve CHMP and CHPs where there is no RAP for an area.

The State told Yoorrook that independence could be achieved through the transfer of all powers and functions currently held by the Secretary to the Department and Premier and Cabinet under the *AHA*, and by establishing an independent Aboriginal cultural heritage statutory authority.⁸² This would require legislative reform to shift the functions of the Secretary and First Peoples — State Relations Heritage branch into such an agency.⁸³

VAHC and Traditional Owners have called for the Victorian Aboriginal Heritage Register to be transferred into Traditional Owner control.⁸⁴ The *AHA* currently imposes restrictions on access to the Register and empowers RAPs to determine access, but the Register is under State management.⁸⁵ VAHC and Traditional Owners have also asked for enforcement powers given concerns that the Government is not fulfilling its obligations to enforce the *AHA*.⁸⁶

The State acknowledged that the current system is not self-determining:

The current system does not fully empower Traditional Owners to the extent they wish to be empowered, and where it does so — for example in the right to refuse a CHMP — the Act can be unclear and complex. Aboriginal data sovereignty is not fully realised.⁸⁷

DEPARTMENT OF PREMIER AND CABINET

The Victorian Government told Yoorrook that it agrees that ‘Traditional Owners ... should enjoy most, if not all, the decision-making powers currently sitting with the Minister and Secretary’ under the *AHA*.⁸⁸ The Government has suggested that transfer of power to an independent agency may be best negotiated through treaty.⁸⁹ It is clear to Yoorrook that urgent implementation of the *Taking Control of Our Heritage* recommendations would go some way to addressing these issues.

Aboriginal cultural heritage is important for all Victorians

[My] heritage, my children’s heritage if lost is a loss of ‘Australia’s’ heritage. If we lose our unique landscapes, animals, waterways and plants that is a loss both to me culturally, to my heritage but also to the heritage and culture of everyone who calls my country home. If I lose my heritage, you will lose your heritage.⁹⁰

UNCLE LARRY WALSH

Many non-First Peoples do not appreciate or understand Aboriginal cultural heritage or see it as something important to protect.⁹¹ Yoorrook heard that in Victoria, Aboriginal cultural heritage is not treated with the same pride, recognition and respect as non-Aboriginal cultural heritage.⁹² This difference in treatment may stem in part from a Western focus on tangible culture and a struggle to appreciate intangible heritage, such as stories and memories, that can be connected to a place.⁹³

Co-Chairs of the First Peoples’ Assembly of Victoria Rueben Berg and Ngarra Murray (Wamba Wamba, Yorta Yorta, Dhudhuroa, Jupagulk, Baraparapa, Wiradjuri, Dja Dja Wurrung) reflected:

[T]he lack of capacity to elevate some of our cultural heritage to be of statewide significance and treat it with the same care and diligence that the non-Aboriginal cultural heritage gets treated is a significant gap.⁹⁴

RUEBEN BERG, CO-CHAIR OF FIRST PEOPLES’ ASSEMBLY OF VICTORIA

[T]he Carlton United Brewery facade and the bridge at Hawthorn has more respect and recognition than our ancient burial grounds on our country or Budj Bim with the aquacultural systems they have that are ancient and older than the pyramids.⁹⁵

NGARRA MURRAY, CO-CHAIR OF FIRST PEOPLES’ ASSEMBLY OF VICTORIA

The State has a responsibility ‘to continually elevate the recognition of First Peoples’ cultural heritage’ among all Victorians.⁹⁶ The failure of the State to educate landowners and others is directly implicated in the low rates of compliance with cultural heritage protections:

Government can do more to educate Victorians about the State’s significant Aboriginal cultural heritage. Raising the profile of Aboriginal cultural heritage among the Victorian public provides the social and political authority for its legislative protection. Moreover, it makes the work of protecting Aboriginal heritage easier. More information means greater understanding, which in turn means greater respect and acceptance of Aboriginal values for cultural heritage among the broader population.⁹⁷

MINISTER NATALIE HUTCHINS MP

First Peoples’ cultural heritage in Victoria is not only indivisible from the identify of First Peoples in Victoria, but is also pivotal to our collective identity as Victorians. It is significant and rare — which is why we focus so much effort to protect and manage it.⁹⁸

MINISTER NATALIE HUTCHINS MP

Minister Hutchins admitted to Yoorrook that the State can do more to educate the public and raise the profile of places of cultural significance.⁹⁹ The Minister used the example of Murrup Tamboore (Keilor Archaeological Site) overlooking the Maribyrnong River in Keilor, (Melbourne), which contains one of Australia’s oldest known places of Aboriginal habitation.¹⁰⁰ In the 1940s, a human cranium was discovered at this site that was dated to 15,000 years old. In the 1970s, archaeological work uncovered hearth sites nearby that date to around 31,000 years old.¹⁰¹ The Minister said that ‘[m]ore can be done to elevate places of such international significance among Victorians’.¹⁰² However, Yoorrook emphasises that stating that ‘more can be done’ is insufficient when the State is currently failing to take the necessary actions.

The failure of the State to enforce its own laws has meant that First Peoples trying to protect their heritage are targeted by misinformation, racism and other harms.¹⁰³ Minister Hutchins recognised that broader acceptance and understanding of Aboriginal cultural heritage would help shield First Peoples from unjustified attacks.¹⁰⁴

DIREL (LAKE TYRRELL)

Direl (Lake Tyrrell) is a large ancient salt lake and an area of significance to First Peoples that contains First Peoples’ artefacts and burial sites.¹⁰⁵ Direl is on Crown land and managed by the Department of Energy, Environment and Climate Action and Parks Victoria.¹⁰⁶ The Barengi Gadjin Land Council Aboriginal Corporation is the RAP for the south-west of Direl. There is no RAP for the rest of the lake, despite its importance to several Traditional Owner groups (including the First Peoples of the Millewa-Mallee, Latji Latji, Tati Tati, Wadi Wadi, Weki Weki and Wamba Wemba).¹⁰⁷

Uncle Gary Murray (Dhudhuroa, Yorta Yorta, Barapa Barapa, Dja Dja Wurrung, Wamba Wemba, Wergaia, Wiradjeri, Waywurru) said that Direl is an area rich in tangible and intangible heritage significant for First Peoples’ astronomy.¹⁰⁸ Direl (meaning ‘sky’) is an ancient meeting place and burial ground. It is the home of creator spirits and is linked to First Peoples astronomy including the dark emu.¹⁰⁹ Direl has unique spiritual, cultural, social and scientific values. It ‘is a place where the Dreamtime was viewed and experienced in both the night sky and its reflections on the lake’.¹¹⁰

Since the 1970s, the lake was used as the site for the Sea Lake Mallee Rally (a dune buggy rally).¹¹¹ In 2019, the Victorian Government refused to issue a permit for the event.¹¹² An interim report determined the rally would damage highly significant Aboriginal cultural heritage sites and the environmental values of the lake if allowed to continue.¹¹³

The decision resulted in ongoing tension within the community.¹¹⁴ Uncle Gary Murray told Yoorrook that many locals continue to petition for the return of the rally to Direl.¹¹⁵ Fearing that the Victorian system is unable to adequately protect the site, Uncle Gary Murray said an application had been made for protection under the Commonwealth cultural heritage scheme.¹¹⁶

Cultural heritage is being destroyed

First Peoples testified to Yoorrook about the ongoing destruction of cultural heritage and the inadequacy of current protections. Their words demonstrate frustration, pain and determination.

Staff at the Wurundjeri Woi Wurrung Cultural Heritage Aboriginal Corporation have said:

For us, our cultural heritage is priceless. A value cannot be put on it. Also, our cultural heritage doesn’t grow back. Once it’s gone, it’s gone forever.¹¹⁷

CAROLINE SPRY AND WURUNDJERI WOI WURRUNG CULTURAL HERITAGE ABORIGINAL CORPORATION

The AHA does not provide adequate safeguards against the destruction of Aboriginal culture. Instead of protecting and strengthening culture, Traditional Owners and RAPs are often obliged to focus on minimising harm to Country.¹¹⁸ The State told Yoorrook that the AHA regime is designed to ‘protect Aboriginal cultural heritage while also enabling land

use and development’.¹¹⁹ Urban and regional planning specialist Dr Ed Wensing submitted that the *AHA* focuses on providing certainty to developers and government that Aboriginal heritage ‘will be managed without imposing ... costs and delay [on] development activities’.¹²⁰ He stated:

The material and geographical manifestations of Aboriginal cultures that developed over 65,000 years are rapidly being destroyed by resource extractions, urban development, and public infrastructure, such as roads and other public works, and our regulatory regimes fail to prevent their destruction.¹²¹

DR ED WENSING

Cultural Heritage Management Plans are usually not required

Yoorrook notes that for most development activities, Cultural Heritage Management Plans (CHMPs) are not required. This is because, as outlined above, CHMPs are only required if a development activity is proposed to be a ‘high impact activity’ and in an ‘area of cultural heritage sensitivity’ under the *Aboriginal Heritage Regulations 2018* (Vic).¹²²

Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation told Yoorrook that ‘CHMPs are only required for around 0.66% of land-development activities that require Planning Permit Approval’.¹²³ Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation said that this suggests that the other 99.34 per cent of developments have occurred without any consultation with Traditional Owners, indicating how little control they have over the destruction of Country.¹²⁴ In correspondence to Yoorrook, the State submitted that this figure: ‘provides an incomplete picture as most activities that require planning permission are small activities, such as house renovations, which do not involve harm to Aboriginal cultural heritage. Large developments which have the greatest impact on heritage are routinely subject to CHMPs’.¹²⁵

Suggestions that cultural heritage requirements imposed by Traditional Owners are delaying development¹²⁶ are further undermined by the fact that there have ‘only been five times since 2006 where a Registered Aboriginal Party (RAP) failed to approve a plan within the statutory time limit of 30 days’.¹²⁷

‘Permits to destroy’

Where they are required, Yoorrook heard that CHMPs and Cultural Heritage Permits (CHPs) are permissive instruments.¹²⁸ RAPs do not have the power to stop the destruction of cultural heritage; they can only reduce or slow down that destruction.¹²⁹ RAPs can only refuse to approve CHMPs in very limited circumstances, including where the RAP is not satisfied that the activity will be conducted in a way that minimises harm.¹³⁰

Participants at a roundtable with the Wadawurrung Traditional Owners Aboriginal Corporation told Yoorrook that CHMPs facilitate rather than reduce destruction:

So under the RAP status, we have that legal rights to protect heritage, but it still requires heritage advisors and archaeologists. We can only advise. And really, what a CHMP is, is a permit to destroy and manipulate. That’s really all it is. And unfortunately, that’s the harsh reality of it. If you were to take away RAP status, it’d be even worse. So right now it’s the lesser of two evils.¹³¹

PARTICIPANT, WADAWURRUNG TRADITIONAL OWNERS
ABORIGINAL CORPORATION ROUNDTABLE

Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation, which is the RAP for a large area around Naarm (Melbourne), said:

Our country is one of the most heavily developed areas in Australia. Since the Aboriginal Heritage Act 2006 started, we have approved 1,300 CHMPs. That’s 1,300 different developments in 1,300 different parts of our country. That represents a lot of destruction of our cultural heritage. We have to protect the very little that we have left.¹³²

WURUNDJERI WOI-WURRUNG CULTURAL HERITAGE ABORIGINAL CORPORATION

First Peoples re-iterated that cultural heritage is being destroyed.¹³³ For example, participants at a roundtable with Bunurong Land Council spoke of the risks to cultural heritage:

You’re constantly sacrificing sections of land to allow them to harm it and mine it.¹³⁴

PARTICIPANT, BUNURONG LAND COUNCIL ROUNDTABLE

Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation also described how cultural heritage regimes have largely failed them:

[I]n practice the [AHA] has facilitated the slow destruction of most of Wurundjeri Woi-wurrung Country without consultation with Traditional Owners, and with little economic benefit to the Wurundjeri Woi-wurrung people.¹³⁵

WURUNDJERI WOI-WURRUNG CULTURAL HERITAGE ABORIGINAL CORPORATION

Katherine Mullet (Gunaikurnai, Monero Ngarigo) from the Gunaikurnai Land and Water Aboriginal Corporation said:

[Y]ou have to go through a process to get consent to harm when your work is actually there to conserve. And it’s hard to conserve and protect cultural heritage in the legislation than it is to destroy the heritage and meet the legislation.¹³⁶

KATHERINE MULLET

Consequently, many First Peoples feel that they are ‘in the reactive space’¹³⁷, and have minimal resources to be proactive in preventing harm.¹³⁸ Rueben Berg said there is a need to ‘move from just a system that only focuses on minimising harm that can actually prevent harm’¹³⁹

The State acknowledged that some Traditional Owners see the CHMP and CHP system as fostering a process of managing the destruction of their cultural heritage.¹⁴⁰ Minister Hutchins recognised that ‘the pace of development in Victoria, as our population continues to expand, has made the State’s cultural heritage regime highly reactive’.¹⁴¹ Minister Hutchins acknowledged that Traditional Owners’ ‘efforts may be often focused on minimising harm’ rather than advancing plans for strengthening their cultural heritage.¹⁴² The Department of Premier and Cabinet told Yoorrook that this issue could be addressed by increasing Traditional Owners’ autonomy in decision making, clarifying the operation of CHMP provisions in legislation, and adding ‘regulatory and non-legislative processes ... to encourage protection and preservation over harm minimisation’.¹⁴³ Yet, despite knowing what policy changes would assist in remedying this unjust system, the State has not committed to any specific reforms.

Development often trumps cultural heritage

There are tensions between the protection of Aboriginal cultural heritage and development.¹⁴⁴ Aboriginal cultural heritage interests are often in direct conflict with development decisions. Roundtable participants at Bunurong Land Council told Yoorrook

that the power often lies with developers and that the process of negotiating and preparing a CHMP is a ‘constant fight’.¹⁴⁵

[A]t the end of the day the developers usually get what they want and [the] RAP ends up falling second.¹⁴⁶

PARTICIPANT, BUNURONG LAND COUNCIL ROUNDTABLE

Marcus Stewart (Taungurung), inaugural Co-Chair of the First Peoples’ Assembly of Victoria, also reflected on the limitations of the *AHA*:

The *AHA* makes clear that the colonial hierarchy of interests remains as follows: the State; the developer; and then Traditional Owners.¹⁴⁷

MARCUS STEWART, INAUGURAL CO-CHAIR OF FIRST PEOPLES’ ASSEMBLY OF VICTORIA

In relation to intangible heritage, Environmental Justice Australia submitted that current mechanisms to identify and accommodate Aboriginal intangible heritage in land use planning are ‘nascent, ad hoc and exceptional’.¹⁴⁸

Overwhelmingly, Aboriginal heritage considerations are dealt with at the ‘back end’ of development projects or land use changes ... so that any actual engagement with Aboriginal matters, usually concerning tangible heritage, occurs well after projects or uses are well-advanced.¹⁴⁹

ENVIRONMENTAL JUSTICE AUSTRALIA

The State told Yoorrook that some developers consider the CHMP process to be too costly and time-consuming and that some RAP demands to obtain approval are unreasonable.¹⁵⁰ The State said that First Peoples — State Relations ‘conducts regular information sessions with industry peak bodies and appears at ... conferences to discuss major topical issues ... to alleviate concerns’.¹⁵¹ The State also said that First Peoples — State Relations ‘is ... undertaking a strategic Aboriginal heritage assessment program, which involves mapping the landscape with RAPs for significant Aboriginal cultural values’ to ‘reduce downstream costs for industry by revealing appropriate and inappropriate areas for land use well ahead of the development phase’.¹⁵²

Aboriginal ancestral remains and cultural objects are not being returned

Since colonisation, First Peoples’ ancestral remains and their secret and sacred objects have been desecrated, stolen and removed. There was a lucrative and active trade economy around Aboriginal human remains and other items until relatively recently¹⁵³ (see further Chapter 23: Tertiary overview and historical context). Yoorrook heard that significant work is required to repatriate First Peoples’ ancestors and other cultural items from museums and institutions around the world.¹⁵⁴ The State acknowledged that ‘failure or refusal to return Aboriginal ancestral remains causes ongoing trauma to First Peoples’.¹⁵⁵

The *AHA* provides for the Victorian Aboriginal Heritage Council (VAHC) to be the central coordinating body responsible for overseeing and monitoring the system of reporting and returning Aboriginal ancestral remains in Victoria.¹⁵⁶ This is carried out by VAHC’s First Peoples-led Ancestral Remains Unit.¹⁵⁷ VAHC can transfer remains to any relevant Traditional Owners or RAP that it is satisfied is entitled and willing to take possession, custody or control of the remains.¹⁵⁸ VAHC can transfer remains to the Museums Board for safekeeping or deal with the remains as it considers appropriate.¹⁵⁹

The *AHA* compels public entities to notify VAHC of ancestral remains in their possession and take all reasonable steps to transfer ancestral remains to VAHC. Individuals who know of the existence of remains likely to be Aboriginal are also under a statutory obligation to report them and give details to VAHC.¹⁶⁰

In August 2018, two years after changes to the *AHA*, Museums Victoria transferred a large number of ancestral remains to VAHC.¹⁶¹ In 2018, VAHC launched a comprehensive repatriation program. VAHC has catalogued the 2000 ancestral remains in their care and developed a plan for returning them to RAPs.¹⁶² At the time of writing, VAHC had completed five legal transfers of ancestral remains to RAPs.¹⁶³ Additionally, in July 2023, VAHC established the Ancestral Remains Repatriation Fund, allowing RAPs to apply for up to \$30,000 for activities related to the repatriation of their Ancestors¹⁶⁴. As of March 2024, three applications had been submitted under this fund which were being assessed and two more applications were expected.¹⁶⁵

International repatriations present more complex challenges. The State told Yoorrook that despite extensive First Peoples advocacy for repatriation of remains, ‘many museums and scientific institutions around the world have failed to repatriate the remains that they hold’.¹⁶⁶ The State further submitted that many overseas institutions ‘rely upon their own policies for assessing claims by First Peoples for the repatriation of ancestral remains, some of which are quite burdensome, requiring Traditional Owners to travel to the countries where the remains are held to establish their claims’.¹⁶⁷

Ngarra Murray spoke of the need for First Peoples’ control over their cultural heritage, including repatriation of ancestors:

Every one of us ... would have stories of our ancestors and in museums right across the globe, and in our own museum, so there is a lot of work we need to do to repatriate our ancestors back to country.¹⁶⁸

NGARRA MURRAY, CO-CHAIR OF FIRST PEOPLES’ ASSEMBLY OF VICTORIA

Professor Marcia Langton (Yiman, Bidjara) told Yoorrook that provenance and cultural issues are barriers to repatriation.¹⁶⁹ Aboriginal graves have been dug up without any proper record-keeping.¹⁷⁰ It is often difficult or too costly to obtain DNA from human remains.¹⁷¹ Yoorrook heard that remains should be returned to their groups of origin. If remains are not provenanced, then safekeeping places are needed to honour the person and give them a dignified interment.¹⁷² Reuben Berg highlighted the need to return heritage to First Peoples:

[T]he overall principle should be, when we know where something comes from and a group wants it returned, it should be returned.¹⁷³

RUEBEN BERG, CO-CHAIR OF FIRST PEOPLES’ ASSEMBLY OF VICTORIA

Minister Hutchins acknowledged that repatriation ‘is highly sensitive work’ that entails Traditional Owners reaching a consensus about where and how their Ancestors should be returned to Country.¹⁷⁴ If remains are provenanced to areas without a RAP, the rightful custodians might be unknown or this may result in harmful disputes.¹⁷⁵

There is no dedicated program to support keeping places

Traditional Owner groups encounter barriers in their efforts to maintain and operate ‘keeping places’ for ancestral remains. Keeping places are ‘facilities that provide culturally appropriate spaces for Traditional Owners to hold, store and display objects of Aboriginal cultural heritage’.¹⁷⁶

Some Traditional Owner groups may want to establish keeping places for ancestral remains, but lack the resourcing and adequate facilities to do so.¹⁷⁷ Between 2019 and 2021, the Government’s Aboriginal Community Infrastructure Program provided funding to several Traditional Owner groups to build, refurbish or expand infrastructure facilities,¹⁷⁸ including building the Budj Bim Keeping Place.¹⁷⁹ However, the State told Yoorrook there is ‘no dedicated program to support the operations of Keeping Places’.¹⁸⁰

Participants at a roundtable with the Bangerang Aboriginal Corporation told Yoorrook about the challenges that First Peoples face in operating keeping places, particularly in relation to funding:

So we really wanted to put that on how significant the cultural centre is. The Bangerang Cultural Centre is really important to us, and ... our families, Bangerang people have been fighting really hard to keep that cultural centre alive and keep it going without funding. So, you know, and that’s important to actually also put on everything that is in terms of culture, we’ve got to fight hard to keep it. It’s not recognised, you know, the funding isn’t, you know, given. We are working hard. We’re — it’s almost like cap in hand all the time trying to keep finding money to keep it going when in actual fact history and museums are funded elsewhere. So we want to really put that on the table around the need to actually get some funding to support keeping that history alive here in this community because ... it’s a rich history.¹⁸¹

PARTICIPANT, BANGERANG ABORIGINAL CORPORATION ROUNDTABLE

Intangible cultural heritage is not adequately protected

[Cultural heritage] is still treated by the Act and also by the Victorian planning regime as individual places, not as that connected story, not as that song line. That needs to be rectified.¹⁸²

PARTICIPANT, GUNDITJ MIRRORING TRADITIONAL OWNERS ABORIGINAL CORPORATION ROUNDTABLE

The current cultural heritage framework does not sufficiently protect intangible cultural heritage (‘the story of the place’¹⁸³) from interference, destruction and exploitation. Yoorrook heard that the AHA focuses on material culture or locations¹⁸⁴ and ‘has not typically operated to recognise or protect significant cultural landscapes, landforms and physical landscape features’ such as ‘mountain peaks or ranges that may be the embodiment of creation ancestors’.¹⁸⁵ First Peoples explained that protection focuses more on physical than cultural attributes, for example roundtable participants said:

It’s more the geology of the place. It’s not about the story of the place.¹⁸⁶

PARTICIPANT, GUNDITJ MIRRORING TRADITIONAL OWNERS ABORIGINAL CORPORATION ROUNDTABLE

Rueben Berg also described the significance of heritage to First Peoples’ identity and wellbeing:

[T]he scar tree to me is always such a powerful element of our cultural heritage. And it’s not just about the scar itself ... it is what that represents in the broader sense. And to me it is that — those scar trees represent that deep connection we have to the environment and to the land, because if you think about it, if you wanted a canoe one choice is you could go and chop down a tree and you could make a canoe, but then there is no more tree left. Our ancestors worked out you don’t need the whole tree. You can just take off this single sheet of bark, make a canoe and the tree will still get to live. The scar trees are a powerful reminder of that connection we have to the land and that is why they are such a critical element of our heritage to be protecting.¹⁸⁷

RUEBEN BERG, CO-CHAIR OF FIRST PEOPLES’ ASSEMBLY OF VICTORIA

Amendments to the AHA in 2016 included the introduction of Aboriginal intangible heritage agreements, which may deal with the management and protection of intangible heritage.¹⁸⁸ Traditional Owners may apply directly to the Secretary to register intangible cultural heritage without an agreement.¹⁸⁹

The State acknowledged that, while the AHA is intended to protect cultural landscapes with intangible values, most places protected by the AHA are archaeological sites.¹⁹⁰ Minister Hutchins accepted that Western colonial conceptions of land, natural resources and cultural heritage result in a focus on protecting individual physical places and objects.¹⁹¹ This focus, however, does not reflect the full extent of Traditional Owner obligations to Country and concepts of intangible heritage.¹⁹²

The State gave examples of changes over time resulting in increased protection for intangible cultural heritage.¹⁹³ Anakie Youang is a cultural landscape near Geelong on Wadawurrung Country, with cultural significance to the Wadawurrung People. Anakie Youang (‘three sisters’) refers to three hills (Coranguilook, Baccheriburtand and Woollerbeen).¹⁹⁴ Prior to the introduction of the AHA, a basalt quarry was in operation at the base of two of the hills. In 2014, the mining company planned to expand the quarry, which would have led to the removal and damage of parts of Anakie Youang hills.¹⁹⁵ The Wadawurrung had not previously been consulted on the mining activities in the area.¹⁹⁶ In 2014, the Victorian Civil and Administrative Tribunal (VCAT) approved further expansion of the quarry, noting that no mandatory CHMP was required. VCAT did not ‘consider it probable that any such [cultural heritage] sites exist on the land’.¹⁹⁷ The Wadawurrung people asked the Victorian Government to protect the area by registering Anakie Youang as an ‘Aboriginal place’ under the AHA.¹⁹⁸ The Government agreed, Anakie Youang was registered and the expansion of the quarry was stopped.¹⁹⁹

Minister Hutchins told Yoorrook that the registration of Anakie Youang under the AHA was significant as it was based largely on Traditional Owner knowledge. It recognised that Traditional Owners’ oral history and knowledge systems are as valid as archaeological evidence in establishing cultural heritage value.²⁰⁰

I believe that the AHA must operate to reflect the cultural values and knowledges of Traditional Owners, otherwise it will be less effective in protecting cultural heritage.²⁰¹

MINISTER NATALIE HUTCHINS MP

Yoorrook agrees that the registration of Anakie Youang is a positive outcome. Yoorrook also notes that such results remain rare and elusive and that the AHA must be strengthened to more clearly reflect Traditional Owner aspirations. The Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation, for example, told of how intangible cultural values associated with Country are still not being adequately protected under the AHA in the case of Wil-im-mee Moor-ing (Mount William Stone Hatchet Quarry) (see box: Wil-im-ee Moor-ing / Mount William on next page).

WIL-IM-EE MOOR-ING / MOUNT WILLIAM

Wil-im-ee Moor-ing (also spelt Wil-im-mee Moor-ing and Willam-ee moor-ing, the Mount William Stone Hatchet Quarry or ‘Mount William’) is a sacred place of cultural significance to the Wurundjeri Woi-wurrung people.²⁰² It is protected under federal legislation,²⁰³ listed on the National Heritage List²⁰⁴ and registered on the Victorian Aboriginal Heritage Register under the AHA.

At Wil-im-mee Moor-ing / Mount William the Wurundjeri Woi-wurrung quarried greenstone to make ground-edge stone axes. These axes were also traded with other First Peoples groups, including as far as South Australia and Queensland.²⁰⁵ Wurundjeri Woi-wurrung continue to connect with Country and Ancestors by visiting the area, continuing cultural practices of making greenstone axes, and viewing the surrounding Country, old trade and travel routes, and songlines.²⁰⁶

The local council approved a planning permit in 2021 for construction of a large dwelling and agricultural buildings that overlook this sacred location.²⁰⁷ This did not require the preparation of a CHMP²⁰⁸ because it did not meet the thresholds of a ‘high impact activity’ in an ‘area of cultural heritage sensitivity’ under the *Aboriginal Heritage Regulations 2018*(Vic).²⁰⁹ The Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation told Yoorrook that the AHA ‘[does] not readily protect the tangible and intangible values of cultural landscapes’.²¹⁰

Wurundjeri Woi-wurrung Elders have said:

We want to move away from just looking at whether there are artefacts present or not in heritage assessments. We want to know more about our Ancestors and what they were doing, about the tangible and intangible.²¹¹

UNCLE ALLAN WANDIN, UNCLE RON JONES AND UNCLE BOBBY MULLINS

The State acknowledged that the AHA ‘does not fully empower Traditional Owners to the extent they wish to be empowered’.²¹² Minister Hutchins said the ‘provisions protecting intangible cultural heritage are not being widely used and are not fully understood’, and that only one example of ‘traditional knowledge’ has been registered to date.²¹³ Minister Hutchins noted that Traditional Owners may be reluctant to entrust protection of such information to the Government, which operates the Victorian Aboriginal Heritage Register.²¹⁴ The State said that transferring more decision-making capability to Aboriginal people would mean that the system better reflects First Peoples values and understandings.²¹⁵

Yoorrook notes that no action has been taken to transfer more decision-making to Traditional Owners. The State has not indicated a timeline in which such a transfer would be anticipated. Greater self-determination remains an unrealised aspiration.

The law is not enforced by the State

Compliance with the AHA is poor

We had many birthing trees on Country when I was growing up but not many are left now. We were upset that a lot of land owners would ringbark the trees in Victoria. That’s the way you kill a tree and let it bleed out.²¹⁶

UNCLE COLIN WALKER

Compliance with the AHA by both the State and private landowners is poor,²¹⁷ meaning that cultural heritage is being harmed or destroyed in breach of the law. Traditional Owners told Yoorrook that they have witnessed the destruction of their Country and felt powerless to stop it.²¹⁸ For example, the roundtable participants at the Barengi Gadjin Land Council Aboriginal Corporation told Yoorrook about a case where Aboriginal heritage officers were brought in to undertake an assessment. Before it could be assessed, the cultural heritage in the area had been destroyed and ‘there was nothing there to assess’.²¹⁹

Yoorrook heard that it is often a struggle to get public land managers such as Parks Victoria to comply with the legislation.²²⁰ Table 12.2 outlines alleged breaches of the AHA by government since 2015, provided to Yoorrook by the Department of Premier and Cabinet. These are alleged instances of the Government breaching its own Act, which form a significant percentage of total non-compliance cases. First Peoples are concerned that procedures for the management of cultural heritage are not consistent between different government agencies.²²¹

Table 12.2: Alleged breaches by local and State governments since 2015²²²

Year	Local government	State Government	Total	Percentage of total non-compliance cases
2016	2	11	13	16%
2017	4	5	9	12%
2018	2	15	17	14%
2019	2	3	5	5%
2020	0	1	1	1%
2021	3	3	6	6%
2022	10	11	21	19%
2023	4	14	18	15%

Yoorrook heard that most of the destruction of cultural heritage occurs on private land.²²³ Ensuring compliance and collecting data is difficult because Authorised Officers and Aboriginal Heritage Officers generally cannot enter private land or premises without the consent of the landowner.²²⁴ In limited circumstances, authorised officers can apply to a magistrate for the issue of a search warrant to enter a place. A magistrate may grant a warrant if they are satisfied that there are reasonable grounds for believing an offence against the Act has occurred or is likely to occur.²²⁵ Yoorrook heard about private landowners intentionally destroying cultural heritage on their property to avoid the application of the AHA. For example, participants at the Barengi Gadjin Land Council Aboriginal Corporation roundtable said:

[M]ost people will get rid of [cultural heritage artefacts] for this fear of the taking of the land ... they'd rather just not deal with it. And then throw it in the dam or burn the tree down. Whatever it is, just completely get rid of it and don't tell a soul, except other white people cause that's what they do, and that's how we find out.²²⁶

PARTICIPANT, BARENGI GADJIN LAND COUNCIL ROUNDTABLE

Under the AHA, private landowners and managers can enter into a voluntary agreement with a RAP to protect and manage Aboriginal cultural heritage on their properties.²²⁷ These private agreements are rare; the State advised that there is only one agreement currently in place in Victoria.²²⁸ The State told Yoorrook that 'this is very likely due to a lack of communication and landowner reluctance'.²²⁹

Breaches are not being addressed

You've got to understand how hard it is to do cultural heritage work when you do have that connection to the material, the land, the history and you're just watching it just get destroyed.²³⁰

PARTICIPANT, BUNURONG LAND COUNCIL ROUNDTABLE

First Peoples are advocating for increased accountability for cultural heritage violations.²³¹ First Peoples told Yoorrook that enforcement of the AHA is slow and ineffective.²³² It can take three to four years to complete an investigation.²³³ There have only been six successful prosecutions under the AHA in Victoria.²³⁴

In the rare circumstance that a breach is prosecuted, First Peoples have suggested that penalties may be insignificant for developers working on multi-million-dollar projects.²³⁵ The State submitted that there are significant penalties for causing harm to heritage without a CHMP or permit (the maximum is \$1.92 million for a corporation) and that these are among the highest such penalties in Australia, but a criticism of the AHA is the scarcity of prosecutions.²³⁶

The State told Yoorrook that one reason for the low prosecution rate is the difficulty in satisfying the burden of proof.²³⁷ Offences under the AHA generally require the prosecution to establish that the accused intended to harm cultural heritage.²³⁸ This is hard to establish as there is a lack of awareness among the public about Aboriginal cultural heritage²³⁹ and the Victorian Aboriginal Heritage Register is not public. The low risk of prosecution means there is no disincentive for the destruction of cultural heritage.²⁴⁰ Yoorrook considers that these excuses are unsatisfactory explanations for failures of the legislation and the State to enforce protections effectively.

The State attempted to improve enforcement through the 2016 amendments to the AHA. These amendments lowered the burden of proof for one of the primary harm offences and introduced a new strict liability offence (which does not require proof of intent).²⁴¹ The Victorian Government told Yoorrook that the number of investigations has now increased. As at 30 September 2023, there were 154 open investigations.²⁴²

A theme in evidence to Yoorrook is that RAPs need more autonomy and expanded powers to properly protect Aboriginal cultural heritage,²⁴³ including the power to investigate and enforce the AHA themselves.²⁴⁴ Implementation of VAHC's recommendations in *Taking Control of Our Heritage* would start to address these issues.

The process for determining RAPs under the AHA is divisive

The rich seem to be getting richer, poor are getting poorer, with the unrecognised groups. I'm going to name some of them. Bidawai in the east ... Dhudhuroa, Waywurru, Ngooraialum, Baraparapa, Wadi, Tati, they are some of the groups that are not recognised, not funded.²⁴⁵

UNCLE GARY MURRAY

A recurring theme reported by First Peoples is the difficulties associated with determining and recognising the Traditional Owners of Country. As outlined in Chapter 9: How we got here — overview of recognition systems, not being recognised has serious consequences. It can cause rifts and divisions in the community and disconnection from culture and land.²⁴⁶ Without recognition, Traditional Owners have limited ability to speak for Country or fulfil their cultural obligations. This is unjust.²⁴⁷

Under the AHA, VAHC is responsible for determining RAP applications.²⁴⁸ This contrasts with the native title and TOSA frameworks where the courts and the State respectively are ultimately responsible for this. However, similar to the *Native Title Act 1993* (Cth) and TOSA, the AHA has no formal process for resolving disputes about the right Traditional Owners for an area.

The requirements to become a RAP are less onerous than recognition in native title and TOSA. VAHC has formally recognised 12 groups, estimated to cover 77.5% of Victoria.²⁴⁹ For Traditional Owners with a native title or settlement agreement, VAHC must register the group as the RAP for the area.²⁵⁰ For other groups, VAHC considers factors such as whether the applicant represents the Traditional Owners of the area relating to the application and whether they have demonstrated expertise in managing Aboriginal cultural heritage in that area.²⁵¹ Applicants also need to explain how they will consider the interests of Aboriginal people for whom the area has cultural heritage significance.²⁵² It is possible for more than one RAP to be registered for an area if certain conditions are met,²⁵³ for example there is a shared Eastern Maar and Gunditj Mirring area in southwest Victoria.²⁵⁴

RAP appointments follow a similar pattern to native title consent determinations. They have at times been controversial. Some RAPs have been the subject of dispute and required judicial determination.²⁵⁵

The RAPs appointed are:²⁵⁶

- [Gunditj Mirring Traditional Owners Aboriginal Corporation](#), appointed in 2007
- [Barengi Gadjin Land Council Aboriginal Corporation](#), appointed in 2007
- Martang Pty Ltd, appointed in 2007 (revoked in 2019)
- [Yorta Yorta Nation Aboriginal Corporation](#), appointed in 2007
- [Gunaikurnai Land and Waters Aboriginal Corporation](#), appointed in 2008
- [Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation](#), appointed in 2008
- [Dja Dja Wurrung Clans Aboriginal Corporation](#), appointed in 2008
- [Wadawurrung Traditional Owners Aboriginal Corporation](#), appointed in 2009
- [Taungurung Land and Waters Council Aboriginal Corporation](#), appointed in 2009
- [Eastern Maar Aboriginal Corporation](#), appointed in 2013
- [Bunurong Land Council Aboriginal Corporation](#), appointed in 2017
- [First People of the Millewa Mallee Aboriginal Corporation](#), appointed in 2018
- [Wamba Wamba Aboriginal Corporation](#), appointed in 2024.

The way forward

The State is responsible for ensuring Aboriginal cultural heritage, including intangible heritage, is protected in both law and practice. The State, local government, private developers, farmers and the public have engaged in the destruction, desecration and oppression of First Peoples’ cultural practices, human remains, artefacts and cultural knowledge (see also Chapter 7: How colonisers stole Country, Chapter 8: Impacts of Country being stolen and Chapter 9: How we got here — overview of recognition systems). The State should take steps to ensure Aboriginal cultural heritage is understood, valued, enjoyed and safeguarded by all Victorians.

Yoorrook acknowledges that the AHA has provided a step forward in engaging Traditional Owners with protecting their lands.²⁵⁷ However, changes are needed to be consistent with UNDRIP standards, previous reviews and First Peoples’ advocacy:

- provide safe keeping places for cultural objects, including secret and sacred objects, artefacts and knowledge
- better protect intangible heritage and cultural landscapes
- improve compliance with and enforcement of the AHA
- increase the independence and powers of VAHC
- increase the ability of RAPs to make decisions in relation to cultural heritage on Country and to prevent development that will result in destruction of cultural heritage
- reduce division and enable self-determination.

While cultural heritage matters may form part of treaty negotiations, Yoorrook heard resounding support for urgent implementation of all recommendations made in VAHC’s Taking Control of Our Heritage report.

Recommendations

RECOMMENDATION 27

Taking into account the changed context of the treaty process and the aim of enhancing rights, the Victorian Government must implement all the recommendations made in the Victorian Aboriginal Heritage Council’s *Taking Control of Our Heritage* report.

RECOMMENDATION 28

The Victorian Government must provide ongoing and sustainable funding to Traditional Owner groups to empower them to conduct cultural heritage work on their Country.

RECOMMENDATION 29

The Victorian Government must consider and implement reforms to strengthen the recognition and protection of intangible heritage under the *Aboriginal Heritage Act 2006* (Vic).

RECOMMENDATION 30

The Victorian Government must provide funding for the Victorian Aboriginal Heritage Council and Traditional Owner groups to develop and implement a strategy for the provenancing and return to Traditional Owners and/or other culturally appropriate handling of remains.

RECOMMENDATION 31

The State must also work with the Commonwealth to identify and negotiate the safe return of cultural, secret and sacred objects held in interstate, overseas and private collections.

RECOMMENDATION 32

The Victorian Government must provide secure, ongoing funding, resources and land to Traditional Owners to establish and maintain appropriate infrastructure, including museum-regulated spaces, to keep and preserve cultural, secret and sacred objects, artefacts and knowledge.

RECOMMENDATION 33

- The Victorian Government must provide funding for Traditional Owner groups to undertake, informed by their perspectives of key priorities on their Country:
- a. Research and strategic mapping of Aboriginal cultural values and landscapes;
 - b. Projects for the identification, protection and/or restoration of cultural values and landscapes; and
 - c. Management of data.

Endnotes

1. Witness Outline of Ngarra Murray, Co-Chair of First Peoples’ Assembly of Victoria, 11 April 2024, 11 [26]–[27].

2. Witness statement of Uncle Larry Walsh, 19 May 2022, 20 [100].

3. Victorian Aboriginal Heritage Council, [Taking Control of Our Heritage: Aboriginal People Caring for Aboriginal Heritage](#) (Report, April 2021), 4.

4. Victorian Aboriginal Heritage Council, [Taking Control of Our Heritage: Aboriginal People Caring for Aboriginal Heritage](#) (Report, April 2021), 4.

5. *Aboriginal Heritage Act 2006* (Vic) ss 1(a), (d). See also Witness Statement of Minister the Hon Natalie Hutchins MP, 18 March 2024, 39 [197].

6. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 40 [204].

7. See ‘[Compliance with the AHA is poor](#)’.

8. Department of Premier and Cabinet, Response to NTP-003-002 — ‘*Aboriginal Cultural Heritage*’, 8, produced by the State of Victoria in response to the Commissions Notice to Produce dated 8 November 2023.

9. Professor Libby Porter, Submission 335, 7.

10. *Aboriginal Heritage Act 2006* (Vic) s 131(1).

11. Department of Climate Change, Energy, the Environment and Water ‘[Indigenous cultural heritage laws](#)’. (Webpage, 2 August 2023). See also *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) ss 9–13.

12. Department of Climate Change, Energy, the Environment and Water, ‘[Environment Protection and Biodiversity Conservation Act 1999 \(EPBC Act\)](#)’ (Webpage, 28 October 2024).; Department of Climate Change, Energy, the Environment and Water, ‘[First Nations heritage](#)’ (Webpage, 21 August 2024).

13. Department of Climate Change, Energy, the Environment and Water, ‘[National Heritage](#)’ (Webpage, 3 October 2021); Department of Climate Change, Energy, the Environment and Water, ‘[Australia’s National Heritage List](#)’ (Webpage, 13 November 2024).

14. UNESCO, ‘[Budj Bim Cultural Landscape](#)’ (Webpage, 16 November 2023).

15. *Aboriginal Heritage Act 2006* (Vic) s 144.

16. *Aboriginal Heritage Act 2006* (Vic) Pt 4 Divs 4 and 5, s 72, Pt 10.

17. *Aboriginal Heritage Act 2006* (Vic) Pt 9.

18. *Aboriginal Heritage Act 2006* (Vic) Pt 4.

19. *Aboriginal Heritage Act 2006* (Vic) Pt 3 Div 4.

20. *Aboriginal Heritage Regulations 2018* (Vic), reg 7.

21. *Aboriginal Heritage Act 2006* (Vic) s 63(1).

22. *Aboriginal Heritage Act 2006* (Vic) Pt 11, Div 2.

23. *Aboriginal Heritage Act 2006* (Vic) s 4.

24. *Aboriginal Heritage Act 2006* (Vic) s 5.

25. Department of Premier and Cabinet, Response to NTP-003-002 — ‘*Aboriginal Cultural Heritage*’, 1, produced by the State of Victoria in response to the Commissions Notice to Produce dated 8 November 2023.

26. *Aboriginal Heritage Act 2006* (Vic) s 4.

27. *Aboriginal Heritage Act 2006* (Vic) s 4.

28. *Aboriginal Heritage Act 2006* (Vic) s 4.

Aboriginal tradition is also defined in section 4 as ‘the body of traditions, knowledge, observances, customs and beliefs of Aboriginal people generally or of a particular community or group and any such traditions, knowledge, observances, customs or beliefs relating to particular persons, areas, objects or relationships’.

29. Department of Premier and Cabinet, Response to NTP-003-002 — ‘*Aboriginal Cultural Heritage*’, 3, produced by the State of Victoria in response to the Commissions Notice to Produce dated 8 November 2023.

30. Department of Premier and Cabinet, Response to NTP-003-002 — ‘*Aboriginal Cultural Heritage*’, 3, produced by the State of Victoria in response to the Commissions Notice to Produce dated 8 November 2023.

31. *Aboriginal Heritage Act 2006* (Vic) pt 5A.

32. *Aboriginal Heritage Act 2006* (Vic) s 79B(1).

33. *Aboriginal Heritage Act 2006* (Vic) s 79B(2).

34. *Aboriginal Heritage Act 2006* (Vic) s 79B(1).

35. *Aboriginal Heritage Act 2006* (Vic) s 79G.

36. *Aboriginal Heritage Act 2006* (Vic) s 79D.

37. *Aboriginal Heritage Act 2006* (Vic) s 79F.

38. *Aboriginal Heritage Act 2006* (Vic) s 79C.

39. *Aboriginal Heritage Act 2006* (Vic) s 79H.

40. *Aboriginal Heritage Act 2006* (Vic) s 79G.

41. First Peoples State Relations, ‘[Aboriginal Heritage Protection Declarations and Cultural Heritage Agreements](#)’ (Webpage).

42. First Peoples State Relations, ‘[Aboriginal Heritage Protection Declarations and Cultural Heritage Agreements](#)’ (Webpage).

43. Department of Premier and Cabinet, Response to NTP-003-002 — ‘*Aboriginal Cultural Heritage*’, 7, produced by the State of Victoria in response to the Commissions Notice to Produce dated 8 November 2023, referencing *Aboriginal Heritage Act 2006* (Vic) pt 7.

44. Department of Premier and Cabinet, Response to NTP-003-002 — ‘*Aboriginal Cultural Heritage*’, 7, produced by the State of Victoria in response to the Commissions Notice to Produce dated 8 November 2023.

45. This is ‘Dyurrite 1 Aboriginal Place (2020)’, located near Mount Arapiles in Western Victoria: Department of Premier and Cabinet, Response to NTP-003-002 — ‘*Aboriginal Cultural Heritage*’, 7, produced by the State of Victoria in response to the Commissions Notice to Produce dated 8 November 2023.

46. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 44 [220]; Department of Premier and Cabinet, Response to NTP-003-002 — ‘*Aboriginal Cultural Heritage*’, 7, produced by the State of Victoria in response to the Commissions Notice to Produce dated 8 November 2023.

47. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 44 [220]; Department of Premier and Cabinet, Response to NTP-003-002 — ‘*Aboriginal Cultural Heritage*’, 7, produced by the State of Victoria in response to the Commissions Notice to Produce dated 8 November 2023. See also ABC News, ‘[Ancient Aboriginal site Moyjil could rewrite the global story of human migration](#)’ (Webpage, 5 September 2020).

48. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 44 [220]; Department of Premier and Cabinet, Response to NTP-003-002 — ‘*Aboriginal Cultural Heritage*’, 7, produced by the State of Victoria in response to the Commissions Notice to Produce dated 8 November 2023. See also Witness Outline of Ngarra Murray, Co-Chair of First Peoples’ Assembly of Victoria, 11 April 2024, 14–15 [33]–[36]; First Peoples State Relations, ‘[Ongoing Protection Declaration for Ghow Swamp Aboriginal Place](#)’ (Webpage, 6 October 2022).

49. *Aboriginal Heritage Act 2006* (Vic) s 131; Aboriginal Heritage Council, ‘[About the Victorian Aboriginal Heritage Council](#)’ (Webpage); Victorian Aboriginal Heritage Council, *Taking Control of Our Heritage: Recommendations for Reform of the Aboriginal Heritage Act 2006* (Report, October 2021), 6.

50. *Aboriginal Heritage Act 2006* (Vic) s 132.

51. *Aboriginal Heritage Act 2006* (Vic) s 148.

52. *Aboriginal Heritage Act 2006* (Vic) s 148(a).

53. *Aboriginal Heritage Act 2006* (Vic) s 148(c) and 148(fc).

54. First Peoples State Relations, ‘[About First Peoples – State Relations](#)’ (Webpage, 29 February 2024).

55. *Aboriginal Heritage Act 2006* (Vic) s 143.

56. *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007).

57. *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007) art 11.

58. *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007) art 31.

59. *Charter of Human Rights and Responsibilities Act 2006* (Vic) s19.

60. Department of Premier and Cabinet, Response to NTP-003-002 — ‘*Aboriginal Cultural Heritage*’, 11, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 8 November 2023. See also Victorian Aboriginal Heritage Council, *Taking Control of Our Heritage: Aboriginal People Caring for Aboriginal Heritage* (April 2021), 21–23.

61. See ‘Cultural heritage is being destroyed’.

62. See ‘First Peoples should independently manage cultural heritage’.

63. See ‘First Peoples should independently manage cultural heritage’ and ‘The law is not enforced by the State’.

64. See ‘Intangible cultural heritage is not adequately protected’.

65. Victorian Aboriginal Heritage Council, *Taking Control of Our Heritage: Recommendations for Reform of the Aboriginal Heritage Act 2006* (Report, October 2021).

66. Victorian Aboriginal Heritage Council, *Taking Control of Our Heritage: Recommendations for Reform of the Aboriginal Heritage Act 2006* (Report, October 2021), 7.

67. Environmental Justice Australia, Submission 346 (Land, Sky, Waters 1), 12.

68. Victorian Aboriginal Heritage Council, *Taking Control of Our Heritage: Recommendations for Reform of the Aboriginal Heritage Act 2006* (Report, October 2021), 3.

69. Victorian Aboriginal Heritage Council, *Taking Control of Our Heritage: Recommendations for Reform of the Aboriginal Heritage Act 2006* (Report, October 2021), 3.

70. Department of Premier and Cabinet, Response to NTP-003-030 — ‘*Community Relations and Heritage, FPSR Responses to RFI*’, 5, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 19 February 2024; Transcript of Minister Natalie Hutchins MP, 18 April 2024, 85 [13]–[16]. See also First Peoples’ Assembly of Victoria, Submission 378 (Land, Sky, Waters), 35; Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 18.

71. Department of Premier and Cabinet, Response to NTP-003-002 — ‘*Aboriginal Cultural Heritage*’, 18, produced by the State of Victoria in response to the Commissions Notice to Produce dated 8 November 2023.

72. Department of Premier and Cabinet, Response to NTP-003-002 — ‘*Aboriginal Cultural Heritage*’, 12, produced by the State of Victoria in response to the Commissions Notice to Produce dated 8 November 2023.

73. Transcript of Minister Natalie Hutchins MP, 18 April 2024, 82 [15]–[24].

74. Transcript of Minister Natalie Hutchins MP, 18 April 2024, 82 [32].

75. Transcript of Ngarra Murray, Co-Chair of First Peoples’ Assembly of Victoria, 17 April 2024, 27 [13]–[18].

Yoorrook notes that Statewide treaty negotiations commenced on 21 November 2024, with Traditional Owner treaty negotiations expected to commence by mid-2025.

76. Transcript of Rueben Berg, Co-Chair of First Peoples’ Assembly of Victoria, 17 April 2024, 44 [15]–[19]; Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 18.

77. Transcript of Rueben Berg, Co-Chair of First Peoples’ Assembly of Victoria, 17 April 2024, 41 [27]–[29].

78. *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007) art 31.

79. Department of Premier and Cabinet, Response to NTP-003-002 — ‘*Aboriginal Cultural Heritage*’, 17, produced by the State of Victoria in response to the Commissions Notice to Produce dated 8 November 2023.

80. *Aboriginal Heritage Act 2006* (Vic) s 131.

81. Department of Premier and Cabinet, Response to NTP-003-002 — ‘*Aboriginal Cultural Heritage*’, 18, produced by the State of Victoria in response to the Commissions Notice to Produce dated 8 November 2023.

82. Department of Premier and Cabinet, Response to NTP-003-002 — ‘*Aboriginal Cultural Heritage*’, 17, produced by the State of Victoria in response to the Commissions Notice to Produce dated 8 November 2023.

83. Department of Premier and Cabinet, Response to NTP-003-002 — ‘*Aboriginal Cultural Heritage*’, 17, produced by the State of Victoria in response to the Commissions Notice to Produce dated 8 November 2023.

84. Victorian Aboriginal Heritage Council, *Taking Control of Our Heritage: Recommendations for Reform of the Aboriginal Heritage Act 2006* (Report, October 2021), 33; Department of Premier and Cabinet, Response to NTP-003-002 — ‘*Aboriginal Cultural Heritage*’, 17, produced by the State of Victoria in response to the Commissions Notice to Produce dated 8 November 2023.

85. Department of Premier and Cabinet, Response to NTP-003-002 — ‘*Aboriginal Cultural Heritage*’, 17, produced by the State of Victoria in response to the Commissions Notice to Produce dated 8 November 2023.

86. Victorian Aboriginal Heritage Council, *Taking Control of Our Heritage: Recommendations for Reform of the Aboriginal Heritage Act 2006* (Report, October 2021), 33; Department of Premier and Cabinet, Response to NTP-003-002 — ‘*Aboriginal Cultural Heritage*’, 17, produced by the State of Victoria in response to the Commissions Notice to Produce dated 8 November 2023.

87. Department of Premier and Cabinet, Response to NTP-003-002 — ‘*Aboriginal Cultural Heritage*’, 19, produced by the State of Victoria in response to the Commissions Notice to Produce dated 8 November 2023.

88. Department of Premier and Cabinet, Response to NTP-003-002 — ‘*Aboriginal Cultural Heritage*’, 19, produced by the State of Victoria in response to the Commissions Notice to Produce dated 8 November 2023.

89. Department of Premier and Cabinet, Response to NTP-003-002 — ‘*Aboriginal Cultural Heritage*’, 17, produced by the State of Victoria in response to the Commissions Notice to Produce dated 8 November 2023.

90. Witness Statement of Uncle Larry Walsh, 19 May 2022, 20 [99].

91. Transcript of roundtable with Barengi Gadjin Land Council, 26 October 2023, 23, served on the State of Victoria on 1 April 2024.

92. Transcript of Rueben Berg, Co-Chair of First Peoples' Assembly of Victoria, 17 April 2024, 30 [10]–[15]; Transcript of Ngarra Murray, Co-Chair of First Peoples' Assembly of Victoria, 17 April 2024, 42 [12].

93. Transcript of Rueben Berg, Co-Chair of First Peoples' Assembly of Victoria, 17 April 2024, 30 [20]–[25].

94. Transcript of Rueben Berg, Co-Chair of First Peoples' Assembly of Victoria, 17 April 2024, 30 [11]–[14].

95. Transcript of Ngarra Murray, Co-Chair of First Peoples' Assembly of Victoria, 17 April 2024, 42 [32]–[35].

96. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 38 [195].

97. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 47 [235].

98. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 38 [191].

99. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 38 [194].

100. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 38 [194].

101. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 38 [194]. See also Wurundjeri Woi-Wurrung Cultural Heritage Aboriginal Coporation, '[Management of Wurundjeri Properties & Significant Places](#)' (Webpage); Jim Berg and Shannon Faulkhead (eds), *The Power and the Passion: Our Ancestors Return Home* (Museums Victoria, 2022), 15–16.

102. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 38 [194].

103. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 47 [236]; Transcript of roundtable with Bunurong Land Council, 2 November 2023, 23.

104. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 47 [236].

105. Transcript of Uncle Gary Murray, 26 April 2024, 47 [30]–[36]; ABC news '[Lake Tyrrell traditional owners apply for protection of sacred meeting place, Mallee tourism drawcard](#)' (Webpage).

106. Department of Environment, Land, Water and Planning (Vic), [Conservation Management Plan Direl \(Lake Tyrrell\), Sea Lake: Frequently Asked Questions](#) (Fact Sheet).

107. Department of Energy, Environment and Climate Action, '[Lake Tyrrell \(Direl\)](#)' (Webpage).

108. Transcript of Uncle Gary Murray, 26 April 2024, 48 [5]–[25].

109. ABC news '[Lake Tyrrell traditional owners apply for protection of sacred meeting place, Mallee tourism drawcard](#)' (Webpage); Department of Energy, Environment and Climate Action, '[Lake Tyrrell \(Direl\)](#)' (Webpage).

110. Department of Energy, Environment and Climate Action, '[Lake Tyrrell \(Direl\)](#)' (Webpage).

111. ABC news, '[Lake Tyrrell traditional owners apply for protection of sacred meeting place, Mallee tourism drawcard](#)' (Webpage).

112. ABC news, '[Lake Tyrrell traditional owners apply for protection of sacred meeting place, Mallee tourism drawcard](#)' (Webpage).

113. See Dr Vincent Clark & Associates, [Direl \(Lake Tyrrell\): Cultural Landscape Conservation Management Plan, "Direl" \(VAHR 7427-0187\)](#), Report to Buloke Shire Council (Report, 20 October 2021); Department of Environment, Land, Water and Planning, [Conservation Management Plan Direl \(Lake Tyrrell\), Sea Lake: Frequently Asked Questions](#) (Fact Sheet), 3.

114. Jack Latimore, '["Bombing the Vatican": The Fight over an Aboriginal Heritage Site in Victoria Heats up](#)', *The Age* (Webpage, 14 August 2022).

115. Transcript of Uncle Gary Murray, 26 April 2024, 47 [35]–[37].

116. Transcript of Uncle Gary Murray, 26 April 2024, 48 [5]–[15].

117. Caroline Spry, Allan Wandin, Ron Jones, Bobby Mullins, Ariana Spencer-Gardner, Lauren Modra, Rebecca Zeidan, Wendy Morrison, Natalie Langowski, Garrick Hitchcock, Brian Armstrong, Martin Tomko, 'Centering Traditional Custodians in cultural heritage legislation reform: a view from Wurundjeri Woi Wurrung Cultural Heritage Aboriginal Corporation, Melbourne, Australia' (2022) 34(1–3) *Historic Environmental*, 68, citing Uncle Allan Wandin, Uncle Ron Jones and Uncle Bobby Mullins.

118. See for example, Transcript of roundtable with Bunurong Land Council, 2 November 2023, 20–21, served on the State of Victoria on 1 April 2024. See also Victorian Aboriginal Heritage Council, *Taking Control of Our Heritage: Aboriginal People Caring for Aboriginal Heritage* (Report, April 2021), 21–23.

119. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 39 [197].

120. Dr Ed Wensing, Submission, 590, 14.

121. Dr Ed Wensing, Submission, 590, 6, citing Marcia Langton, '[The Destruction of the Juukan Gorge Caves: A Cultural Property Crime in Moral Terms](#)', *The Saturday Paper* (Webpage, September 2020); Ed Wensing '[Indigenous peoples' human rights, self-determination and local governance – Part 1](#)' (2021) 24 *Commonwealth Journal of Local Governance*, 98–123.

122. *Aboriginal Heritage Regulations 2018* (Vic), reg 7.

123. Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation, Submission 661 (Economic Prosperity), 8.

124. Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation, Submission 661 (Economic Prosperity), 8.

125. Correspondence from the Victorian Government Solicitors Office to King & Wood Mallesons (Solicitors Assisting) dated 13 December 2024.

126. ABC News, '[Victorian Coalition withdraws Aboriginal treaty support, citing cultural heritage concerns - ABC News](#)' (Webpage, 22 January 2024).

127. National Indigenous Times (Dechlan Brennan), '[Victorian Opposition made no submission to land management inquiry before abandoning Treaty](#)' (Webpage, 24 January 2024).

In correspondence to Yoorrook, the State noted that there are different stages of the Cultural Heritage Management Plan (CHMP) process relevant to delays, including preparation of the CHMP before the statutory period has started, and that the statutory period ceases to run when a RAP requests further information: Correspondence from the Victorian Government Solicitors Office to King & Wood Mallesons (Solicitors Assisting) dated 13 December 2024.

128. Environmental Justice Australia, Submission 346 (Land, Sky, Waters 1), 12–13.

129. See e.g., Victorian Aboriginal Heritage Council, *Taking Control of Our Heritage: Aboriginal People Caring for Aboriginal Heritage* (Report, April 2021), 21–23.

Whilst the AHA empowers a RAP to refuse approve a Cultural Heritage Management Plan (CHMP) where it is not satisfied a CHMP condition is adequate to avoid or minimise harm (see ss 61, 63(4)) this decision is not final as it is subject to a right of review by VCAT.

130. *Aboriginal Heritage Act 2006* (Vic) ss 61(b), 63; Department of Premier and Cabinet, Response to NTP-003-002 — '*Aboriginal Cultural Heritage*', 11, produced by the State of Victoria in response to the Commission's Notice to Produce dated 8 November 2023.

131. Transcript of roundtable with Wadawurrung Traditional Owners Aboriginal Corporation, 14 December 2023, 18. See also Dr Ed Wensing, Submission, 590, 14.

132. Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation, Submission 344 ('Summary of Past and Ongoing Land Injustice'), 3.

133. Katherine Mullet, Submission 1056, 3, 5–8, 22; Transcript of roundtable with Bunurong Land Council, 2 November 2023, 20–21, served on the State of Victoria on 1 April 2024.

134. Transcript of roundtable with Bunurong Land Council, 2 November 2023, 20, served on the State of Victoria on 1 April 2024.

135. Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation, Submission 661 (Economic Prosperity), 8.

136. Katherine Mullet, Submission 1056, 6.

137. Katherine Mullet, Submission 1056, 27.

138. Katherine Mullet, Submission 1056, 27; Transcript of roundtable with Nindi-Ngujarn Ngarigo Monero, 13 November 2023 (Part 2), 37; Environmental Justice Australia, Submission 346 (Land, Sky, Waters 2), 6. See also Anonymous 33, Submission 33.

Katherine Mullet also said: 'The other parts of the Act that doesn't allow you to register anything that was made post colonisation. So any scar trees, so scar trees that my grandfather made can't be registered on the register to be protected as Aboriginal cultural heritage because they were done after colonisation ... It's an issue. Because that's how we recognise and continuation of cultural practices and that's not recognising also cultural practices that evolve and change to suit cultures of its type that, you know, if you can't register your cultural property, then it doesn't get protected. There is no means for to us protect our heritage and our connection.' Katherine Mullet, Submission 1056, 24.

139. Transcript of Rueben Berg, Co-Chair of First Peoples' Assembly of Victoria, 17 April 2024, 41 [16]–[18].

140. Department of Premier and Cabinet, Response to NTP-003-002 — '*Aboriginal Cultural Heritage*', 17, produced by the State of Victoria in response to the Commission's Notice to Produce dated 8 November 2023.

141. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 45 [224].

142. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 45 [224].

143. Department of Premier and Cabinet, Response to NTP-003-002 — '*Aboriginal Cultural Heritage*', 17, produced by the State of Victoria in response to the Commissions Notice to Produce dated 8 November 2023.

144. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 39 [197].

145. Transcript of roundtable with Bunurong Land Council, 2 November 2023, 19–21, served on the State of Victoria on 1 April 2024.

146. Transcript of roundtable with Bunurong Land Council, 2 November 2023, 22, served on the State of Victoria on 1 April 2024.

147. Witness Statement of Marcus Stewart, inaugural Co-Chair of the First Peoples' Assembly of Victoria, 29 April 2022, 32 [90].

148. Environmental Justice Australia, Submission 346 (Land, Sky, Waters 2), 7.

149. Environmental Justice Australia, Submission 346 (Land, Sky, Waters 2), 7.

150. Department of Premier and Cabinet, Response to NTP-003-002 — '*Aboriginal Cultural Heritage*', 6, produced by the State of Victoria in response to the Commission's Notice to Produce dated 8 November 2023.

151. Department of Premier and Cabinet, Response to NTP-003-002 — '*Aboriginal Cultural Heritage*', 6, produced by the State of Victoria in response to the Commission's Notice to Produce dated 8 November 2023.

152. Department of Premier and Cabinet, Response to NTP-003-002 — '*Aboriginal Cultural Heritage*', 6, produced by the State of Victoria in response to the Commission's Notice to Produce dated 8 November 2023.

153. *Aboriginal Heritage Act 2006* (Vic) s 14.

154. Transcript of Ngarra Murray, Co-Chair of First Peoples' Assembly of Victoria, 17 April 2024, 43 [35]–[40]; Transcript of Professor Marcia Langton, 27 March 2024, 38 [25]–[30].

155. Department of Health, Response to NTP-003-006 — '*Cemeteries*', 11, produced by the State of Victoria in response to the Commission's Notice to Produce dated 9 November 2023.

156. *Aboriginal Heritage Act 2006* (Vic) s 132(2)(cc), see also: Victorian Aboriginal Heritage Council, Response to Yoorrook Justice Commission Request for Information – January 2024, 41.

157. See Victorian Aboriginal Heritage Council, *State of Victoria's Cultural Heritage Report 2016–2021* (Report, October 2021), 58, 111–113.

158. *Aboriginal Heritage Act 2006* (Vic) s 20(1)(a).

159. *Aboriginal Heritage Act 2006* (Vic) ss 20(1)(b), 20(1)(c).

160. *Aboriginal Heritage Act 2006* (Vic) s 17.

161. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 41 [206], see also: Victorian Aboriginal Heritage Council, Response to Yoorrook Justice Commission Request for Information – January 2024, 48.

162. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 41 [207].

163. The five transfers of Ancestral remains were to Barengi Gadjin Land Council Aboriginal Corporation, Dja Dja Wurrung Clans Aboriginal Corporation, Gunaikurnai Land and Waters Aboriginal Corporation, Wadawurrung Traditional Owners Aboriginal Corporation, and Yorta Nation Aboriginal Corporation. See Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 41 [207].

164. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 41 [208].

165. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 41 [208].

166. Department of Health, Response to NTP-003-006 — '*Cemeteries*', 10, produced by the State of Victoria in response to the Commission's Notice to Produce dated 9 November 2023.

167. Department of Health, Response to NTP-003-006 — '*Cemeteries*', 10–11, produced by the State of Victoria in response to the Commission's Notice to Produce dated 9 November 2023.

168. Transcript of Ngarra Murray, Co-Chair of First Peoples' Assembly of Victoria, 17 April 2024, 43 [35]–[37].

169. Transcript of Professor Marcia Langton, 27 March 2024, 39 [1]–[19].

170. Transcript of Professor Marcia Langton, 27 March 2024, 39 [1]–[19].

171. Transcript of Professor Marcia Langton, 27 March 2024, 39 [20]–[25].

172. Transcript of Professor Marcia Langton, 27 March 2024, 39 [30].

173. Transcript of Rueben Berg, Co-Chair of First Peoples' Assembly of Victoria, 17 April 2024, 44 [4]–[5].

174. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 42 [211].

175. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 42 [211].

176. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 46 [230].

177. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 42 [211].

178. Department of Premier and Cabinet, ‘DPC Land Injustice RFI Response’, 5–6, produced by the State of Victoria in response to the Commission’s Request for Information dated 19 February 2024.

179. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 46 [230].

180. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 46 [230]. See also Department of Premier and Cabinet, ‘DPC Land Injustice RFI Response’, 5, produced by the State of Victoria in response to the Commission’s Request for Information dated 19 February 2024.

181. Transcript of roundtable with Bangerang Aboriginal Corporation, 7 December 2023, 15, served on the State of Victoria on 1 April 2024.

182. Transcript of roundtable with Gunditj Mirring Traditional Owners Aboriginal Corporation, 19 January 2024 (Part 1), 8, served on the State of Victoria on 12 April 2024.

183. Transcript of roundtable with Gunditj Mirring Traditional Owners Aboriginal Corporation, 19 January 2024 (Part 1), 8, served on the State of Victoria on 12 April 2024.

184. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 18; See also Environmental Justice Australia, Submission 346 (Land, Sky, Waters 2), 6 [28].

185. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 18.

186. Transcript of roundtable with Gunditj Mirring Traditional Owners Aboriginal Corporation, 19 January 2024 (Part 1), 8, served on the State of Victoria on 12 April 2024.

187. Transcript of Rueben Berg, Co-Chair of First Peoples’ Assembly of Victoria, 17 April 2024, 43 [12]–[22].

188. *Aboriginal Heritage Act 2006* (Vic) s 79D.

189. *Aboriginal Heritage Act 2006* (Vic) s 78C.

190. Department of Premier and Cabinet, Response to NTP-003-002 — ‘*Aboriginal Cultural Heritage*’, 1, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 8 November 2023.

191. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 45 [225].

192. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 45 [225].

193. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 43 [219].

194. Magic Lands, ‘[History of the Three Sisters, Anakie](#)’ (Webpage).

195. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 43 [219].

196. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 43 [219].

197. *Aerolite Quarries Pty Ltd v Greater Geelong City Council* [2014] VCAT 1611, [143].

198. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 43 [219].

199. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 43 [219].

200. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 43 [219].

201. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 43 [219].

202. Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation, Submission 344 (‘Summary of Past and Ongoing Land Injustice’), 3; Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation, ‘[Management of Cultural Heritage Places](#)’ (Webpage); Isabel McBryde, ‘Wil-im-ee Morring-ring: Or, Where do Axes Come From?’ (1978) 11 *Mankind* 355.

203. Places on the National Heritage List are protected under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth), which requires that approval be obtained before any action takes place that has, will have, or is likely to have a significant impact on the national heritage values of a listed place.

204. Australian Government, Department of Climate Change, Energy, the Environment and Water, ‘[National Heritage Places – Mount William Stone Hatchet Quarry](#)’ (Webpage).

205. Darren Griffin, Delta Lucille Freedman, Bill Nicholson Jnr, Fiona McConachieb and Alexander Parmington, ‘[The Koorong Project: experimental archaeology and Wurundjeri continuation of cultural practices](#)’ (La Trobe University, 2013), 59–65, 60; Angela Foley, ‘[The art of place-making on Wurundjeri Country today](#)’ (Western Sydney University, Phd Thesis, 2020).

206. Transcript of Professor Julie Andrews, 26 March 2024, 16 [46]–17 [5], 19 [29]–[40]; Mick Harding, Submission 891, 20; Darren Griffin, Delta Lucille Freedman, Bill Nicholson Jnr, Fiona McConachieb and Alexander Parmington, ‘[The Koorong Project: experimental archaeology and Wurundjeri continuation of cultural practices](#)’ (La Trobe University, 2013), 59–65, 60; Angela Foley, ‘[The art of place-making on Wurundjeri Country today](#)’ (Western Sydney University, Phd Thesis, 2020).

207. Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation, Submission 344 (‘Land injustices for Wurundjeri Woi-wurrung cultural heritage places: a case study at Mount William Stone Hatchet Quarry (Wil-im-mee Mooring)’), 2.

208. Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation, Submission 344 (‘Land injustices for Wurundjeri Woi-wurrung cultural heritage places: a case study at Mount William Stone Hatchet Quarry (Wil-im-mee Mooring)’), 2.

209. *Aboriginal Heritage Regulations 2018* (Vic), reg 7.

210. Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation, Submission 344 (‘Land injustices for Wurundjeri Woi-wurrung cultural heritage places: a case study at Mount William Stone Hatchet Quarry (Wil-im-mee Mooring)’), 3.

211. Caroline Spry, Allan Wandin, Ron Jones, Bobby Mullins, Ariana Spencer-Gardner, Lauren Modra, Rebecca Zeidan, Wendy Morrison, Natalie Langowski, Garrick Hitchcock, Brian Armstrong, Martin Tomko, ‘Centering Traditional Custodians in cultural heritage legislation reform: a view form Wurundjeri Woi Wurrung Cultural Heritage Aboriginal Corporation, Melbourne, Australia’ (2022) 34(1–3) *Historic Environmental*, 71, citing Uncle Allan Wandin, Uncle Ron Jones and Uncle Bobby Mullins.

212. Department of Premier and Cabinet, Response to NTP-003-002 — ‘*Aboriginal Cultural Heritage*’, 19, produced by the State of Victoria in response to the Commissions Notice to Produce dated 8 November 2023.

213. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 45 [227].

214. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 45 [227].

215. Department of Premier and Cabinet, Response to NTP-003-002 — ‘*Aboriginal Cultural Heritage*’, 19, produced by the State of Victoria in response to the Commissions Notice to Produce dated 8 November 2023.

216. Witness Statement of Uncle Colin Walker, 27 May 2022, 7 [50].

217. Transcript of roundtable with Bunurong Land Council, 2 November 2023, 19, served on the State of Victoria on 1 April 2024; Dja Dja Wurrung Clans Aboriginal Corporation, Dja Dja Wurrekatjalangu (RSA) Team, Submission 504 (Land, Sky, Waters), 6. See also Dechlan Brennan, ‘[Court hears farmer was warned twice before destroying 1500-year-old Indigenous heritage site](#)’, National Indigenous Times (Webpage, April 2, 2025)

218. Transcript of roundtable with Bunurong Land Council, 2 November 2023, 24, served on the State of Victoria on 1 April 2024.

219. Transcript of roundtable with Barengi Gadjin Land Council, 26 October 2023, 22, served on the State of Victoria on 1 April 2024.

220. Transcript of roundtable with Nindi-Ngujarn Ngarigo Monero, 13 November 2023, 14, served on the State of Victoria on 12 April 2024.

221. Transcript of roundtable with Nindi-Ngujarn Ngarigo Monero, 13 November 2023, 14, served on the State of Victoria on 12 April 2024.

222. Department of Premier and Cabinet, Response to NTP-003-030 — ‘*Community Relations and Heritage, FPSR Responses to RFI*’, 4, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 19 February 2024.

223. Environmental Justice Australia, Submission 346 (Land, Sky, Waters 1), 12.

224. *Aboriginal Heritage Act 2006* (Vic) s 166.

225. *Aboriginal Heritage Act 2006* (Vic) s 173.

226. Transcript of roundtable with Barengi Gadjin Land Council, 26 October 2023, 22, served on the State of Victoria on 1 April 2024.

227. *Aboriginal Heritage Act 2006* (Vic) pt 5 div 1; First Peoples State Relations, ‘[Aboriginal Heritage Protection Declarations and Cultural Heritage Agreements](#)’ (Webpage); Department of Premier and Cabinet, Response to NTP-003-002 — ‘*Aboriginal Cultural Heritage*’, 7, produced by the State of Victoria in response to the Commissions Notice to Produce dated 8 November 2023.

228. Department of Premier and Cabinet, Response to NTP-003-002 — ‘*Aboriginal Cultural Heritage*’, 7, produced by the State of Victoria in response to the Commissions Notice to Produce dated 8 November 2023.

229. Department of Premier and Cabinet, Response to NTP-003-002 — ‘*Aboriginal Cultural Heritage*’, 7, produced by the State of Victoria in response to the Commissions Notice to Produce dated 8 November 2023.

230. Transcript of roundtable with Bunurong Land Council, 2 November 2023, 20, served on the State of Victoria on 1 April 2024.

231. Transcript of roundtable with Barengi Gadjin Land Council, 26 October 2023, 32, served on the State of Victoria on 1 April 2024.

232. Transcript of roundtable with Barengi Gadjin Land Council, 26 October 2023, 32, served on the State of Victoria on 1 April 2024.

233. Transcript of roundtable with Barengi Gadjin Land Council, 26 October 2023, 32, served on the State of Victoria on 1 April 2024.

234. Department of Premier and Cabinet, Response to NTP-003-002 — ‘*Aboriginal Cultural Heritage*’, 8, produced by the State of Victoria in response to the Commissions Notice to Produce dated 8 November 2023.

235. Transcript of roundtable with Bunurong Land Council, 2 November 2023, 19–21, served on the State of Victoria on 1 April 2024.

236. Department of Premier and Cabinet, Response to NTP-003-002 — ‘*Aboriginal Cultural Heritage*’, 8, produced by the State of Victoria in response to the Commissions Notice to Produce dated 8 November 2023.

237. Department of Premier and Cabinet, Response to NTP-003-002 — ‘*Aboriginal Cultural Heritage*’, 8–9, produced by the State of Victoria in response to the Commissions Notice to Produce dated 8 November 2023.

238. Department of Premier and Cabinet, Response to NTP-003-002 — ‘*Aboriginal Cultural Heritage*’, 8–9, produced by the State of Victoria in response to the Commissions Notice to Produce dated 8 November 2023.

239. Department of Premier and Cabinet, Response to NTP-003-002 — ‘*Aboriginal Cultural Heritage*’, 9, produced by the State of Victoria in response to the Commissions Notice to Produce dated 8 November 2023.

240. Victorian Aboriginal Heritage Council, *Taking Control of Our Heritage: Recommendations for Reform of the Aboriginal Heritage Act 2006* (Report, October 2021) 41–45. See also Department of Premier and Cabinet, Response to NTP-003-002 — ‘*Aboriginal Cultural Heritage*’, 19–20, produced by the State of Victoria in response to the Commissions Notice to Produce dated 8 November 2023.

241. Department of Premier and Cabinet, Response to NTP-003-002 — ‘*Aboriginal Cultural Heritage*’, 9, produced by the State of Victoria in response to the Commissions Notice to Produce dated 8 November 2023; *Aboriginal Heritage Act 2006* (Vic) s 28.

242. Department of Premier and Cabinet, Response to NTP-003-002 — ‘*Aboriginal Cultural Heritage*’, 9, produced by the State of Victoria in response to the Commissions Notice to Produce dated 8 November 2023.

243. Taungurung Land and Waters Council Aboriginal Corporation, Submission 596 (Land, Sky, Waters), 13.

244. Transcript of roundtable with Barengi Gadjin Land Council, 26 October 2023, 32, served on the State of Victoria on 1 April 2024.

245. Transcript of Uncle Gary Murray, 26 April 2024, 26 [40]–[44].

246. Summary Report — Bangerang Site Visit, 19 December 2022, 2.

247. Summary Report — Bangerang Site Visit, 19 December 2022, 2.

248. *Aboriginal Heritage Act 2006* (Vic) s 151.

249. Victorian Aboriginal Heritage Council, ‘[Victoria’s Registered Aboriginal Parties](#)’ (Webpage).

250. *Aboriginal Heritage Act 2006* (Vic) ss 151(2), (2A).

251. *Aboriginal Heritage Act 2006* (Vic) s 151(3).

252. *Aboriginal Heritage Act 2006* (Vic) s 151(3).

253. Department of Premier and Cabinet, Response to NTP-003-002 — ‘*Aboriginal Cultural Heritage*’, 10, produced by the State of Victoria in response to the Commissions Notice to Produce dated 8 November 2023.

254. Department of Premier and Cabinet, Response to NTP-003-002 — ‘*Aboriginal Cultural Heritage*’, 10, produced by the State of Victoria in response to the Commissions Notice to Produce dated 8 November 2023.

255. Federation of Victorian Traditional Owner Corporations, *A Framework for Traditional Owner Treaties: Lessons from the Settlement Act* (Discussion Paper 5, 2021) 25. See *Briggs v Aboriginal Heritage Council* [2019] VSC 25 (12 February 2019); *Gunaikurnai Land and Waters Aboriginal Corporation v Aboriginal Heritage Council* [2016] VSC 569; *Lovett on behalf of the Gunditjmara People v State of Victoria* (No 5) [2011] FCA 932.

256. Victorian Aboriginal Heritage Council, ‘[Victoria’s Registered Aboriginal Parties](#)’ (Webpage).

257. See e.g. Taungurung Land and Waters Council Aboriginal Corporation, Submission 596, 8.

Chapter 13: Joint management

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The ability to access land and to determine how it is used, managed, protected and developed is vitally important for First Peoples to maintain and continue their spiritual and cultural practices and their individual and collective identities; to support the protection and healing of Country; to advance towards economic self-reliance and First Peoples broader aspirations; and to improve the health and well-being of First Peoples.¹

FEDERATION OF VICTORIAN TRADITIONAL OWNER CORPORATIONS

When are we going to have the rights, you know, for managing Country?²

PARTICIPANT, BUNURONG LAND COUNCIL ROUNDTABLE

Introduction

In Victoria, ‘cooperative’ or ‘joint’ management of land between Traditional Owners and other entities emerged in the early 2000s. These land management arrangements were developed as a response to the complexities of establishing native title and the injustices arising from unsuccessful claims (see Chapter 14: Water and Chapter 15: Earth, sea and living things).³

Joint management is a formal and ongoing arrangement between Traditional Owners and other holders of rights and interests in land to share responsibility for its management.⁴ When it was developed, joint management was presented as a pathway to rectify land injustice, offering recognition and shared responsibility for managing public land between Traditional Owners and the State.⁵

Joint management arrangements vary. In law, ‘joint management’ refers to an arrangement for managing public land (usually national parks) established under Part 8A of the *Conservation, Forests and Lands Act 1987* (Vic) (‘CFLA’) and the *Traditional Owner Settlement Act 2010* (Vic) (‘TOSA’).⁶ It is linked to grants of ‘Aboriginal title’ under TOSA.⁷ Under this arrangement Traditional Owners do not have an enhanced right to use the land for any purposes, but they have a say over how public land is managed. Joint management is typically only available to Traditional Owner groups that are recognised under TOSA.⁸ It is therefore a limited form of joint management only. This kind of joint management is the focus of this chapter.

‘Joint management’ can also refer to earlier ‘cooperative management’ and other initiatives like Commonwealth Indigenous Protected Areas, Indigenous Land Use Agreements (ILUAs) under the *Native Title Act 1993* (Cth) (see Chapter 10: Native title), state and local council strategies and frameworks and ad hoc arrangements with private landowners.

Broadly, joint management also arises in relation to Aboriginal cultural heritage protection, water and other resource management and responses to climate change, which are covered in other chapters (e.g. Chapter 12: Cultural heritage, Chapter 14: Water, Chapter 15: Earth, sea and living things, and Chapter 16: Climate change, renewables and emergencies).

While joint management arrangements appeared to offer a pathway for Traditional Owners to obtain greater decision-making authority and responsibility for land management, in practice Traditional Owners’ authority and influence has been limited. Ongoing barriers to meaningful joint management include constraints on Aboriginal title; lack of resources to support Traditional Owners; conflicting understandings about how land should be managed, and state authorities’ uneven capacity and willingness to engage as partners. These barriers have been compounded by complex laws, regulations and funding arrangements, imposing a heavy administrative burden on First Peoples and reinforcing dispossession and trauma.⁹

CEO of the Federation of Victorian Traditional Owner Corporations (FVTOC) Paul Paton (Gunnai, Monaro, Gunditjmara) told Yoorrook about some of the limitations and opportunities of joint management:

I don’t want to diminish the hard-fought gains by Traditional Owners when they achieved Traditional Owner Settlement Act outcomes and native title, because they are significant outcomes, but when it comes to the implementation of those ... agreements and those rights, they are still ... held within sort of guard rails, let’s say, to be able to only undertake certain activities. So that’s where new forms of land tenure can open up those opportunities to allow those cultural practices to occur.¹⁰

PAUL PATON

Other forms of joint management have also been created. At a Commonwealth level, these include Indigenous Protected Areas. New strategies have been developed at a state level, such as the Cultural Landscapes Strategy, and Cultural Fire Strategy, led by Traditional Owners, discussed further in this chapter. At a local level, some informal arrangements have emerged, including with farmers and other private landowners.

The limitations and barriers faced by Traditional Owners in joint management arrangements show that joint management does not transfer the power, authority, control and resources required to enable self-determination.¹¹ Power, authority, control and resources continue to be held by the State. Yet self-determination requires the State to shift towards sole management by Traditional Owners.¹² To work towards this goal in line with their own aspirations, Traditional Owners require support to care for Country through legal reform, sufficient resourcing and culturally capable state partners.

Joint management under TOSA

Under TOSA, joint management is achieved via a Traditional Owner Land Management Agreement covering land that the State has granted to Traditional Owners in Aboriginal title.¹³ State authorities are required to give effect to these agreements in carrying out their duties in managing public land to which a Traditional Owner Land Management Agreement applies.¹⁴ The CFLA provides for the establishment of Traditional Owner Land Management Boards,¹⁵ which are required to develop Joint Management Plans.¹⁶ These plans must be consistent with the purpose for which the land is reserved¹⁷ and with the state-wide policy to maintain public access.

Joint management does not provide exclusive rights of use and access to Traditional Owners.¹⁸ Aboriginal title granted under TOSA requires Traditional Owners to transfer the right to occupy, use, control and manage land to the State before the grant is made.¹⁹ Minister for Treaty and First Peoples the Hon Natalie Hutchins MP described the purpose and limitations of Aboriginal title:

Aboriginal Title is the grant of public land to Traditional Owners for the purpose of joint management with the State. Grants are conditional on the Traditional Owner group agreeing that the State continues to manage the land, in partnership with them as a group, as public land reserved for a certain purpose (e.g. a National Park). Holders of Aboriginal Title cannot sell, transfer or grant interests in the land, and all activities on the land must be consistent with the public purpose for which the land is reserved. Existing land access and usage rights are not affected by the grant of Aboriginal Title.²⁰

MINISTER NATALIE HUTCHINS MP

Beyond these limitations, a joint management plan can cover any other matters agreed in the Traditional Owner Land Management Agreement relevant to land management.²¹

Current joint and cooperative management arrangements

To date, four joint management arrangements have been agreed between Traditional Owners and the State under TOSA and CFLA (see Table 13.1). These arrangements cover approximately 1,265,937 hectares of public land.²² This figure equates to approximately 16% of reserved Crown land in Victoria.²³

One joint management agreement has been agreed under the CFLA outside of TOSA, and three ‘cooperative management agreements’ have been agreed, two of which remain in force. Together, the agreements outside of TOSA cover approximately 67,598 hectares of public land.²⁴

Table 13.1: Current joint and cooperative management arrangements²⁵

Traditional Owner group	Joint management arrangements
Yorta Yorta People	In 2004, the Yorta Yorta Nation Aboriginal Corporation entered into cooperative management arrangements under the CFLA that predate TOSA and remain in place (Yorta Yorta Traditional Owner Land Management Agreement 2010). The Agreement’s ‘Designated Areas’ comprise Victorian crown lands and waters in Yorta Yorta country, being a subset of traditional Yorta Yorta country in Victoria. The Designated Areas include Kow Swamp, Barmah State Park, Barmah State Forest and other areas of public lands and waters located along the Murray and Goulburn Rivers in Victoria. ²⁶ The Agreement recognised the Yorta Yorta People as Traditional Owners and formalised their involvement in decision making in relation to the protection, maintenance and sustainability of designated areas of public land in Barmah National Park. The Yorta Yorta Traditional Owner Land Management Board developed a joint management plan for the park in 2020. ²⁷
Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagalk Peoples	In 2005, the Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagalk Peoples entered into a cooperative management arrangement as part of their native title settlement. This was terminated in 2022 when the Barengi Gadjin Land Council Aboriginal Corporation entered a land agreement under a Recognition and Settlement Agreement (RSA), which included the grant of Aboriginal title over 12 parks and reserves in northwest Victoria. The establishment of a Traditional Owner Land Management Board and processes are under discussion.
Gunditjmara People	In 2007, the Gunditjmara People entered into cooperative management arrangements under the CFLA covering Budj Bim National Park, which has World Heritage status for its Aboriginal heritage values. The cooperative management arrangements were entered into in 2007, at the same time as the Gunditjmara native title consent determination. The arrangements predate TOSA and remain in place.
Gunaikurnai People	In 2010, the Gunaikurnai Land and Waters Aboriginal Corporation entered a land agreement under an RSA which included the grant of Aboriginal title over 10 parks and reserves in Gippsland. The Gunaikurnai Traditional Owner Land Development Board developed a joint management plan for these areas. An additional four parks and reserves are scheduled for transfer as Aboriginal title under a variation to the RSA. The Board is developing a joint management plan for these areas.
Dja Dja Wurrung People	In 2013, the Dja Dja Wurrung Clans Aboriginal Corporation (DJAARA) entered a land agreement under a RSA which included the grant of Aboriginal title over six parks and reserves in central-northwest Victoria. These areas are jointly managed by the Dhelkunya Dja Land Management Board, which published a joint management plan in 2018.
Taungurung People	In 2018, the Taungurung Land and Waters Council Aboriginal Corporation entered a land agreement under an RSA which included the grant of Aboriginal title over nine parks and reserves in central Victoria and a Joint Management Plan. The establishment of a Traditional Owner Land Management Board and processes are under discussion.

Public or Crown land can be subject to joint management arrangements (see box: What is ‘public land’? for more details).

WHAT IS ‘PUBLIC LAND’?

The term ‘public land’ is used in a number of pieces of legislation. In *TOSA* and *CFLA* ‘public land’ includes ‘Crown land’ and land in national parks, forests, nature and wildlife reserves.²⁸ ‘Crown land is held by the Crown (the King) in right of the State of Victoria’.²⁹ It can be reserved for a particular public purpose, such as a national park, state forest, conservation reserve or marine or coastal park.³⁰

Only a small proportion of public land can be subject to joint management

Formal joint management arrangements under *TOSA* and *CFLA* apply to reserved ‘public land’, as defined in those pieces of legislation. Under *TOSA*, unreserved public land can be transferred into freehold title to Traditional Owners as part of a recognition and settlement agreement.³¹ Under *TOSA*, reserved public land can only be transferred into Aboriginal title for joint management (not freehold).³² The government holds 300,000 hectares of unreserved public land compared to 7.75 million hectares of reserved public land. This means less than 4 per cent of Crown land is unreserved and potentially available for freehold transfer.³³

Reform of public land legislation

The primary legislation regulating public land in Victoria are the *Crown Land (Reserves) Act 1978* (Vic), the *Forest Act 1958* (Vic) and the *Land Act 1958* (Vic). Following a 2017 investigation into public lands conducted by the Victorian Environment Assessment Council, the government is updating and consolidating these three Acts into one new Public Land Act. If passed, the new Act will regulate public land use and management alongside the *National Parks Act 1975* (Vic) and the *CFLA*.³⁴

At the time of Yoorrook’s investigations, details of the proposed reforms had not yet been released. However, according to Minister for Environment the Hon Steve Dimopoulos MP:

A key aspect of the reforms to public land legislation will be to provide Traditional Owners with a range of opportunities to be involved in public land management. These include the opportunity to directly manage public land, as well as providing greater flexibility in joint management with the State. ...

The reforms seek to make these options available for Traditional Owners regardless of whether Aboriginal Title has been granted over the relevant land. Consistent with the principles of self determination, it is not proposed to mandate any single way for Traditional Owners to be involved in public land management, but rather to provide a range of options from which Traditional Owners may choose.³⁵

MINISTER STEVE DIMOPOULOS MP

Yoorrook waits with anticipation to see how these State ambitions are translated into legislation.

What Yoorrook heard

Cooperative and joint management was recognised as progress in the face of delays and injustices arising from native title processes. Co-Chair of the First Peoples’ Assembly of Victoria, Ngarra Murray (Wamba Wamba, Yorta Yorta, Dhudhuroa, Jupagulk, Baraparapa, Wiradjuri, Dja Dja Wurrung) told Yoorrook:

Today, there is joint management of the Barmah National Park by Yorta Yorta people and the State. This is a step in the right direction towards valuing and incorporating the culture and knowledge of the Yorta Yorta people over our land, which benefits Country and the wider community.³⁶

NGARRA MURRAY, CO-CHAIR OF FIRST PEOPLES’ ASSEMBLY OF VICTORIA

However, restricted use and access rights combined with decision-making and partnership problems have limited the potential of joint management as a pathway to land justice.

Joint management is not self-determination

I think it goes back to about our obligations to ... our ancestors, to continually care ... for, have authority over and manage Country, so it is an objective of Traditional Owners to meet that cultural obligation ... having that sense of power and authority and decision making to be able to undertake those obligations without ... any impost of government directly relates back to that ... responsibility, that power and authority that Traditional Owners once held prior to colonisation.³⁷

PAUL PATON

Joint management does not support the self-determination required for land justice. Yoorrook heard that joint management does not genuinely transfer power, authority, control and resources to Traditional Owners. This is because of the constraints of Aboriginal title, where existing rights of use and access of public land are maintained and ultimate decision-making authority remains with state agencies.³⁸ At best, joint management gives Traditional Owners an advisory role and some capacity to influence decision making over areas of public land. According to Uncle Dr Wayne Atkinson (Yorta Yorta, Dja Dja Wurrung):

[Joint management] is a compromise position, to that of ‘sole management’ which has been practiced by Indigenous Australians for the majority of our land management history — 60,000 years or since creation, land has been cared for as ancestral lands in a more holistic way.³⁹

UNCLE DR WAYNE ATKINSON

While Traditional Owners are referred to as ‘partners’ in joint management, they described the experience as an unequal partnership which gives them limited control.⁴⁰ Inaugural Co-Chair of the First Peoples’ Assembly of Victoria Marcus Stewart (Taungurung) told Yoorrook that current systems like joint management of national parks ‘doesn’t award you any operational control. It’s predominantly strategic direction’.⁴¹

Aunty Marjorie Thorpe (Gunaikurnai, Tjapwurrung) expressed frustration at State partners’ responses when Traditional Owners sought to exercise traditional rights and practice cultural activities⁴². Similarly, Uncle Colin Walker (Yorta Yorta) said:

[W]e still haven't got our ... traditional rights, to go into the forest to hunt our food or to get our wood, which I bring up to National Parks all the time. As Traditional Owners of the forest why aren't we allowed to go into the forest and — like NAIDOC is coming up — to get three of four kangaroos and two or three emus. That's all we ask for. But under the Act, 'Oh, no, you know, you have got to come and see us'.⁴³

UNCLE COLIN WALKER

Some First Peoples questioned the benefit of agreements that do not address the issue of sovereignty. For example, one participant from a roundtable with Nimmie-Caira Land and Water Aboriginal Corporation said:

So what is the benefit to our people when the land and the water and the sky isn't coming back to us, but it's allowing an agreement to be made for others to use freely so that they don't have to worry about the sovereignty part to it then?⁴⁴

PARTICIPANT, NIMMIE-CAIRA LAND AND WATER ABORIGINAL CORPORATION ROUNDTABLE

Others asserted that Traditional Owners should have more say in land management, including the power to say no. As one participant from the Bunurong Land Council roundtable put it: 'We should be able to say, "You're not allowed to destroy the Country lands" ... we should have a say in that'.⁴⁵ Similarly, Aunty Marjorie Thorpe said:

[W]e went into the agreement of joint management but we don't get to say no, "These are areas that you shouldn't burn; these are the areas that need protecting." Because they are very important places, and that is in our stories that these are important places, and there's no understanding or total disregard by those in power.⁴⁶

AUNTY MARJORIE THORPE

Environmental Justice Australia told Yoorrook that these arrangements under TOSA generally 'do not represent comprehensive or broad-ranging transfer of ... decision-making into governance of lands and waters'⁴⁷ and that:

The extent of formal and actual authority vested in Traditional Owner bodies under joint management arrangements may be limited and fragmented, reproducing the highly fragmented and incoherent way in which environmental and natural resources law treats the natural world. Traditional Owners may be given authority over areas of land but no accompanying control or authority over works or actions necessary to manage that land in the desired or appropriate manner.⁴⁸

ENVIRONMENTAL JUSTICE AUSTRALIA

The conditions and limits on Aboriginal title led some to question what they were being given. For example, one participant from the Bunurong Land Council roundtable stated:

It's like, "Good. Well, you can have it back, but with conditions". So just give it back ... You know, we haven't got land. We're Traditional Owners, but of what?⁴⁹

PARTICIPANT, BUNURONG LAND COUNCIL ROUNDTABLE

Traditional Owners highlighted that joint management is often framed as an outcome, rather than as a point on a pathway to sole management.⁵⁰ Co-Chair of First Peoples' Assembly of Victoria, Rueben Berg (Gunditjmara) said, 'I think we've seen joint management in lots of places as outcomes. I think we need to look at opportunities to look for sole management by First Peoples of some of these matters'.⁵¹

Traditional Owners expressed the desire for greater decision-making power, and the transition of decision making to support sole management. FVTOC submitted:

Practical forms of 'Joint management' are typically enabled via alternative arrangements between Traditional Owner Corporations and the land manager (Parks Victoria) such as via services agreements or specific procurement ... to enable or allow Traditional Owner Corporations to undertake any on ground management activities ... Traditional Owner Corporations are administratively treated by the land manager as a contractor.

Legislative reform, including the ability to appoint Traditional Owner Group Entities as land managers, must be progressed to enable transition towards direct and sole Traditional Owner management which prioritises Indigenous cultural safety and ecological knowledge.⁵²

FEDERATION OF VICTORIAN TRADITIONAL OWNER CORPORATIONS

Some Traditional Owners rejected joint management and Aboriginal title as a pathway to land justice. For example, one participant from a roundtable with Barengi Gadjin Land Council stated:

We don't need more land handed back to us in Aboriginal title that is Crown land, normally it's already protected. You can't develop it. We need large areas of farming land in order to get into some economic development stuff. We need parcels of land in towns in order to set up businesses and develop houses.⁵³

PARTICIPANT, BARENGI GADJIN LAND COUNCIL ROUNDTABLE

Others highlighted that very little land had been transferred as freehold title with unrestricted rights of use and access.⁵⁴ As highlighted in Chapter 11: Traditional Owner settlements, only 65 hectares of land has been transferred as freehold title to Traditional Owners under RSAs.⁵⁵ This is in part due to the TOSA limitation that only unreserved public land can be transferred as freehold title.⁵⁶

The Taungurung Land and Waters Council Aboriginal Corporation (Taungurung Land and Waters Council) submitted:

While Aboriginal title ... has brought significant benefits, [Taungurung Land and Waters Council] has full and unfettered ownership of very little traditional land as freehold title — and that is made up of either those few land parcels for which government had no further use, or land purchased by [Taungurung Land and Waters Council] from its own financial resources.⁵⁷

TAUNGURUNG LAND AND WATERS COUNCIL ABORIGINAL CORPORATION

Minister Dimopoulos accepted the statement that 'what is offered in terms of rights that attach to Aboriginal Title are a shadow, if you like, of the rights that are offered by freehold title'.⁵⁸ Minister Dimopoulos further acknowledged that 'there remain significant barriers to First Peoples realising their aspirations for legal title, management and ownership of land'.⁵⁹ The Minister also acknowledged that Aboriginal title is 'strictly limited', including by the requirement of co-management, and does not 'fully enable self-determined decision-making about care for Country by Traditional Owners'.⁶⁰ Minister Dimopoulos indicated that the Victorian Government's proposed reform of public land legislation⁶¹ will seek to address this barrier.⁶² However, Yoorrook was not provided with any dates or details for the reforms to substantiate this promise.

Traditional Owners’ understanding of caring for Country is not shared by the State

As outlined in Chapter 6: Country, First Peoples’ conception of caring for Country is fundamentally different to Western conceptions of land ownership and management. Traditional Owners act as custodians for Country, caring for it holistically. In contrast, Western conceptions of land ownership, imported to Victoria from English law, apply a use-based approach.⁶³ This fragments land into distinct parcels.⁶⁴ As noted in the Cultural Landscapes Strategy (discussed below), while specific clauses in the legal framework recognise Traditional Owners’ exceptional status, ‘the overall framing continues to regard activities conducted by Traditional Owners on country as impacts on the environment to be regulated’.⁶⁵

Yoorrook heard that Western land management approaches continue to dominate and limit Traditional Owners’ opportunities to engage in cultural practices. Paul Paton told Yoorrook that:

[T]he significant barrier there is the Western land management regimes that don’t fully align with Traditional Owner cultural practices and needs to — needs as far as our spiritual — our obligations to manage Country, those regimes don’t facilitate that.⁶⁶

PAUL PATON

Western land management frameworks divide land and responsibilities into separate domains, such as forest, water, wildlife, mineral and other resources. This divisive approach does not sit well with holistically caring for Country.⁶⁷ These conflicting approaches reinforce the disadvantage and dispossession experienced by Traditional Owners.

Then Minister for Treaty and First Peoples the Hon Gabrielle Williams MP⁶⁸ acknowledged:

Rather than working with First Peoples to sustainably manage Victoria’s lands and waters, the State imposed processes of land and water management derived from foreign lands and climates.⁶⁹

MINISTER GABRIELLE WILLIAMS MP

While there has been increasing recognition of the need to bridge these worldviews in initiatives like the Cultural Landscapes Strategy,⁷⁰ Minister Dimopoulos acknowledged that the State’s frameworks for advancing self-determination are ‘nowhere near enough’.⁷¹ Minister Dimopoulos further stated:

I ... absolutely accept that we are effectively trying to retrofit what is and always should have been Traditional Owner-led management of Country, within the constraints of a colonial legislative framework.⁷²

MINISTER STEVE DIMOPOULOS MP

State laws disconnect Traditional Owners from Country

Country has had ‘layers and layers ... of colonial legislation built up on it’⁷³ which disconnect Traditional Owners from Country. For example, Aboriginal Housing Victoria explained:

In Victoria, we have the effect of the Native Title Act. We have the Traditional Owner Settlement Act in Victoria, and we have our Aboriginal Heritage Act. They’re layers of legislation that lay across our land and attempt to separate our continuing connection to country. That’s part of the struggle.⁷⁴

ABORIGINAL HOUSING VICTORIA

This disconnection reinforces the ongoing dispossession and trauma experienced by Traditional Owners. For example, Paul Paton explained that:

Colonisation and the dispossession of land and natural resources is not only in the past ... There are active forms of dispossession that are continuing to be systematically applied by the State of Victoria through public land management and administration.⁷⁵

PAUL PATON

Minister Dimopoulos recognised the barriers presented by existing legislation to achieving self-determination, stating: ‘we need to do more and better, and I think reforming some of those laws that barely mention Traditional Owners in them would be a very good start’.⁷⁶

Again, Yoorrook is yet to hear of upcoming law changes or any timeline to achieve change.

THE COMPLEX JOINT MANAGEMENT FRAMEWORK

The legal framework supporting joint management sits within a complex landscape of overlapping strategies, policies, frameworks, action plans and reporting mechanisms.⁷⁷

As outlined in Chapter 3: Self-determination, the Victorian Government is committed to supporting First Peoples’ rights to self-determination. The Victorian Aboriginal Affairs Framework 2018–2023 (VAAF) sets statewide goals and measures to enable self-determination.⁷⁸ VAAF Goal 18 is the realisation of Aboriginal land, water and cultural rights,⁷⁹ including measure 18.1.5: ‘Number of Joint Management Plans and area of land covered’.⁸⁰ Progress is reported annually through the Victorian Government Aboriginal Affairs Report (VGAAR).⁸¹ Public service actions to enable self-determination under the VAAF are guided by the Victorian Government Self-determination Reform Framework.⁸²

As the primary agencies responsible for administering public land, the Department of Energy, Environment and Climate Action (DEECA) and Parks Victoria are the principal partners in joint management arrangements with Traditional Owners.⁸³

PUPANGARLI MARNMARNEPU ‘OWNING OUR FUTURE’ ABORIGINAL SELF-DETERMINATION REFORM STRATEGY 2020–2025

In 2019, DEECA’s predecessor, the Department of Environment, Water, Land and Planning (DEWLP), developed *Pupangarli Marnmarnepu ‘Owning our future’ Aboriginal Self-Determination Reform Strategy 2020–2025* (Pupangarli Marnmarnepu) to implement its obligations under the Victorian Government Self-determination Reform Framework.⁸⁴ According to Pupangarli Marnmarnepu, it ‘sets the strategic direction, outcomes and priorities for DEWLP to respond to Aboriginal self-determination’.⁸⁵ Pupangarli Marnmarnepu specifies four outcomes for self-determination — people and cultural capability, systems that respect Aboriginal decision-making and self-governance, First Peoples’ rights to Country, and transparent transfer of powers and resources to ensure accountability.

Implementation of Pupangarli Marnmarnepu is facilitated through a series of annual implementation action plans, which DEECA incorporate into its annual business plans. Progress against actions and outcomes is reported through the VGAAR.⁸⁶ The process of implementation, evaluation and monitoring of Pupangarli Marnmarnepu is overseen by the statewide Caring for Country Partnership Forum. This is a Traditional Owner-led forum comprising representatives from 12 formally-recognised Traditional Owner corporations and representatives from DEECA and Parks Victoria.⁸⁷ Minister for Climate Action, Energy and Resources the Hon Lily D’Ambrosio MP admitted to Yoorrook that the Victorian Government will not achieve the outcomes it has promised under Pupangarli Marnmarnepu⁸⁸.

VICTORIAN TRADITIONAL OWNER CULTURAL LANDSCAPES STRATEGY

The Cultural Landscapes Strategy recognises the land ‘as a tapestry of interwoven cultural landscapes that are the product of the skills, knowledge and activities of Aboriginal land managers over thousands of generations’.⁸⁹ The concept of a cultural landscape is described as ‘a bridging tool ... between Indigenous and “western” world views, between Natural Resource Management (NRM) and caring for Country’.⁹⁰ The Cultural Landscapes Strategy is intended to inform and guide Victoria’s land and forestry management strategies and plans.⁹¹

The Strategy describes how ‘[t]hrough partnership in a co-design process, [FVTOC], with Parks Victoria and [Department of Environment, Land, Water and Planning] worked in self-determination mode with Traditional Owners to understand how Traditional Owners wish to express their cultural values, practices, interests and knowledge associated with planning and management for all Countries in Victoria’.⁹²

The Cultural Landscapes Strategy overlaps with formal joint management arrangements, shared governance arrangements and collaborative management.⁹³ It has potential for broader application across all land tenures. It also asserts the aspiration for sole management over specified areas.⁹⁴

VICTORIAN TRADITIONAL OWNER CULTURAL FIRE STRATEGY

During 2017 and 2018, Traditional Owners led the development of the Cultural Fire Strategy. Its purpose is ‘to reinvigorate cultural fire through Traditional Owner led practices across all types of Country and land tenure; enabling Traditional Owners to heal Country and fulfil their rights and obligations to care for Country’.⁹⁵ The Cultural Fire Strategy focuses on increased collaboration with land and fire management agencies.⁹⁶ It was co-designed by the Department of Environment, Land, Water and Planning, Parks Victoria, the Country Fire Authority and Traditional Owners and knowledge holders.⁹⁷ Like the Cultural Landscapes Strategy, it goes beyond joint management to facilitate cultural burning across land tenures, not limited to public land.⁹⁸

Cultural burning is funded by the State as part of Reducing Bushfire Risk Funding, with \$22.5 million committed over four years in the Victorian State Budget 2021–22.⁹⁹ This includes \$6.3 million for Cultural Fire Grants.¹⁰⁰ In the 18 months to December 2023, 26 cultural burns were conducted by Traditional Owners with the support of Forest and Fire Management Victoria.¹⁰¹ Cultural fire and cultural burning is also discussed in Chapter 16: Climate change, renewables and emergencies.

PARKS VICTORIA MANAGING COUNTRY TOGETHER FRAMEWORK

In 2019, Parks Victoria launched its Managing Country Together Framework, as ‘a broad agenda that focusses on Traditional Owners as land owners and managers’ with the stated aim for Parks Victoria ‘to become a better partner in park management and meet our obligations under the *Parks Victoria Act 2018*’.¹⁰²

Parks Victoria must monitor and evaluate its performance to ensure progress towards the outcomes in the framework.¹⁰³ Program indicators include: ‘Satisfaction of joint management partners’ and ‘Percentage of actions in joint management operations plans implemented’.¹⁰⁴ Despite outlining a complex reporting framework,¹⁰⁵ there is no clear publicly-available information about how Parks Victoria is progressing against its stated objectives.

BUILDING CULTURAL CAPABILITY AND CULTURAL SAFETY

DEECA and Parks Victoria have developed internal frameworks and training to improve staff cultural capability when working with Traditional Owners and First Peoples in Victoria, as well as improving the cultural safety of First Peoples staff members.¹⁰⁶ DEECA’s initiatives include the Aboriginal Cultural Capability Framework and the Aboriginal Cultural Safety Framework. Parks Victoria has an Aboriginal Employment and Wellbeing Plan and is developing a Cultural Safety Framework which is linked to its Managing Country Together Framework.

Government accountability under these and other strategies and frameworks is discussed in Chapter 5: Accountability.

Complex frameworks disempower and lack accountability

The State policies, strategies and frameworks that interact with joint management are complex and lack accountability. Over the past decade, considerable resources have been invested in developing a range of frameworks, strategies and action plans committing government agencies to change the way they work with Traditional Owners (see box: The complex joint management framework). Yoorrook heard that despite good intentions, responsibility for implementation and evaluation of such policies, frameworks and strategies is frequently unclear and lacks sufficient resourcing (see generally Chapter 5: Accountability). For example, FVTOC submitted:

Even where strategies have been developed to empower Traditional Owners, too often they are only implemented in a piecemeal manner. It is important that where strategies already exist, they are fully implemented and adequately resourced with the oversight of Traditional Owners.¹⁰⁷

FEDERATION OF VICTORIAN TRADITIONAL OWNER CORPORATIONS

Minister for Climate Action, Energy and Resources the Hon Lily D’Ambrosio MP acknowledged the State’s failure to deliver on commitments regarding advancing self-determination in the resources sector and accepted that decision-making and power has to shift.¹⁰⁸ In relation to Pupangarli Marnmarnepu, Minister D’Ambrosio admitted that her department and the Government will not achieve the four outcomes specified in the strategy, including that the State ‘is accountable and transparent in its efforts to transfer relevant decision-making powers and resources to Traditional Owners and Aboriginal Victorians’. Minister D’Ambrosio said:

[W]e will work as hard as we can to do that. But I will say, though, that I realise it won’t be achieved by then ... we have not delivered anywhere near what we say we would in that five-year strategy, and we have to try harder and work harder and get better outcomes.¹⁰⁹

MINISTER LILY D’AMBROSIO MP

Implementation of the various land policies, strategies and frameworks is also complicated by a lack of clear accountability across multiple agencies and government portfolios.¹¹⁰ In the words of one participant in a roundtable with the Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation, ‘[t]hey bounce off each other’.¹¹¹ Ngarra Murray also told Yoorrook:

I think we’re unravelling all of those existing policies, there are so many arms of government when you power map it, so I think there’s some consolidation that needs to happen as well. That’s something that we are considering, yeah, through our work with Treaty.¹¹²

NGARRA MURRAY, CO-CHAIR OF FIRST PEOPLES’ ASSEMBLY OF VICTORIA

First Peoples identified there are significant barriers to implementing various strategies.¹¹³ For example, FVTOC said:

Implementation of strategies is a major hurdle for Traditional Owners across the board. Development and implementation of various strategies, often in partnership with government, reach a certain point and then stall at the point where change management and a cultural shift needs to follow.¹¹⁴

FEDERATION OF VICTORIAN TRADITIONAL OWNER CORPORATIONS

Yoorrook heard that the current system is a barrier to full implementation, requiring fundamental change to achieve better outcomes. Rueben Berg commented:

[O]ftentimes these strategies go as far as they can within the current systems. And so within those systems they are pushing the boundaries, but they come up against, at a certain level, a barrier, and so whilst those barriers are there, the government should be implementing those in full, but we can use the Treaty negotiations to try and remove some of those barriers that might be prohibiting some of those initiatives achieving the stronger outcomes they could be achieving.¹¹⁵

RUEBEN BERG, CO-CHAIR OF FIRST PEOPLES’ ASSEMBLY OF VICTORIA

Minister Dimopoulos recognised the need for greater accountability, stating: ‘all those frameworks ... they seem a little bit scattered. They are there for good purpose and for good reason. What perhaps is missing is an opportunity to have an accountability’.¹¹⁶

Failure of government partnerships

Government’s commitment to act as partners is not met in practice. Unequal distribution of power, conflicting worldviews, institutional inertia and a lack of accountability mean that government agencies are not acting as partners with Traditional Owners in joint management arrangements.

Yoorrook heard instances of Traditional Owners feeling dismissed and disregarded, with agencies adopting a box-ticking approach to engagement.¹¹⁷ For example, Keicha Day (Gunditjmara, Yorta Yorta) described her experience: ‘[W]e go into meetings as First Nations people, you know, sitting at the table, is this a prop? Are you ticking a box or is it going to be meaningful?’.¹¹⁸

Similarly, a participant in a roundtable with Nindi-Ngujarn Ngarigo Monero stated: ‘You know, it’s lip service consultation. And I know because I’ve been involved in some of it and pulled right back on it because I just saw it as a tick-a-box approach’.¹¹⁹

Another participant in a roundtable with Bunurong Land Council also expressed frustration at government agencies’ lack of responsiveness:

[T]hese are the significant things that need to be addressed ... And they — the fellas on the ground will say — might say, ‘Yeah. Yeah. Yeah’, you know, give a little lip service and go back to the top, and, ‘Yeah. We’ll get back to them when we’re ready’. So beyond the words it’s got to come actions.¹²⁰

PARTICIPANT, BUNURONG LAND COUNCIL ROUNDTABLE

Others recounted the experience of being rebuffed when they tried to protect Country. Keicha Day gave the example of proponents seeking permission for exploration activities but not being willing to accept ‘no’: ‘[Y]ou’re asking us to say yes to this. But then if we say no, we’re going to get taken to court like we’re the criminals, and we have to prove, like, why it’s a no’.¹²¹

This response demonstrates a lack of trust in Traditional Owners’ knowledge and capacity to make decisions, which was also reflected in FVTOC’s evidence to Yoorrook:

Traditional Owner Corporations ... feel like Government underestimates the capacity of Traditional Owners. ... This seeming lack of trust has manifested itself in the substandard implementation of strategies, agreements and recommendations. ... Even Traditional Owner Corporations that have signed [RSA] s with the State face difficulty in seeing the terms of those agreements upheld.¹²²

FEDERATION OF VICTORIAN TRADITIONAL OWNER CORPORATIONS

Consequently, Traditional Owners’ engagement as partners in joint management can be tokenistic and limited. Describing the experience, a participant in a roundtable with Dja Dja Wurrung Clans Aboriginal Corporation said:

You get your joint management board set up, majority traditional owners, a couple of government agencies, Parks and maybe DELWP or DEECA, they call them now. ... And they manage the park. But what are we doing? We are cleaning up weeds, we are fixing fences, cleaning up all the white man’s bullshit.¹²³

PARTICIPANT, DJA DJA WURRUNG CLANS ABORIGINAL CORPORATION ROUNDTABLE

Traditional Owners highlighted that the foundation of trust is necessary to support self-determination. FVTOC stated:

Genuine self-determination will require a shift of mindset on the part of Victorian Government departments and agencies, and an increase in a willingness to trust Traditional Owner corporations to deliver.¹²⁴

FEDERATION OF VICTORIAN TRADITIONAL OWNER CORPORATIONS

Environmental Justice Australia noted that tension and ambiguity may be inherent in the concept of joint management:

Joint management relies on recognition, formally and practically, of Traditional Owner authority, or in other words Traditional Owner entities functioning as quasi-public authorities alongside State institutions. Decision-making, operations and conduct may be harmonious as between them but forms of dual authority are susceptible to ambiguity and tension ... Such ambiguities or tensions do not necessarily denote bad faith or impropriety on the part of State agencies but rather conflicting duties or operational space.¹²⁵

ENVIRONMENTAL JUSTICE AUSTRALIA

These tensions between partners may be inevitable when one party is the ultimate authority with more resources. In evidence, Minister Dimopoulos stated: ‘I understand that the State has more power, more resources, and sets a tone in many of these relationships, I am not pretending otherwise’.¹²⁶ He also recognised the need to:

[M]ake sure the Department in all its dealings with Traditional Owners, all its dealings on Country, on their Country, is done in a way that ... gives them agency and respects their rights. ... people have to be trained, have to understand, and have to know, and training is vital.¹²⁷

MINISTER STEVE DIMOPOULOS MP

Traditional Owners’ capacity to fulfil the role of partners in joint management is hampered by insufficient and unequal resourcing. Ngarra Murray told Yoorrook that ‘[a]lthough First Peoples have the expertise necessary to care for Country, and are already involved in joint land management with positive results, we lack the resources necessary to do so properly’.¹²⁸ FVTOC also told Yoorrook of the need for greater

resourcing for Traditional Owner groups. FVTOC submitted that ‘[a]longside any collective state-wide reform work, it is vital that Traditional Owner Corporations are funded to build capacity and expertise, which will allow them to develop their own individual pathways’.¹²⁹ FVTOC also implored that:

Resourcing must be provided to promote nation building and strengthen Traditional Owner Nation resilience and enable Traditional Owner Nations to lead the process to heal and strengthen Country through their governance systems and with active, adaptive management.¹³⁰

FEDERATION OF VICTORIAN TRADITIONAL OWNER CORPORATIONS

Environmental Justice Australia also said that current resourcing levels do not match the responsibilities demanded of Traditional Owners in joint management:

This quasi-public role, however, is typically expected to be performed without comparable technical and financial resources available to ordinary public (State) authorities. Public funding does flow as a consequence of formal recognition ... but ... it is neither comparable to other agencies performing public functions or sufficient and adapted to the facts of historic injustices and current pathways to build new models of jurisdiction and operational delivery.¹³¹

ENVIRONMENTAL JUSTICE AUSTRALIA

Traditional Owners referred to instances of unequal resourcing which limited their capacity to engage in joint management.¹³² For example, one participant in a roundtable with Barengi Gadjin Land Council reflected:

It’s kind of unfair that they’ll give you some, here you go. But joint management, sometimes they don’t even give you the keys to access the joint management stuff. ... In Bendigo, there’s 30,000 square metres of coverage in the RAP for here, but they’ve given us enough for 8 rangers to carry — Parks have 50. Like that’s not equality. How are you supposed to joint manage when you’ve got 50 and we’ve got 8? How do you create — going back to what you were talking about, creating wealth within community, or even just trying to create jobs. It’s not fair.¹³³

PARTICIPANT, BARENGI GADJIN LAND COUNCIL ROUNDTABLE

Similarly, another participant reflected on lack of funding and sustainable economic development opportunities under Aboriginal title, stating: ‘They don’t provide us with the opportunity to get ourselves above where we are now. The equity and funding to do the same job that Parks Vic are doing, in the same places, that’s not there’.¹³⁴

Transferring responsibility without providing sufficient resources places an unsustainable burden on Traditional Owners. Rueben Berg told Yoorrook: ‘Oftentimes, ... there is a huge impost put on Traditional Owner groups around what the obligations are, but without the resources to back it up’.¹³⁵ This burden is compounded by government agencies seeking to engage with Traditional Owners without recognition of the value of that engagement and cost to Traditional Owners.¹³⁶ For example, FVTOC submitted that Traditional Owner corporations:

are increasingly being contacted by different government departments and their agencies, with the expectation that they provide input on various activities. While it is certainly a positive development that Traditional Owners are now being consulted with in this way, in the absence of proper resourcing, these organisations often struggle to make fully informed contributions to these conversations.¹³⁷

FEDERATION OF VICTORIAN TRADITIONAL OWNER CORPORATIONS

The State’s inadequate resourcing of Traditional Owner corporations generally reflects Traditional Owners’ concerns about lack of trust and inadequate value placed on their expertise.¹³⁸ FVTOC noted that co-designed strategies for landscape management should be ‘fully implemented and adequately resourced’. Commenting on the unequal allocation of resources between Traditional Owners and government agencies generally, Paul Paton stated: ‘there is an inequity there, and it doesn’t recognise the breadth of work that Traditional Owners are faced [with] on a day-to-day basis’.¹³⁹ One participant in a roundtable with Barengi Gadjin Land Council called for payment for specialist services:

So cultural burning and stuff like that ... we should be paid to do that as a specialty service, not just — as a partnership with [Parks Victoria] or the fire service or whatever. Like people pay us for our cultural knowledge ... And if you go to any of these statewide meetings, people always talk about, you should be paid for your intellectual knowledge. Well, they can pay us.¹⁴⁰

PARTICIPANT, BARENGI GADJIN LAND COUNCIL ROUNDTABLE

Inadequate resourcing of Traditional Owners is also linked to the failures in implementation and accountability under the frameworks, strategies and action plans. Paul Paton reflected on the funding for the implementation of the Cultural Fire Strategy:

My mind goes to the Cultural Fire Strategy which proposed an implementation budget of \$122 million. The government provided \$20 million across all Traditional Owners and nothing further, so ... is it going to meet its objective — the desired outcomes? I think not.¹⁴¹

PAUL PATON

First Peoples called for greater resourcing to enable them to engage as equal partners and care for Country.¹⁴² For example, CEO of the Victorian Aboriginal Community Controlled Health Organisation Aunty Dr Jill Gallagher (Gunditjmara) said:

We must support our Traditional Owner groups, resourcing them properly to play their fullest part in managing this land. If they are to be partners of the State they must be resourced as equal partners, and they must be resourced to fully care for Country.¹⁴³

AUNTY DR JILL GALLAGHER

First Peoples also called for security of funding for Traditional Owner groups beyond the usual government budget cycles. For example, Paul Paton said:

[T]here’s several elements at play, the cycles of government, budget processes that don’t allow government to commit beyond three years. There needs to be agreements that could be established through Treaty, perhaps, that commit secure funding regardless of ... government.¹⁴⁴

PAUL PATON

FVTOC also submitted that ‘[f]or real self-determination to occur, Traditional Owners need to be able to make informed strategic decisions about how they manage their Country. This requires much greater resourcing than is currently available’.¹⁴⁵

Administrative burden on Traditional Owners

In addition to inadequate resourcing, Traditional Owners bear an administrative burden to navigate complex and disconnected funding arrangements when allocating resources to care for Country. As outlined in Chapter 11: Traditional Owner settlements, RSAs include funding agreements. Traditional Owners can also apply for funding under various other arrangements, including services agreements and grants linked to collaborative projects, such as cultural burning.¹⁴⁶

Seeking and managing funding from multiple sources is complex and carries an administrative burden arising from extensive application and acquittal processes. This burden diverts resources which could instead be used to care for Country. For example, FVTOC submitted:

Traditional Owner Corporations are too reliant on smaller grant funding, and this leads to onerous reporting and acquittal obligations. It is not uncommon to hear of Traditional Owner Corporation projects requiring multiple grants from different agencies — all with different reporting requirements. A sustainable funding model would allow Traditional Owners to pursue their own interests and priorities, rather than delivering on the areas that Government wants to fund.¹⁴⁷

FEDERATION OF VICTORIAN TRADITIONAL OWNER CORPORATIONS

Minister Dimopoulos acknowledged the burden of reporting and acquittal and noted that DEECA was working with the Gunditjmara People on a new acquittal model for contracts on their Country.¹⁴⁸ He stated he was keen to avoid a situation ‘where you employ people just to be able to catch up with where government bureaucracy is. That would be the worst outcome. The best outcome is to ... do the work of the Traditional Owner, not the work of the Government of Victoria’.¹⁴⁹

The complex funding arrangements surrounding joint management also mirror and reinforce the Western framework of land management.¹⁵⁰ Funding opportunities are compartmentalised, focusing on specific issues or areas, rather than taking a whole-of-Country or cultural landscapes approach.¹⁵¹ For example, a participant in a roundtable with Bunurong Land Council reflected:

They can say well here’s some funding, and then you’ve got to have another part of it, the fellas on the ground to do it. And then there’s another thing of — right now we’ve got two fellas, now we want stuff to be able to do in fire management, now we want stuff to be able to do in eco and environmental stuff. But, hey, no hang on, stop now. Now let’s go back, get some more funding, you know, it’s always chasing the resources.¹⁵²

PARTICIPANT, BUNURONG LAND COUNCIL ROUNDTABLE

Minister Dimopoulos said he had received feedback from Traditional Owners that the government’s approach of funding in silos for specific initiatives, such as an invasive species fund, does not align with a whole-of-Country approach.¹⁵³ Minister Dimopoulos noted that DEECA are considering a whole-of-Country funding approach, recognising that ‘in the absence of that, what we are doing is effectively imposing more on Traditional Owners to navigate the system to find bits of funding that collectively ensure an outcome of care for Country in the way they know to care for Country’.¹⁵⁴

Capacity building and upskilling

First Peoples highlighted the need for capacity building and upskilling to enable them to take responsibility for land management. First Peoples noted there were few opportunities available for culturally safe learning and training tailored to First Peoples’ approaches to caring for Country.¹⁵⁵

The need for capacity building is reflected in the Cultural Landscapes Strategy, which incorporates a commitment to co-capacity building (both Traditional Owners and agencies).¹⁵⁶ Paul Paton highlighted the impact of dispossession and the need to build capacity as part of the Strategy.¹⁵⁷ Referring to the partial loss of First Peoples’ language and knowledge, he stated:

[W]e need to be able to ensure that all these components are working together that Traditional Owners are able to recover those knowledges such as language and land management practices that build on the existing knowledge that’s been passed on through generations, and to be able to test that knowledge ... through research partnerships, to be able to apply those practices and to continually learn by doing on Country, and to be able to address those ... issues across both sides of the desk, I think, in regards to government and Traditional Owners, and have a deep understanding of ... what those needs are and work together to be able to resolve those challenges.¹⁵⁸

PAUL PATON

Evidence received by Yoorrook pointed to the need to support First Peoples to develop skills to engage with regulatory frameworks on their own terms. Planning and development researcher and Director of the Centre for Urban Research¹⁵⁹ Professor Libby Porter referred to a

call for the establishment of dedicated resourcing for ‘treaty, lands and resources’ type capacities for all traditional custodians / First Nations in Victoria. The international evidence demonstrates the importance of in-house mapping and land research capacities to enable First Peoples to produce knowledge on their own self-determining terms and then be able to translate that knowledge into settler planning and environmental management regimes.¹⁶⁰

PROFESSOR LIBBY PORTER

FVTOC highlighted the benefits that flow from trusting First Peoples and developing skills to work on Country:

There is the dual benefit that comes from trusting Traditional Owners to deliver projects on their own Country. Not only are Aboriginal people being employed on-Country, but they are also developing skills to deliver more projects into the future. Particularly in parts of regional Victoria, where jobs and skills can be scarce, there is huge value in developing the capacity of Traditional Owner Corporations and their Aboriginal workforces, as they have such strong, ongoing ties to those areas.¹⁶¹

FEDERATION OF VICTORIAN TRADITIONAL OWNER CORPORATIONS

Experience of other forms of collaborative management is mixed

As outlined above, ‘joint management’ has a technical legal meaning in the context of the *CFLA* and *TOSA*, which is the primary focus of this chapter. However, the term ‘joint management’ is sometimes used to refer to other collaborative land management arrangements in which Traditional Owners have a role, whether formal or otherwise.

These collaborative land management arrangements include:

- working with local government through consultation and engagement rather than collaborative management.
- supplementary contracts and agreements with Traditional Owners to provide services on land, including operational or on-the-ground activities, rather than at a strategic level.
- Indigenous Protected Areas, a Commonwealth-funded program administered by the National Indigenous Australians Agency that reserves areas of land and sea for management by Traditional Owners ‘in accordance with Traditional Owners’ objectives’.¹⁶² In general, and especially on freehold land, Indigenous Protected Areas are further along the continuum to sole management by Traditional Owner groups when compared to joint management.
- UNESCO World Heritage Listing, which applies to some areas within Indigenous Protected Areas in Victoria such as Budj Bim Cultural Landscape, recognising Traditional Owners’ exceptional role in caring for Country.
- Immediate Protection Areas is a program to protect state forest areas from timber harvesting (as part of the Victorian Forestry Plan). Immediate Protection Areas include forest in the Strathbogie Ranges, Central Highlands, Mirboo North and East Gippsland.¹⁶³ Traditional Owners are appointed as members of an Eminent Panel for Community Engagement for each area.¹⁶⁴
- the Indigenous Land and Sea Corporation, which is a Commonwealth entity established under the *Aboriginal and Torres Strait Islander Act 2005* (Cth). Its primary grant program assists Indigenous groups to acquire and manage rights and interests in land, saltwater and freshwater Country.¹⁶⁵

Yoorrook heard that First Peoples’ experience of different collaborative management approaches has been varied. Some arrangements and initiatives provide greater authority and autonomy than joint management under *TOSA*, such as Indigenous Protected Areas, but still suffer from the same resourcing issues.¹⁶⁶ Other arrangements have similar failings to *TOSA* or merely engage Traditional Owners as service providers or consultants.¹⁶⁷

The way forward

Joint management is a step towards recognising First Peoples’ rights and authority in caring for Country, but it does not achieve land justice. While some Traditional Owner groups are successfully involved in work on Country under joint management arrangements, currently joint management does not represent true self-determination for First Peoples. Aboriginal title has strict conditions maintaining existing use and access rights. The complex regulatory framework continues to disconnect First Peoples from Country. First Peoples face challenges in engaging as partners due to conflicting understandings, insufficient resources and government failures to fulfil commitments.

To achieve land justice, the Victorian Government must support First Peoples to move from joint management to sole management of land, aligning with self-determination principles.¹⁶⁸ This requires a clear legal pathway to transfer power, authority, control and resources to Traditional Owners based on the aspirations of First Nations groups.¹⁶⁹

The Victorian Government’s review of public land legislation could facilitate this transition. Minister Dimopoulos indicated that the potential for sole management is ‘on the table’ and supported the eventual appointment of Traditional Owners ‘as land managers in the same order of magnitude ... as Parks Victoria’.¹⁷⁰ Sole management should be a key objective of the new legislative framework. However, Yoorrook is concerned about the lack of a clear timeframe for these reforms and the inadequacy of existing frameworks. Yoorrook calls for a comprehensive overhaul of the current land management policy landscape.

Legal reforms should simplify the overlapping strategies related to joint management. Traditional Owner-led frameworks such as the Cultural Landscapes Strategy should be adequately resourced and implemented.¹⁷¹ The goal should be to create a pathway to sole management with clear progress measures.

Increased resources and simpler funding arrangements are crucial for both joint and sole management.¹⁷² Potential revenue sources include rate rebate schemes, payments for cultural burning, support for cultural tourism and creation of more employment opportunities, including in National Parks.¹⁷³ Long term, secure funding which is not tied to specific sources, budget cycles or political sentiment is essential for Traditional Owners to act as partners and ultimately resume sole management responsibility.

The burden of multiple funding applications and acquittals continues to hinder Traditional Owners in caring for Country. A streamlined funding process is necessary, coupled with a shift in government mindset to view Traditional Owners as custodians rather than service providers. A whole-of-Country funding approach should replace fragmented allocations.

Support for sole management should include culturally safe capacity building opportunities for Traditional Owners. These opportunities should be specifically developed for First Peoples founded on their holistic conception of and relationship to Country.

The government must also enhance the cultural capability of its workforce, ensuring accountability and measurable outcomes based on Traditional Owners’ experiences. Government departments and agencies like DEECA and Parks Victoria do have cultural capability frameworks and training in place. However, there needs to be clear accountability for and measurement of outcomes that focuses on Traditional Owners’ experience of working with government staff. This is essential for government agencies to recognise and respect the agency of First Peoples in caring for Country and to bridge the differing worldviews between fragmented Western land management practices and the holistic approach of First Peoples.

Recommendations

RECOMMENDATION 34

To support self-determination, the Victorian Government must amend public land legislation to provide:

- a. Opportunities for transition to direct management by First Peoples of public land, led by the aspirations of Traditional Owners, and continuing to provide public access where appropriate;
- b. Transfer of authority to Traditional Owners to determine management priorities and methodologies, including informed by Traditional Owners’ knowledge of Country; and
- c. Related sources of ongoing funding.

RECOMMENDATION 35

The review of Victoria’s public land legislation must properly capture Traditional Owner aspirations and priorities and enable flexibility and evolution over time. The review of public land legislation must not limit future treaty-making or in any way impede Traditional Owners from asserting their rights and interests.

RECOMMENDATION 36

Further to recommendations 18.1 and 18.2 of the final report of the Commonwealth Royal Commission into National Natural Disaster Arrangements (October 2020), the Victorian Government must:

- a. Support and resource the establishment by First Peoples of an independent First Peoples Cultural Fire Authority, led and staffed by First Peoples to facilitate three key functions:
 - i. enable a pathway for Traditional Owner-led cultural fire development and practice to occur within the current regulatory environment;
 - ii. house the function for developing policy that seeks to reform and decolonise the regulatory environment in seeking pathways to fully transition Traditional Owner-determined fire to Traditional Owner groups; and
 - iii. enable a pathway for Traditional Owner carbon and emissions reduction practice.
- b. Conduct a review of existing fire related legislation, policies, procedures and codes of practice in the State of Victoria to identify opportunities to better recognise and integrate:
 - i. First Peoples’ fire knowledge and practices; and
 - ii. First Peoples’ knowledge of Country and Aboriginal cultural heritage values (tangible and intangible) requiring protection.
- c. Provide Traditional Owner groups with ongoing funding to develop and implement cultural fire plans for Country.

Endnotes

1. Federation Victorian Traditional Owners Corporation, Submission 376 (Land, Sky, Waters), 13.

2. Transcript of roundtable with Bunurong Land Council, 2 November 2023, 18, served on the State of Victoria on 1 April 2024.

3. Joint management and leaseback arrangements for national parks were also a recommendation of the Royal Commission into Aboriginal Deaths in Custody: Australian Human Rights Commission, *Royal Commission into Aboriginal Deaths in Custody (Report, 1991), Recommendation 315*.

4. See Department of Energy, Environment and Climate Action, Response to NTP-003-004 — ‘*The Legal and policy frameworks concerning the ownership, management and administration of public land and natural resources*’, 10, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 2 November 2023; Department of Energy, Environment and Climate Action, ‘[Joint management](#)’ (Webpage); Department of Land, Water, Environment and Planning, Traditional Owner Agreements Unit, ‘[What is the difference between Cooperative and Joint Management?](#)’ (Webpage); Parks Victoria, ‘[Joint management](#)’ (Webpage).

5. The development of cooperative management, started with the first agreement with the Yorta Yorta Nations Aboriginal Corporation (‘YYNAC’) in 2004. Peter Seidel and Julian Hetey have written: ‘On 10 June 2004, [YYNAC] ... and the Victorian Attorney General, Rob Hulls, declared: “The State [of Victoria] recognises that the Yorta Yorta Peoples are the traditional owners of and have a unique inherent relationship with and responsibility to their country ... In accordance with this recognition, the State will ensure the ongoing important role of the Yorta Yorta Peoples in land and water management decision making relating to the protection, management and sustainability of their country, including cultural and environmental values.”’ See Peter Seidel and Julian Hetey, ‘Summary of the Yorta Yorta Nation Aboriginal Corporation/State of Victoria Co-operative Management Agreement (part one)’ (2004) 6(4) *Indigenous Law Bulletin* 15, 15.

6. See Chapter 11: Traditional Owner settlements for a discussion of agreement making under TOSA.

7. *Traditional Owner Settlement Act 2010* (Vic) s 12(5).

8. Note that in 2004, the Yorta Yorta Nation Aboriginal Corporation entered into cooperative management arrangements under the CFLA that predate TOSA and remain in place (see Table 13.1: Current joint and cooperative management arrangements).

9. Transcript of Paul Paton, 17 April 2024, 57 [5]–[29], 71 [35]–[43].

10. Transcript of Paul Paton, 17 April 2024, 55 [43]–56 [2].

11. Transcript of Uncle Graham Atkinson, 14 April 2024, 22 [10]–[17]; Transcript of Aunty Marjorie Thorpe, 14 April 2024, 25 [21]–26 [14].

12. Transcript of Aunty Marjorie Thorpe, 14 April 2024, 22 [25]–[40]; Transcript of Paul Paton, 17 April 2024, 62 [17]–[46].

13. *Traditional Owner Settlement Act 2010* (Vic) s 12(5), 23.

14. *Conservation, Forests and Lands Act 1987* (Vic) s 82AB.

15. *Conservation, Forests and Lands Act 1987* (Vic) s 82P.

16. *Conservation, Forests and Lands Act 1987* (Vic) ss 82PA.

17. *Conservation, Forests and Lands Act 1987* (Vic) ss 82PA, 82PB.

18. For an overview of the limits on Aboriginal title, see Chapter 11: Traditional Owner settlements.

19. *Traditional Owner Settlement Act 2010* (Vic) s 20.

20. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 52 [257], citing *Traditional Owner Settlement Act 2010* (Vic), Part 3, division 4.

21. *Conservation, Forests and Lands Act 1987* (Vic) s 82PC.

22. Department of Premier and Cabinet, Response to NTP-003-002—‘*Native Title Act 1993 and the Traditional Owner Settlement Act 2010*’, 25, produced by the State of Victoria in response to the Commission’s Notice to Produce 8 November 2023.

23. Note that the Victorian Government holds 7.75 million hectares of reserved Crown land: Department of Energy, Environment and Climate Action, Response to NTP-003-004 — ‘*The Legal and policy frameworks concerning the ownership, management and administration of public land and natural resources*’, 3, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 2 November 2023.

24. Department of Energy, Environment and Climate Action, ‘Yoorrook Justice Commission Land Injustice Inquiry Additional information provided by the Hon Steve Dimopoulos MP, Minister for Environment, and Outdoor Recreation’, 13 August 2024, 2–3, produced by the State of Victoria in response to the Commission’s Notices to Attend dated 12 April 2024.

25. Department of Energy, Environment and Climate Action, Response to NTP-003-004 — ‘*The Legal and policy frameworks concerning the ownership, management and administration of public land and natural resources*’, 10–11, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 2 November 2023.

26. [Cooperative Management Agreement, between Yorta Yorta Nation Aboriginal Corporation and the State of Victoria](#) (2004).

27. Yorta Yorta Traditional Owner Land Management Board, [Joint Management Plan for Barmah National Park](#) (2020).

28. *Traditional Owner Settlement Act 2010* (Vic) s 3; *Conservation, Forests and Lands Act 1987* (Vic) s 82A.

29. Department of Energy, Environment and Climate Action, Response to NTP-003-004 — ‘*The Legal and policy frameworks concerning the ownership, management and administration of public land and natural resources*’, 2, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 2 November 2023.

30. The definition of ‘public land’ under the CFLA and TOSA includes both land that has been ‘reserved’ under the *Crown Land (Reserves) Act 1978* (Vic), and ‘unreserved’ Crown land under the *Land Act 1958* (Vic).

31. *Traditional Owner Settlement Act 2010* (Vic) s 12(2).

32. *Traditional Owner Settlement Act 2010* (Vic) s 12(2). See Department of Energy, Environment and Climate Action, Response to NTP-003-004 — ‘*The Legal and policy frameworks concerning the ownership, management and administration of public land and natural resources*’, 11, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 2 November 2023.

33. Department of Energy, Environment and Climate Action, Response to NTP-003-004 — ‘*The Legal and policy frameworks concerning the ownership, management and administration of public land and natural resources*’, 3, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 2 November 2023.

34. Department of Energy, Environment and Climate Action, Response to NTP-003-004 — ‘*The Legal and policy frameworks concerning the ownership, management and administration of public land and natural resources*’, 13–14, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 2 November 2023.

35. Witness Statement of Minister Steve Dimopoulos MP, 8 March 2024, 14 [74]–[76].

36. Witness Outline of Ngarra Murray, Co-Chair of First Peoples’ Assembly of Victoria, 11 April 2024, 18 [46], citing Yorta Yorta Traditional Owner Land Management Board, ‘[Yorta Yorta Traditional Owner Land Management Agreement](#)’ (Webpage).

37. Transcript of Paul Paton, 17 April 2024, 62 [31]–[33], [41]–[44].

38. Transcript of roundtable with Barengi Gadjin Land Council, 26 October 2023, 15–16, served on the State of Victoria on 1 April 2024; Transcript of Marcus Stewart, inaugural Co-Chair of First Peoples’ Assembly of Victoria, 5 May 2022, 264 [23]–[27].

39. Uncle Dr Wayne Atkinson, Submission 497 (‘Local histories: Koori struggles for Land Justice in Victoria: Exposing the myths’), 19.

40. Transcript of Aunty Marjorie Thorpe, 14 April 2024, 22 [25]–[40], 25 [21]–26 [14].

41. Transcript of Marcus Stewart, inaugural Co-Chair of First Peoples’ Assembly of Victoria, 5 May 2022, 264 [20]–[28].

42. Transcript of Aunty Marjorie Thorpe, 15 April 2024, 22 [30]–[35].

43. Transcript of Uncle Colin Walker, 27 May 2022, 247 [44]–[49].

44. Transcript of roundtable with Nimmie-Caira Land and Water Aboriginal Corporation, 7 December 2023, 12, served on the State of Victoria on 1 April 2024.

45. Transcript of roundtable with Bunurong Land Council, 2 November 2023, 9, served on the State of Victoria on 1 April 2024.

46. Transcript of Aunty Marjorie Thorpe, 15 April 2024, 26 [10]–[14].

47. Environmental Justice Australia, Submission 346, 10.

48. Environmental Justice Australia, Submission 346, 15–16.

49. Transcript of roundtable with Bunurong Land Council, 2 November 2023, 30, served on the State of Victoria on 1 April 2024.

50. Transcript of Rueben Berg, Co-Chair of First Peoples’ Assembly of Victoria, 17 April 2024, 28 [18]–[20]; Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 32.

51. Transcript of Rueben Berg, Co-Chair of First Peoples’ Assembly of Victoria, 17 April 2024, 28 [18]–[20].

52. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 17.

53. Transcript of roundtable with Barengi Gadjin Land Council, 26 October 2023, 16, served on the State of Victoria on 1 April 2024.

54. Transcript of Paul Paton, 17 April 2024, 55 [27]–[36].

55. Department of Premier and Cabinet, Response to NTP-003-026 – ‘*Yoorrook Justice Commission – Land Justice Unit – Response to RFI, 2 February 2024 – Response from Dean Cowie PSM*’, 3–5, 19–22, 31, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 2 February 2024.

56. *Traditional Owner Settlement Act* (Vic) s 12(2). See also Department of Energy, Environment, and Climate Action, Response to NTP-003-004 — ‘*The legal and policy frameworks concerning the ownership, management and administration of public land and natural resources*’, 11, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 2 November 2023.

57. Taungurung Land and Waters Council Aboriginal Corporation, Submission 596 (Land, Sky, Waters), 15.

58. Minister Dimopoulos accepted this statement presented to him by Sarala Fitzgerald (Counsel Assisting), in Transcript of Minister Steve Dimopoulos MP, 16 April 2024, 21 [19]–[21].

59. Witness Statement of Minister Steve Dimopoulos MP, 8 March 2024, 9 [46].

60. Witness Statement of Minister Steve Dimopoulos MP, 8 March 2024, 10 [48].

61. See Engage Victoria, ‘[Renewing Victoria’s public land legislation](#)’ (Webpage).

62. Witness Statement of Minister Steve Dimopoulos MP, 8 March 2024, 10 [51]–[53].

63. See Environmental Justice Australia, Submission 346, 6–7.

For a discussion of First Peoples’ cultural knowledge, see Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 14.

64. More detailed information relating to these different approaches is outlined in: Environmental Justice Australia, Submission 346, 4–8; Dr Ed Wensing, Submission 590, 5–6, 8–9.

65. State Government of Victoria, Federation of Victorian Traditional Owner Corporations, and Parks Victoria, [Victorian Traditional Owner Cultural Landscapes Strategy \(August 2021\)](#), 37.

66. Transcript of Paul Paton, 17 April 2024, 55 [39]–[42].

67. See Environmental Justice Australia, Submission 346, 6–7. See also Victorian Aboriginal Legal Service, Submission 339 (Land, Sky, Waters), 11–12.

68. Yoorrook notes that Minister Williams was Minister for Treaty and First Peoples at the time she gave evidence to Yoorrook on 3 May 2022. Minister Natalie Hutchins has been the Minister for Treaty and First Peoples since October 2023.

69. Witness Statement of Minister Gabrielle Williams MP, 3 May 2022, 7 [52].

70. State Government of Victoria, Federation of Victorian Traditional Owner Corporations, and Parks Victoria, [Victorian Traditional Owner Cultural Landscapes Strategy \(August 2021\)](#).

71. Transcript of Minister Steve Dimopoulos MP, 16 April 2024, 5 [32]–[33].

72. Transcript of Minister Steve Dimopoulos MP, 16 April 2024, 5 [33]–[35]. See also Transcript of Minister Steve Dimopoulos MP, 16 April 2024, 10 [1]–11 [10].

73. Transcript of roundtable with Gunditj Mirring Traditional Owners Aboriginal Corporation, 19 January 2024, 16, served on the State of Victoria on 12 April 2024.

74. Aboriginal Housing Victoria, Submission 351 (Land, Sky, Waters), 3.

75. Transcript of Paul Paton, 17 April 2024, 52 [40]–[44].

76. Transcript of Minister Steve Dimopoulos MP, 16 April 2024, 17 [36]–[38].

77. This chapter focuses on the strategies, frameworks and policies most relevant to joint management. There are many other policies and strategic documents that intersect with joint management in relation to water and catchments, environment and climate change, energy and agriculture which are covered in Chapter 14: Water, Chapter 15: Earth, sea and living things and Chapter 16: Climate change, renewables and emergencies.

78. State Government of Victoria (Department of Premier and Cabinet), *Victorian Aboriginal Affairs Framework 2018–2023* (October 2018), 13.

79. State Government of Victoria (Department of Premier and Cabinet), *Victorian Aboriginal Affairs Framework 2018–2023* (October 2018), 70.

80. State Government of Victoria (Department of Premier and Cabinet), *Victorian Aboriginal Affairs Framework 2018–2023* (October 2018), 70.

81. In the latest Victorian Government Aboriginal Affairs Report, which reports against these goals, in 2021–22, three joint management plans with Traditional Owner groups were in place, covering approximately 122,575 hectares of land across 17 parks and reserves: Department of Premier and Cabinet, State Government of Victoria, *Victorian Government Aboriginal Affairs Report 2022* (Report, 2023), ‘2022 VGAAR Data Tables – Domain 6 – Culture and Country – Statewide’, Table 18.1.5.

82. First Peoples – State Relations, ‘[Self-Determination Reform Framework](#)’ (Webpage, 28 February 2024).

83. Department of Energy, Environment and Climate Action, ‘[Joint management](#)’ (Webpage).

84. State Government of Victoria (Department of Environment, Land, Water and Planning), *Pupangarli Marnmarnepu ‘Owning our Future: Aboriginal Self-Determination Reform Strategy 2020–2025* (2019), 6.

85. State Government of Victoria (Department of Environment, Land, Water and Planning), *Pupangarli Marnmarnepu ‘Owning our Future: Aboriginal Self-Determination Reform Strategy 2020–2025* (2019), 7.

86. State Government of Victoria (Department of Environment, Land, Water and Planning), *Pupangarli Marnmarnepu ‘Owning our Future: Aboriginal Self-Determination Reform Strategy 2020–2025* (2019), 24.

87. First Peoples – State Relations, ‘[Victoria’s Approach to implementing the National Agreement on Closing the Gap](#)’, (Webpage, 12 April 2023); Department of Energy, Environment and Climate Action (Vic), *Corporate Plan 2023–2027* (2023), 8.

88. Transcript of Minister Lily D’Ambrosio MP, 22 April 2024, 51 [45]–52 [6].

89. State Government of Victoria, Federation of Victorian Traditional Owner Corporations, and Parks Victoria, *Victorian Traditional Owner Cultural Landscapes Strategy* (August 2021), 5.

90. State Government of Victoria, Federation of Victorian Traditional Owner Corporations, and Parks Victoria, *Victorian Traditional Owner Cultural Landscapes Strategy* (August 2021), 5. See also Transcript of Paul Paton, 17 April 2024, 53 [12]–[19].

91. State Government of Victoria, Federation of Victorian Traditional Owner Corporations, and Parks Victoria, *Victorian Traditional Owner Cultural Landscapes Strategy* (August 2021), 8; Transcript of Paul Paton, 17 April 2024, 59 [17]–60 [47].

92. State Government of Victoria, Federation of Victorian Traditional Owner Corporations, and Parks Victoria, *Victorian Traditional Owner Cultural Landscapes Strategy* (August 2021), 2.

93. State Government of Victoria, Federation of Victorian Traditional Owner Corporations, and Parks Victoria, *Victorian Traditional Owner Cultural Landscapes Strategy* (August 2021) 45.

94. State Government of Victoria, Federation of Victorian Traditional Owner Corporations, and Parks Victoria, *Victorian Traditional Owner Cultural Landscapes Strategy* (August 2021), 44 .

95. Victorian Traditional Owner Cultural Fire Knowledge Group, *The Victorian Traditional Owner Cultural Fire Strategy* (2019), 5.

96. Victorian Traditional Owner Cultural Fire Knowledge Group, *The Victorian Traditional Owner Cultural Fire Strategy* (2019), 9, 20.

97. Victorian Traditional Owner Cultural Fire Knowledge Group, *The Victorian Traditional Owner Cultural Fire Strategy* (2019), 3.

98. Victorian Traditional Owner Cultural Fire Knowledge Group, *The Victorian Traditional Owner Cultural Fire Strategy* (2019), 14.

99. Premier of Victoria, The Hon Jacinta Allan MP, ‘[Cultural Burning to Protect Local Communities](#)’ (Webpage, 1 April 2022).

100. Premier of Victoria, The Hon Jacinta Allan MP, ‘[Cultural Burning to Protect Local Communities](#)’ (Webpage, 1 April 2022).

101. Witness Statement of Minister Steve Dimopoulos MP, 8 March 2024, 12 [61].

102. Parks Victoria, *Managing Country Together Framework* (2019), 7.

103. Parks Victoria, *Managing Country Together Framework* (2019), 15.

104. Parks Victoria, *Managing Country Together Framework* (2019), 17.

105. Parks Victoria, *Managing Country Together Framework* (2019), 19.

106. According to Minister Steve Dimopoulos MP, the first module of training under the Aboriginal Cultural Capability Framework was due to be delivered by July 2024, with modules 2, 3 and 4 to be delivered July 2025: Transcript of Minister Steve Dimopoulos MP, 16 April 2024, 29 [45]–30 [3].

107. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 31.

108. Transcript of Minister Lily D’Ambrosio MP, 22 April 2024, 51 [14]–[35].

109. Transcript of Minister Lily D’Ambrosio MP, 22 April 2024, 51 [45]–52 [6].

110. See e.g., Transcript of roundtable with Wurundjeri Woi-Wurrung Cultural Heritage Aboriginal Corporation, 10 November 2023, 31, served on the State of Victoria on 1 April 2024.

111. Transcript of roundtable with Wurundjeri Woi-Wurrung Cultural Heritage Aboriginal Corporation, 10 November 2023, 31, served on the State of Victoria on 1 April 2024.

112. Transcript of Ngarrra Murray, Co-Chair of First Peoples’ Assembly of Victoria, 17 April 2024, 48 [7]–[10].

113. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 31; Transcript of roundtable with Nindi-Ngujarn Ngarigo Monero, 13 November 2023 (Part 1), 14, served on the State of Victoria on 12 April 2024.

114. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 31.

115. Transcript of Rueben Berg, Co-Chair of First Peoples’ Assembly of Victoria, 17 April 2024, 45 [22]–[27].

116. Transcript of Minister Steve Dimopoulos MP, 16 April 2024, 13 [46]–14[1].

117. Keicha Day, Submission 379, 13; Transcript of roundtable with Nindi-Ngujarn Ngarigo Monero, 13 November 2023 (Part 1), 13–14, served on the State of Victoria on 12 April 2024; Transcript of roundtable with Bunurong Land Council, 2 November 2023, 26, served on the State of Victoria on 1 April 2024.

118. Keicha Day, Submission 379, 13.

119. Transcript of roundtable with Nindi-Ngujarn Ngarigo Monero, 13 November 2023 (Part 1), 13–4, served on the State of Victoria on 12 April 2024.

120. Transcript of roundtable with Bunurong Land Council, 2 November 2023, 26, served on the State of Victoria on 1 April 2024.

121. Keicha Day, Submission 379, 14.

122. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 16.

123. Transcript of roundtable with Dja Dja Wurrung Clans Aboriginal Corporation, 25 November 2023, 21, served on the State of Victoria on 1 April 2024.

124. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 17.

125. Environmental Justice Australia, Submission 346, 15.

126. Transcript of Minister Steve Dimopoulos MP, 16 April 2024, 23 [6]–[8].

127. Transcript of Minister Steve Dimopoulos MP, 16 April 2024, 17 [3]–[18].

128. Witness Outline of Ngarrra Murray, Co-Chair of First Peoples’ Assembly of Victoria, 11 April 2024, 21 [66].

129. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 32.

130. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 2, 17.

131. Environmental Justice Australia, Submission 346, 16.

132. Transcript of roundtable with Barengi Gadjin Land Council, 26 October 2023, 15, 29, served on the State of Victoria on 1 April 2024.

133. Transcript of roundtable with Barengi Gadjin Land Council, 26 October 2023, 15, served on the State of Victoria on 1 April 2024.

134. Transcript of roundtable with Barengi Gadjin Land Council, 26 October 2023, 29, served on the State of Victoria on 1 April 2024.

135. Transcript of Rueben Berg, Co-Chair of First Peoples’ Assembly of Victoria, 17 April 2024, 47 [8]–[9].

136. For example, Yoorrook heard an example of Traditional Owners being keen to be part of planning for environmental water activities but lacking the capacity to be part of those conversations: Transcript of Rueben Berg, Co-Chair of First Peoples’ Assembly of Victoria, 17 April 2024, 47 [15]–[22].

137. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 32.

138. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 16, 32.

139. Transcript of Paul Paton, 17 April 2024, 57 [27]–[29]. See also Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 32.

140. Transcript of roundtable with Barengi Gadjin Land Council, 26 October 2023, 36, served on the State of Victoria on 12 April 2024.

141. Transcript of Paul Paton, 17 April 2024, 65 [41]–[44].

142. Transcript of roundtable with Barengi Gadjin Land Council, 26 October 2023, 36, served on the State of Victoria on 12 April 2024; Transcript of Aunty Dr Jill Gallagher, 28 March 2024, 55 [43]–[46]. See also, Environmental Justice Australia’s submission that recognition of the public nature of Traditional Owners’ functions and powers in the management of Country ‘needs to be expressed in parity of resourcing and serious shift in norms of conduct and dealings with Traditional Owner entities’: Environmental Justice Australia, Submission 346, 16.

143. Transcript of Aunty Dr Jill Gallagher, 28 March 2024, 55 [43]–[46].

144. Transcript of Paul Paton, 17 April 2024, 65 [29]–[32].

145. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 32.

146. See, e.g., Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 34.

For the State’s power to enter into funding agreements as part of recognition and settlement agreements, see *Traditional Owner Settlement Act 2010* (Vic) Pt 5.

147. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 32.

148. Transcript of Minister Steve Dimopoulos MP, 16 April 2024, 54 [1]–[19].

149. Transcript of Minister Steve Dimopoulos MP, 16 April 2024, 54 [12]–[16].

150. Transcript of roundtable with Gunditj Mirring Traditional Owners Aboriginal Corporation, 19 January 2024, 50, served on the State of Victoria on 12 April 2024; Transcript of Minister Steve Dimopoulos MP, 16 April 2024, 32 [37]–[47].

151. Transcript of Minister Steve Dimopoulos MP, 16 April 2024, 32 [37]–[47]. See also Transcript of roundtable with Gunditj Mirring Traditional Owners Aboriginal Corporation, 19 January 2024, 50, served on the State of Victoria on 12 April 2024.

152. Transcript of roundtable with Bunurong Land Council, 2 November 2023, 34, served on the State of Victoria on 1 April 2024.

153. Transcript of Minister Steve Dimopoulos MP, 16 April 2024, 32 [37]–[44].

154. Transcript of Minister Steve Dimopoulos MP, 16 April 2024, 32 [45]–[47].

155. An example of culturally-appropriate training that was outlined included a land conservation and management course provided by Trust for Nature: Transcript of roundtable with Bunurong Land Council, 2 November 2023, 41, served on the State of Victoria on 1 April 2024.

156. State Government of Victoria, Federation of Victorian Traditional Owner Corporations, and Parks Victoria, *Victorian Traditional Owner Cultural Landscapes Strategy* (August 2021), 41.

157. Transcript of Paul Paton, 17 April 2024, 61 [26]–[38].

158. Transcript of Paul Paton, 17 April 2024, 61 [29]–[38].

159. RMIT University, Centre for Urban Research, ‘[Libby Porter: Director, Centre for Urban Research](#)’ (Webpage).

160. Professor Libby Porter, Submission 335, 9.

161. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 16.

162. National Indigenous Australians Agency, ‘[Indigenous Protected Areas \(IPA\)](#)’ (Webpage).

163. Engage Victoria, ‘[Future Uses of Our Forests and Immediate Protection Areas](#)’ (Webpage).

164. Engage Victoria, ‘[Future Uses of Our Forests and Immediate Protection Areas](#)’ (Webpage).

165. Indigenous Land and Sea Corporation, ‘[Partner with us: Our Country Our Future](#)’ (Webpage).

166. Transcript of roundtable with Gunditj Mirring Traditional Owners Aboriginal Corporation, 19 January 2024, 19, served on the State of Victoria on 12 April 2024; Lowitja Institute, Submission 331 (Land, Sky, Waters), 17.

First Peoples reported increasing engagement with local government, with positive partnerships and councils reaching out to community: Transcript of roundtable with Bunurong Land Council, 2 November 2023, 44, served on the State of Victoria on 1 April 2024; Keicha Day, Submission 379, 17.

167. For example, in supplementary arrangements where Traditional Owners engage in management through service agreements: Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 17.

168. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 3, 17.

169. Traditional Owners expressed support for legislative reform: Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 17; Taungurung Land and Waters Council Aboriginal Corporation, Submission 596 (Land, Sky, Waters), 14.

170. Transcript of Minister Steve Dimopoulos MP, 16 April 2024, 26 [42]–[43].

171. The Federation of Victorian Traditional Owner Corporations submission called for the government to immediately implement Traditional Owner-led plans and strategies, including a process for monitoring and evaluation and necessary resourcing (see recommendation 9): Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 2, 32.

172. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 17.

173. Professor Libby Porter, Submission 335, 8; Transcript of roundtable with Wurundjeri Woi-Wurrung Cultural Heritage Aboriginal Corporation, 10 November 2023, 29, served on the State of Victoria on 1 April 2024; Uncle Dr Wayne Atkinson, Submission 497 (‘Local histories: Koori struggles for Land Justice in Victoria: Exposing the myths’), 22; Transcript of Minister Steve Dimopoulos MP, 16 April 2024, 34 [32]–[38].

Chapter 14: Water

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We have been dispossessed and dispersed from our waterways, and forcibly removed from our rivers, and now we want our water back. We want to be drivers of water. We want to be instrumental in the management and ownership of water for our people. We don't want to be tacked onto the back of your trailer. We don't want to just be consulted, written up into your plans and then have you misconstrue things and say that you have met your obligations. We don't want to be here just so you can tick boxes. We want to be heard and be part of the solution.¹

UNCLE BRENDAN KENNEDY

Introduction

Water is a vital living part of Country (see Chapter 6: Country). During its inquiry, Yoorrook has approached waters as including rivers, creeks, streams, lakes, wetlands, catchments, groundwater, floodplains and seas.² When colonisers and the State stole First Peoples' land, they took First Peoples' water and deprived First Peoples of their rights to access, use and manage water resources.³ This dispossession continues.

Based on the fiction of *aqua nullius*,⁴ the State has created a market-based system of water entitlements which excludes First Peoples from realising water rights, from water ownership and from the sizeable economic benefits which have flowed from the sale of water to third parties.⁵ *The Water Act 1989* (Vic) includes the purpose of ensuring that Victoria's water resources are managed in a way that considers 'Aboriginal cultural values' and references 'protecting environmental values'.⁶ Despite this, the State system of water management primarily focuses on enabling the growth of towns, cities and industries, treating water as an economic resource.⁷

Water has enormous economic value to the State. Water revenue has produced approximately \$77 billion between 2010 and 2023 for the State.⁸ Very little water or revenue has been returned to First Peoples in Victoria. In 2024, at the time of the Yoorrook land injustice hearings, First Peoples owned less than 0.2% of the water entitlements in Victoria.⁹ Yoorrook heard that there are large volumes of water being traded on the free market which could be reallocated to Traditional Owners. The exclusion from water revenues and the failure to deliver water rights means that First Peoples are locked out of the economic benefits of water on their own land while the State continues to benefit.

Action on Traditional Owner water rights is recent, limited and slow. Traditional Owner groups recognised under the *Traditional Owner Settlement Act 2010* (Vic) ('TOSA') and the *Native Title Act 1993* (Cth) are limited to use of water for 'traditional purposes' under s.84(a) of TOSA.¹⁰ Yoorrook heard that these so-called 'rights' are similar to those enjoyed by any member of the public. These rights are not consistent with those recognised in the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP)¹¹. The current Victorian water management regime fails to protect waters from degradation. It provides limited ways for Traditional Owners to decide what happens on their Country or to influence water management.¹²

The State has recently made some policy advancements towards recognising First Peoples' water rights, including in 2022 through *Water is Life: Traditional Owner Access to Water Roadmap* (*Water is Life*).¹³ This policy recognises the 'cultural flows' model for returning rights to First Peoples to use and manage water.¹⁴ However, Yoorrook heard that *Water is Life* does not go far enough. Yoorrook is also not persuaded on the evidence that the State is making timely progress on implementing this policy.

This chapter outlines the State's historical and ongoing denial of First Peoples' water rights and the reforms required to enable Traditional Owners to engage meaningfully in water management. These include realising concepts of cultural water and cultural flows central to the health, spirituality, economies and prosperity of First Peoples.

Rights to water

First Peoples hold fundamental rights to water which were disrupted by colonisation and continue to be denied by State laws and policies. Water rights that have been returned are minimal and are subject to caveats and limitations as to what can be utilised and when.

Inconsistency with UNDRIP

UNDRIP recognises First Peoples’ water rights in Articles 25 and 32.

Article 25 provides:

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.¹⁵

Article 32 provides:

- 1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
- 2. States shall consult and cooperate in good faith with the [I]ndigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
- 3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.¹⁶

The University of Melbourne Law School explained why UNDRIP should be used as a benchmark for water rights:

Many First Nations groups in Australia have utilised the provisions of the UNDRIP to support their claims for greater recognition and protection of their water rights. Accordingly, and given Australia’s endorsement of the UNDRIP, any progress on First Nations water rights should be benchmarked against the UNDRIP.¹⁷

UNIVERSITY OF MELBOURNE LAW SCHOOL

Yoorrook heard evidence that Victoria’s water laws are inconsistent with UNDRIP, which should be the ‘base minimum’ for how the State recognises Traditional Owners’ rights in legislation.¹⁸ Yoorrook agrees.

Charter of Human Rights and Responsibilities Act 2006 (Vic)

The *Charter of Human Rights and Responsibilities Act 2006* (Vic) recognises First Peoples’ rights to water in its Preamble and in section 19(2). The Preamble provides:

[H]uman rights have a special importance for the Aboriginal people of Victoria, as descendants of Australia’s first people, with their diverse spiritual, social, cultural and economic relationship with their traditional lands and waters.¹⁹

Section 19(2) provides:

Aboriginal persons hold distinct cultural rights and must not be denied the right, with other members of their community ... (d) to maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs.²⁰

Water regulation

HOW WATER IS REGULATED IN VICTORIA

An overview of the main laws that regulate the use, management and distribution of water in Victoria, including Traditional Owners’ rights to water, is provided below.

The Victorian Government manages and distributes water through complex systems. Victorian laws ‘provide powers for the Crown to manage and control the flow of water ... rather than ownership rights’.²¹ The Crown manages individual access to water through entitlements²² recorded on the Victorian Water Register. According to the Department of Energy, Environment and Climate Action (DEECA), ‘Individual water entitlements provide access to take and use water ... and to retain the benefits of that use’.²³ The amount of water available for use will vary from year to year depending on the total amount of water in the system.²⁴

Table 14.1: Laws regulating water under Victorian law

Act or instrument	Summary
Water Act 1989 (Vic)	The Act provides for management of individual access to water through water entitlements, including water shares that are recorded on the Victorian Water Register and may be bought and sold. It ‘provides for the integrated management of the water cycle (catchments, waterways, rivers, storages, water distribution networks, drainage and sewerage systems); and legislates for long-term sustainable planning for water management’.²⁵ It also establishes the Victorian Environmental Water Holder, which is responsible for managing water for environmental flows.²⁶ The Act includes consideration of ‘Aboriginal cultural values and uses of waterways’ at a number of points, including in preparing sustainable water strategies; performing the functions of the Victorian Environmental Water Holder, water corporations and water authorities; and preparing regional water strategies.²⁷ Traditional Owners with a Recognition and Settlement Agreement (RSA) under TOSA may access water for ‘traditional purposes’ under section 8A and section 84(a) of TOSA.
Catchment and Land Protection Act 1994 (Vic)	This Act ‘establishes the framework for the integrated management and protection of catchments in Victoria’, dividing the State into 10 ‘catchment and land protection regions’ each with a catchment management authority.²⁸ Regional catchment strategies must ‘have regard to Aboriginal cultural values and traditional ecological knowledge of management of land and water resources of catchments in the region’.²⁹
Water Industry Act 1994 (Vic)	This Act regulates the provision of water supply and sewerage services, including setting standards for service delivery and infrastructure management. This Act does not refer to First Peoples.

WHAT ARE CULTURAL WATER AND CULTURAL FLOWS?

‘Cultural water’ means ‘water entitlements controlled or held by Traditional Owner Nations to benefit a range of outcomes as determined by each Traditional Owner group’.³⁰ Cultural water ‘encompasses a holistic approach to managing and thinking about water, based on the ... history and knowledge of Traditional Owners and First Nations’.³¹

‘Cultural flows’ is a concept developed by Traditional Owners in the Murray-Darling Basin area³² and has been used and interpreted by First Nations groups over time. The 2007 Echuca Declaration described cultural flows as

water entitlements that are legally and beneficially owned by Indigenous Nations of a sufficient and adequate quantity and quality to improve the spiritual, cultural, natural, environmental, social, and economic conditions of those Indigenous Nations. This is our inherent right.³³

MURRAY LOWER DARLING RIVERS INDIGENOUS NATIONS

The cultural flows model is grounded in self-determination. Cultural flows allow First Peoples to use water ‘as they see fit, and to improve the conditions of their life as well as to care for Country’.³⁴ This might include enabling practical activities and protecting landscape features. Cultural flows are a different concept to ‘environmental water’ because decision-making power rests with First Peoples, rather than with the State. The First Peoples-led [National Cultural Flows Research Project](#) aims to ‘secure a future where Indigenous water allocations are embedded within Australia’s water planning and management regimes’.³⁵

Dr Erin O’Donnell, water law academic at the University of Melbourne, explained the ‘three circles’ underpinning cultural flows:

- water rights: Water rights ‘exist within the settler system’ and ‘are state constructs’. Transferring water rights to Traditional Owners is a way to transfer power (e.g. opportunities for Traditional Owners to use water as they see fit).³⁶
- more influence in water landscapes: This recognises that Traditional Owners must have ‘authority to make decisions about how water is used and how waterscapes are known and cared for more broadly’.³⁷
- transforming foundations: The foundations of water policy and governance can be transformed through agreement-making between the State and Traditional Owners. This is not limited to treaty.³⁸

What Yoorrook heard

First Peoples are excluded from water rights

Water was taken in ‘waves of dispossession’³⁹

The State’s appropriation of First Peoples’ water rights occurred through three distinct waves of dispossession, each building on and extending the previous loss of rights and control.⁴⁰ The foundational dispossession began with the fiction of aqua nullius, expanded through the separation of water from land rights, and continues today through market mechanisms that exclude Traditional Owners.

First wave: Aqua nullius

The initial appropriation of water rights can be understood as occurring through the legal fiction of aqua nullius:⁴¹ the assertion that water belonged to no one prior to colonisation. This fiction, like terra nullius (see Chapter 7: How colonisers stole Country and Chapter 10: Native title), deliberately ignored First Peoples’ sovereign rights and their sophisticated systems of water management. Dr Erin O’Donnell, a water law academic at the University of Melbourne, told Yoorrook that common law water rights were coupled with land rights, and ‘when Aboriginal peoples had their lands stolen, the water went with that’.⁴²

Aqua nullius is a fiction because First Peoples have never ceded sovereignty.⁴³ Section 7(1) of the *Water Act 1989* (Vic) now provides that ‘the Crown has the right to the use, flow and control of all water in a waterway and all groundwater’.⁴⁴ Participants at a roundtable with Barengi Gadjin Land Council explained:

The thing is, and we’ve often spoken about how our land rights and all that idea of terra nullius, it’s actually related to water rights and aqua nullius. So we need to start looking at water as we do land, in terms of our rights. We need to get rid of that idea that the water belongs to no one. It’s actually ours because it’s going through our landscape, and that’s the reality ... the people will jump up and down about it, but the reality is, it’s really no different to land.⁴⁵

PARTICIPANT, BARENGI GADJIN LAND COUNCIL ROUNDTABLE

Dr Katie O’Bryan is a non-First Peoples researcher whose research has explored the legal recognition of First Peoples water rights. Dr O’Bryan told Yoorrook:

[Aqua nullius is based on] an erroneous assumption that water belonged to no one when the British invaded, and that this enabled the British to then assert their own authority over the governance of water. This is a false assumption. We know this from the Mabo case. We know this as well because Aboriginal people have never ceded sovereignty, and the idea of aqua nullius was founded in that belief that their sovereignty did not exist.⁴⁶

DR KATIE O’BRYAN

Second wave: Separation of rights

The deliberate separation of water rights from land rights in the early 2000s created a second wave of dispossession.⁴⁷ Even when Traditional Owners successfully reclaim land rights, they find that water rights have been stripped away.⁴⁸ This separation reflects the State’s continuing failure to recognise the holistic relationship between land and water in First Peoples’ law and culture.

Decoupling land from water was a policy goal of the National Water Initiative in 2004,⁴⁹ which was then implemented in changes to state laws. Under Victorian law, rights to take

and use water are now usually separate from property rights, with the exception of using water for domestic or stock purposes.⁵⁰ The University of Melbourne Law School told Yoorrook: ‘The settler state fragments Country’.⁵¹ Even when Traditional Owners make a successful land rights claim, as Dr Katie O’Bryan explained, ‘when land comes back, it comes back without the water so it is a double dispossession’.⁵²

Third wave: Market exclusion

The current wave of dispossession operates through market mechanisms. High water prices and fully-allocated systems effectively lock Traditional Owners out of water markets, while the State continues to benefit from water trading revenue.⁵³ Will Mooney, an Executive Officer at Murray Lower Darling Rivers Indigenous Nations (MLDRIN) told Yoorrook that scarcity — with fully-allocated markets in the north of Victoria — and high water prices mean it is ‘increasingly difficult [for Traditional Owners] to enter the water market’.⁵⁴

The State commodified water

Yoorrook heard that British colonisers brought fundamentally different ways of thinking about natural landscapes and ecosystems, and the place of human beings within them. State legal systems see water ‘as a resource awaiting capture and exploitation’.⁵⁵ Colonisers, private landowners and the State imposed uses of water for economic gain, including agriculture and mining.⁵⁶ The concept of aqua nullius enables the growing colonial population to continue to extract, use and obtain economic benefits from water without regard to Traditional Owners’ relationship with Country.⁵⁷

Participants at a roundtable with Dja Dja Wurrung Clans Aboriginal Corporation told Yoorrook that the harm resulting from the way the State handled waterways is a breach of cultural lore and rules:

So for us to ... hand water on a high Country, as Djaara [Dja Dja Wurrung] Country is, more higher Country than lower Country, cultural lore is we hand on what we can of healthy water. So for us, it breaches our cultural rule too on lore and handing water to next mob downstream. Our lands have been damaged by mining. So we get a lot of sludge in our waterways and build-up of sludge. And that flows downstream all the way to the Murray and down to the mouth of the Murray, mixes then with the currents along the coastal areas. ... So we try and ... do the right thing by Bunjil, when the water falls from the creator from the sky.⁵⁸

PARTICIPANT, DJA DJA WURRUNG CLANS ABORIGINAL CORPORATION ROUNDTABLE

In *Water is Life*, Aunty Denise Lovett (Gunditjmara) reflected on the commodification of water:

‘Water has been given to us and our Country forever. Water as a commodity is not our cultural way. Ancestors have provided water for us forever. Only through the frontier wars has that water become a commodity’.⁵⁹

AUNTY DENISE LOVETT

The State has altered waterways and continues to cause harm

[W]e feel pain for Country. So when Country is in pain we feel that pain. ... when the Europeans are cutting down the trees and digging up our mother earth and ... killing our kangaroos and killing our water here. Killing our water, like we see the killing our water right before our eyes.⁶⁰

UNCLE BRENDAN KENNEDY

Yoorrook consistently heard that the quality of Victoria’s waters and the ecosystems they sustain have steadily deteriorated since colonisation. The quality of waters has declined and ecosystems have been decimated. Waters that were clear within Elders’ lifetimes are now subject to pollution, salinity, erosion, weeds and, critically, over-allocation and overuse. Wetlands have been drained and rivers’ natural flows interrupted by dams or weirs.⁶¹ This leads to loss of food, medicines, totems, plants for traditional uses, water for drinking and places for ceremony. Seasonal water cycles and flows are also disrupted.

At a site-visit, Wamba Wemba Elders told Yoorrook that they remember a time when the Murray River⁶² was ‘crystal clear’, yabbies came right up to the edge of the river and they were able to drink the water. They said that nowadays the water is ‘toxic’, explaining: ‘It’s black water. They can’t breathe. The water can’t breathe’.⁶³

Participants at a roundtable with Dja Dja Wurrung Clans Aboriginal Corporation told Yoorrook that the plants and fish in waterways have changed over time:

My God, it makes us unwell when we go and do a waterway assessment and we see it’s full of weeds, it’s black water, it’s not flowing water. Species of fish and plants are not there anymore. Packed with introduced botanical garden willow trees and peppercorn trees ...⁶⁴

PARTICIPANT, DJA DJA WURRUNG CLANS ABORIGINAL CORPORATION
ROUNDTABLE

Participants at a roundtable with the Boonwurrung Land and Sea Council also explained that waterways are not healthy:

[W]hen you go walk out in this country, when you go see these rivers, these creeks, these waterways, all that sort of stuff. It’s all sick. You can literally see it.⁶⁵

PARTICIPANT, BOONWURRUNG LAND AND SEA COUNCIL ROUNDTABLE

Will Mooney referred to this degradation as ‘ecological collapse’ at the hands of the State:

[T]he settler state ... has done a really poor job for caring for waterways and caring for Country in that interven[ing] 200 or so years. So, you know, it’s asserted control over waterways or managed or mismanaged waterways to the extent that — I think it uses the terminology of ecological collapse, and the First Nations have been borne some of the worst impacts of that environmental degradation.⁶⁶

WILL MOONEY

Then Minister for Water the Hon Harriet Shing MP⁶⁷ acknowledged that changes caused by colonisation have harmed water.⁶⁸ Minister Shing said:

As part of the colonisation of what became known as the State of Victoria, construction of dams and weirs altered water flows across Country, land was cleared for agriculture and the nature and course of waterways and wetlands changed significantly. Rivers were polluted and modified, wetlands were drained, riparian ecosystems were damaged, plants and animals were rendered extinct, and cities and towns spread over floodplains.⁶⁹

MINISTER HARRIET SHING MP

Minister Shing acknowledged that State laws have failed to protect water quality:

[T]he quality of our water has been devastated over generations. I think when you look at one of the most modified river systems in the entire world, there has been a move away from the flows that have made and kept water Country healthy. I think we’ve also failed to have systems of regulation, quality control, oversight, of accountability for the quality of water or for the way that waterways and rivers are treated.⁷⁰

MINISTER HARRIET SHING MP

Yoorrook held a hearing day at the Margooya Lagoon and at Robinvale where Minister Shing, Uncle Brendan Kennedy (Tati Tati) and other First Peoples attended and gave evidence. At the hearing, Minister Shing was showed a sample of water from the Margooya Lagoon. Minister Shing acknowledged that this water sample was ‘full of green water, with sediment through it’.⁷¹

First Peoples should share in economic benefits

First Peoples should share in the economic benefits of the Victorian water system. As it is, they do not directly benefit from economies underpinned by access to water or most funding to improve the health of waters. This is because of the long-term failure to recognise First Peoples’ water rights, based on aqua nullius, and the development of Victoria’s market-driven water system.

There is no simple measure of the economic benefit of water. Nor is there a clear picture of how much the Victorian Government spends on delivering water services and environmental management of waterways year to year. The Victorian Government received approximately \$77 billion in water-related revenue in the 13-year period between 2010 and 2023.⁷² Minister Shing told Yoorrook that none of this revenue has been directly distributed to Traditional Owners.⁷³ In correspondence to Yoorrook, the State subsequently clarified that ‘environmental contributions’ (funds collected from water supply authorities under the *Water Industry Act 1994* (Vic)), are distributed to Traditional Owners, ‘just not directly’. This distribution includes funding provided to the Aboriginal Water Unit (alongside other programs).⁷⁴ Specific figures were not provided.

Separate information submitted to Yoorrook by the State sought to explain the costs associated in administering the water delivery system.⁷⁵ DEECA characterised the costs of delivering water services in the 2021–22 financial year as marginally below the annual revenue received. They wrote that, of the \$6.4 billion obtained by water corporations, \$6.2 billion was used for service delivery expenses and environmental water contributions.⁷⁶ Any surplus ‘is either paid as income tax equivalents ... and dividends or reinvested by individual water businesses’.⁷⁷

The University of Melbourne Law School submission to Yoorrook noted that the value of water entitlements in the Southern Murray Darling Basin (which includes Victoria) was \$32.3 billion in 2023, but ‘Indigenous organisations hold less than 0.2% of these entitlements’.⁷⁸

Uncle Brendan Kennedy told Yoorrook that Traditional Owners are not benefitting from the revenue streams that water brings to private hands:

[T]he water is getting sold. It is liquid gold. It’s getting sold, traded, and it’s been commodified and commercialised. We have water corporations, we have big almond companies who are sucking all the water out of our rivers. These big multi-national companies here are building all these huge dams and all these channels and they are draining the water out of our rivers. And they are making billions and billions of dollars and people are getting rich and we are dirt poor.⁷⁹

UNCLE BRENDAN KENNEDY

The State’s reluctance to return water by purchasing it from existing entitlement holders (even under a voluntary scheme), is one of many difficulties Traditional Owners face in obtaining water entitlements. As a result, First Peoples are shut out of potential direct economic uses and benefits of water including for fisheries, tourism and food production. For example, participants at a roundtable with Dja Dja Wurrung Clans Aboriginal Corporation told Yoorrook:

[C]ultural flows are economic waterflows as well. For example, big Lake Boort. If it’s got regular water going into it, there you start to have tourism They’ll come because there’s swimming and recreational activities and ducks and all sorts of stuff there. You could add the water in there hey.⁸⁰

PARTICIPANT, DJA DJA WURRUNG CLANS ABORIGINAL CORPORATION
ROUNDTABLE

The ‘environmental contribution’⁸¹ collected from water authorities from 2020 to 2023 is estimated at \$674.2 million.⁸² This equates to about \$173 million per annum to help deliver outcomes under the environmental contribution.⁸³ These funds are placed directly into consolidated revenue and do not flow to Traditional Owners.⁸⁴

Minister Shing told Yoorrook that funding streams to enable First Peoples to participate in water management were first established in 2016 as part of the Aboriginal Water Program.⁸⁵ The Minister explained that \$9.7 million was allocated over 2016 to 2020 and a further \$21 million was allocated in 2020 through to 2024.⁸⁶ This was used to fund projects under the ‘Recognising Aboriginal values and uses of water’ and ‘Aboriginal access to water for economic development’ initiatives, and to employ 17 Aboriginal Water Officers.⁸⁷ This money was not used to deliver water rights directly to First Peoples.

Uncle Brendan Kennedy told Yoorrook that programs of this sort, including funding Aboriginal water officers, simply do not provide water rights for First Peoples:

We have water officers around the State but ... we don’t have that direct ability to be able to make decisions around water that affects all Traditional Owners in Victoria ... [O]ur current water holdings are 0.17 per cent.⁸⁸

UNCLE BRENDAN KENNEDY

Although the State has set up ad hoc arrangements to fund First Peoples water programs, the State does not share the substantial wealth that it has obtained from the market-based water system. Traditional Owners continue to be locked out of the economic benefits of Victoria’s water allocation framework.

Minimal water has been returned to Traditional Owners

Where the State has promised to return water rights directly to Traditional Owners, volumes of water actually transferred have been negligible and the transfer process takes too long.

Several changes to water policy reflect the Victorian Government’s increased commitment to improving First Peoples’ water rights over time. In 2013, the Victorian Waterway Management Strategy, for the first time, required the relevant department to engage with First Peoples.⁸⁹ In 2016, the Government developed *Water for Victoria*, a long-term strategy for managing the state’s water which has a chapter on ‘recognising and managing for Aboriginal values’⁹⁰ and a vision for a water management in Victoria ‘which recognises the rights of Victorian Traditional Owners to use, develop and control water resources on and under our Country.’⁹¹ In 2022, the Government developed *Water is Life*, which made various limited commitments to ‘enable water to be returned to Traditional Owners across the state’.⁹²

Despite these policy changes, the State has failed to make inclusion more than tokenistic. Yoorrook heard that, as of 2022, Victoria’s First Peoples directly held less than 0.2% of all water entitlements in Victoria — 6,797 megalitres (ML) out of a total of 3,833,007 ML.⁹³ Minister Shing acknowledged that while there are a growing number of projects considering returning waters to First Peoples, they are for small volumes⁹⁴ and must navigate complex regulatory hurdles which do not contemplate cultural uses.⁹⁵

The University of Melbourne Law School told Yoorrook that in some cases water has been committed to Traditional Owners but has not been returned, including:

- 1.36 gigalitres (GL) of water savings from the Goulburn Murray Connections project, which was set aside for Traditional Owners in northern Victoria in February 2022.⁹⁶
- 1.4 GL of water in the Birrarung (Yarra River), which DEECA holds under a ‘take and use’ licence, which was committed to be returned to Wurundjeri Woi-wurrung people in 2020.⁹⁷ However, in the period since the University of Melbourne Law School’s evidence, on 18 October 2024 Minister Shing announced the transfer of a 1405 ML water license from the former Australian Paper Manufacturing Company (Amcor) paper mill to Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation for cultural use.⁹⁸

Yoorrook heard that, despite claims that systems are fully allocated, there is a great deal of water that could be returned to Traditional Owners. For example, Yoorrook heard that:

- there is 75 GL of water entitlement in northern Victoria which is currently shared between the three water corporations in Melbourne. The water corporations trade this on the market and some is sold to irrigators.⁹⁹
- 425 GL of water has been delivered as part of the Connections Project in northern Victoria (stakeholders include Melbourne water retailers, the Victorian Environmental Water Holder, the Commonwealth Environmental Water Holder and local irrigators). The project has delivered 4 GL in additional water savings and a further 2 GL of savings in May 2021 which was ‘returned entirely to irrigators’.¹⁰⁰

Uncle Brendan Kennedy told Yoorrook that he is sceptical of the State’s claims that water is fully-allocated and would like to see how the State calculates and accounts for water allocation.¹⁰¹

They’re telling us the whole system is ‘over-allocated’. We’re saying we want to see the books and see how you’re accounting for the water? We just had two years of El Nino. We had a huge flood. There must have been so much surplus water. The story line that’s coming out of there is it’s still an overallocated system. Well OK — we actually want to see the figures and see how you actually calculate and who’s making the decisions?¹⁰²

UNCLE BRENDAN KENNEDY

Failure of recognition legislation on water rights

Recognition legislation has not improved First Peoples’ water rights. Traditional Owners must navigate restrictive processes to access water resources. Yoorrook heard that First Peoples must obtain an entitlement under the *Water Act 1989* (Vic) to use water, like any member of the public, unless they hold a right under *TOSA*. Even where *TOSA* rights are available to a Traditional Owner group, these rights are limited.

In 2010, the State introduced section 8A of the *Water Act 1989* (Vic), which provides water rights for Traditional Owners with recognition under *TOSA*. Under section 8A, a Traditional Owner group may take water without an entitlement under the *Water Act 1989* (Vic) in accordance with the *TOSA* agreement. The use of water under s 8A is limited to ‘traditional purposes’.

As discussed in Chapter 11: Traditional Owner settlements, Traditional Owners may enter into a Natural Resources Agreement (NRA) which permits individual group members to carry out agreed activities (including to ‘take and use water’¹⁰³). Similarly, NRAs only allow Traditional Owners to take and use water for ‘traditional purposes’.¹⁰⁴

Yoorrook heard that ‘take and use’ rights are a weak form of right and can be usurped in times of water scarcity — as Dr Erin O’Donnell explained, ‘if there is no water in the system then there is no water for Traditional Owner’s uses of any kind’.¹⁰⁵ Dr Katie O’Bryan told Yoorrook that s 8A rights are limited and ineffective:

[They are] very similar to the rights the Traditional Owners would have anyway under section 8 [of the *Water Act 1989* (Vic)] as members of the public which are ... domestic and stock purposes. ... The lack of benefit can be observed by the fact that none of the Traditional Owners who have those legal rights are using them.¹⁰⁶

DR KATIE O’BRYAN

Taungurung Land and Waters Council Aboriginal Corporation told Yoorrook that their *TOSA* agreement did not include any water rights:

The Taungurung people think of themselves as the people of the waters and mountains, but their Recognition and Settlement Agreement provides no specific rights to water, and they currently have no water rights with respect to Warring, the Goulburn River — the core life-giving resource that has always been central to the well-being of Taungurung society.¹⁰⁷

TAUNGURUNG LAND AND WATERS COUNCIL ABORIGINAL CORPORATION

The Traditional Owner representatives to the First Principles Review of the *TOSA* recommended that the *TOSA* be amended to ‘accommodate the commercial use of water’.¹⁰⁸ The State representatives to the First Principles Review did not support commercial water rights, noting that these were ‘being progressed through the Aboriginal Access to Water Roadmap’.¹⁰⁹

Academics at the University of Melbourne Law School told Yoorrook that water rights under the *TOSA* do not include ‘management rights’ and continue to treat water as a resource separate from land.¹¹⁰ Yoorrook also heard that water rights under *TOSA* are insufficient to meet Traditional Owners’ aspirations.¹¹¹

The cultural meaning of water to First Peoples

We’re here for the water, where he put the animals and birds and everything, because everything works together. And we need to have water, because without water there is no life ... It’s a circle. It’s a big circle. It’s a calendar of events that’s going on every day of the year.¹¹²

AUNTY JOYCE KENNEDY

Water is the ‘life blood’ of Country.¹¹³ Yoorrook heard that water is a living entity that is essential to First Peoples’ creation stories, shapes the landscape, sustains all life.¹¹⁴ As Aunty Joyce Kennedy (Tati Tati) explained, water is connected to everything in the environment, including people.¹¹⁵ Co-Chair of the First Peoples’ Assembly of Victoria Ngarra Murray (Wamba Wamba, Yorta Yorta, Dhudhuroa, Jupagulk, Baraparapa, Wiradjuri, Dja Dja Wurrung) told Yoorrook that water is a ‘giver of life across our Countries’.¹¹⁶ Ngarra Murray described how land, water and First Peoples are interconnected, and said that water makes up the ‘veins of our country, through all our Traditional Owner groups through the rivers, the creeks, the waterways, [and] the waterholes’.¹¹⁷

Uncle Brendan Kennedy told Yoorrook that water is an essential part of cultural landscapes:

[W]e have ancestral beings in the landscape, in the shape of our ancestral beings and each areas are part of the living body ... the rivers are the arteries and the creeks are the veins and the lagoons and wetlands are all the organs. So by denying its blood, its life blood, water, to those places, is killing Country and then that kills us.¹¹⁸

UNCLE BRENDAN KENNEDY

Participants at a roundtable with the Tati Tati Kaeijin Aboriginal Corporation explained the cultural significance of waterways as being like a compass, providing Traditional Owners on Country with their bearings:

[T]here is no European word to describe what this river means to our river peoples and your river peoples. That’s why our ancestors were singing. They sang. They danced. And they performed rituals, customs. And they traded and shared. And their religious and the storytelling from the stars down to the land. So that’s how much the river means to us ... It’s like a compass ... The river here gives us our bearings of where we are in the world.¹¹⁹

PARTICIPANT, TATI TATI KAEIJIN ABORIGINAL CORPORATION ROUNDTABLE

Action on Traditional Owner water rights is limited and slow

Despite two decades of attempts to improve water outcomes for Traditional Owners, progress has been slow. First Peoples still have a very limited say in how water is managed and used on their Country. This section provides an overview of policy developments in First Peoples’ water rights, First Peoples’ rights to be involved in water management and legislation recognising First Peoples’ water rights.

‘Environmental water’ and the Murray–Darling Basin Plan

Concepts of ‘environmental water’ and the [Murray–Darling Basin Plan](#) have not benefitted First Peoples. Yoorrook heard that there have been efforts by successive State and Federal governments to improve water quality and reduce water use, but these have not improved First Peoples’ access to water.¹²⁰ At the State level, the Victorian Government has established the Victorian Environmental Water Holder. Traditional Owners were not consulted in establishing this body¹²¹ and are not required to be involved in the management of water holdings through it.¹²² At an inter-governmental level, the Murray–Darling Basin Plan has not delivered all of its promised reductions in consumptive water use (e.g. for irrigation). The Victorian Government has, currently, not agreed to 2023 amendments to deliver the Murray–Darling Basin Plan (see box: What is the Murray–Darling Basin Plan?) in full, including by removing the 1500 GL cap on Commonwealth water purchases, due to concern about the volume of buy-backs.¹²³

Victorian Environmental Water Holder (Victorian Government)

In 2005, the *Water Act 1989* (Vic) was amended to establish the Victorian Environmental Water Holder to manage the water holdings to maintain environmental water reserves and ‘improve environmental values and health of water ecosystems’.¹²⁴ The Victorian Environmental Water Holder may acquire and use water entitlements¹²⁵ and may be environmental entitlements.¹²⁶

Traditional Owners are not able to directly influence how environmental water is managed. The Victorian Environmental Water Holder is merely required to consider ‘Aboriginal cultural values and uses of waterways’ when carrying out its functions.¹²⁷ This requirement was, however, a recent addition to the legislation in 2019.¹²⁸ Minister Shing told Yoorrook that First Peoples were not consulted or included in establishing this environmental water system.¹²⁹ This exclusion continues. There is no statutory requirement for Traditional Owners to be on the Water Holder’s governing body and no requirement for appointees to have knowledge of Aboriginal Cultural values or law.¹³⁰ Minister Shing told Yoorrook, however, that an Aboriginal person has been appointed as Commissioner of the Victorian Environmental Water Holder.¹³¹

Yoorrook heard that there is a misconception that ‘environmental water’ is the same thing as cultural flows.¹³² Environmental water is a State concept, whereas cultural flows advance self-determination.¹³³ Uncle Brendan Kennedy said that First Peoples should nonetheless be responsible for environmental water:

[W]e have been here for 100,000 years. We are the best available science. We are the best experts there is and ever can be for Country. All that resources and responsibility needs to be in our hands. We have to be leading. Caring for Country ... responsibilities for the environment and all of Country. That has to be in the hands of First Nations Traditional Owner people. That’s ... the place to start. And water management, all the environmental water should be handed over to Traditional Owners to deliver water for the environment.¹³⁴

UNCLE BRENDAN KENNEDY

Murray–Darling Basin Plan (intergovernmental)

WHAT IS THE MURRAY-DARLING BASIN PLAN?

The Murray–Darling Basin traverses Queensland, New South Wales, the Australian Capital Territory, Victoria and South Australia.¹³⁵ In 2008, these ‘Basin States’ entered into the current Murray–Darling Basin Agreement, which established a framework for water-sharing between states, incorporated into the *Water Act 2007* (Cth).¹³⁶ The Basin States remain responsible for the regulation of water use and trading within their own jurisdictions.¹³⁷

The Basin States and the Commonwealth later agreed on the Murray–Darling Basin Plan, which would return more water to the environment from 2012 to 31 June 2024.¹³⁸ The Plan sets long-term average annual limits on water consumption that Basin States must comply with, known as Sustainable Diversion Limits (SDLs).¹³⁹ SDLs may either be met by reducing water use (including buybacks) or carrying out water efficiency projects.¹⁴⁰

The water reduction aims under the Murray–Darling Basin Plan have not been met. The Murray–Darling Basin Authority noted in 2023 that there has been little progress towards the target to recover 450 GL per year for the environment, with less than 3%, or 12.2 GL per year, recovered since 2018.¹⁴¹ DEECA told Yoorrook that the 450 GL is in addition to the 2750 GL required to meet Sustainable Diversion Limits. 2133 GL out of the 2750 GL has been recovered.

In August 2023, the Commonwealth and all Basin States except Victoria agreed that ‘significant challenges remain’ to implement the Murray–Darling Basin Plan by 30 June 2024, and agreed on measures to adjust Murray–Darling Basin Plan commitments and recover additional water for the environment.¹⁴² Without Victoria’s support, the Commonwealth passed the *Water Amendment (Restoring Our Rivers) Act 2023* (Cth),¹⁴³ which extended the Plan’s deadlines for recovering water for the environment and removed a 1500 GL cap on Commonwealth water purchases.¹⁴⁴

The Murray–Darling Basin Plan has not improved First Peoples’ share of water rights or ability to influence how water is managed. Under the Murray–Darling Basin Plan the State is obliged to produce ‘water resource plans’. The plans are meant to be developed having regard to Indigenous values and uses, as determined ‘through consultation with relevant Indigenous organisations’, including Murray–Darling River Indigenous Nations (MLDRIN).¹⁴⁵ Yoorrook heard that that the Commonwealth’s provisions for the Victorian State to consult with First Peoples in preparing plans are ‘notoriously weak’.¹⁴⁶

Environmental Justice Australia told Yoorrook that the requirements to consult Traditional Owners under both the Victorian environmental water regime and the Murray–Darling Basin Plan are inadequate.¹⁴⁷ With regard to consultation mechanisms generally, Environmental Justice Australia told Yoorrook that there are ‘circumstances where agencies or decision-makers are openly tokenistic about consultation that may be formally required’.¹⁴⁸ Uncle Brendan Kennedy told Yoorrook that there has been a lack of inclusion and consultation by State water authorities on decisions concerning First Peoples’ water:

Yeah, so they have just treated us like an enemy basically. We are an outlaw renegade, too hard to work with. Because, you know, we are asserting our rights. We are asserting this place as important to us. We don't want you to do this to our lagoon. But the way that they do business is the old — good old boys style, is we don't have to — well, we don't have to listen to you. You know, we are the authority and we have been given the power by the State. So that's the colonial way.¹⁴⁹

UNCLE BRENDAN KENNEDY

Yoorrook also heard that concerns about impacting existing water entitlement holders, including irrigators, is a key barrier to considering returning water to the environment and First Peoples. Will Mooney, an Executive Officer at MLDRIN, told Yoorrook that the water systems in the Murray-Darling Basin are 'fully allocated', meaning that 'all water is owned by someone'.¹⁵⁰ Water buy-backs are the only mechanism to return water, but the Victorian Government is against this, he said:

[O]ne of the only mechanisms to have an allocation to recognise First Nations sovereign rights is purchasing water from willing sellers. The Victorian Government has taken a very strong position against that mechanism both in terms of recovering water for environmental purposes, but they've also specified in the Water is Life policy document ... that there would not be a program of direct reinvestment in water allocation.¹⁵¹

WILL MOONEY

DEECA told Yoorrook that it has not supported the extension of the Murray-Darling Basin Plan, in part, due to the volume of water buy-backs proposed in the plan:

The Victorian Government agreed to most of the Australian Government's proposal but could not agree to the core of the deal which was an undisclosed volume of buybacks. The Basin Plan as it was agreed in 2012 promises communities 'confidence in their long-term future', and Victoria continues to stand by that commitment.¹⁵²

DEPARTMENT OF ENERGY, ENVIRONMENT AND CLIMATE ACTION

University of Melbourne Law School submitted that water saved as part of the Murray-Darling Basin Plan is not being shared with First Peoples. They reported that of the water savings delivered by \$1 billion in Commonwealth-funded water efficiency projects in the Goulburn Murray Irrigation District, half was given to the Commonwealth environmental water holder and the remaining half was gifted to irrigators.¹⁵³

In correspondence to Yoorrook, the State noted that the \$2 billion Connections Project achieved 433 GL of long term water savings.¹⁵⁴ The Commonwealth funded Stage 2 of this Project and all 204 GL recovered under that stage was committed to the Commonwealth Environmental Water Holder (and none to irrigators). Additional water savings achieved under Stage 1 enabled 1.36 GL to be set aside for Traditional Owners.

Aboriginal Water Entitlements Program (Commonwealth)

In 2018, the Commonwealth committed to a \$40 million Aboriginal Water Entitlements Program across the whole Murray-Darling Basin. This program established a pool of funding for the Commonwealth Government to buy back water for Traditional Owners.¹⁵⁵

However, none of this money has been spent to date.¹⁵⁶ Yoorrook heard that the Aboriginal Water Entitlements Program has not progressed due to concerns over a perceived transfer of valuable water entitlements from farmers to Traditional Owners.¹⁵⁷ While this funding remains committed, its value has diminished over time. Because of the delay in implementing this buy-back, \$40 million now only buys two thirds of what it would have

bought in 2018.¹⁵⁸ The Commonwealth has increased the funding available under the program to \$100 million as part of the November 2023 reforms to the *Water Act 2007* (Cth).¹⁵⁹ How and when these monies will be spent has not yet been determined by the Government.

Traditional Owners seek engagement in water management

To date, First Peoples' opportunities for meaningful involvement in the administration of water entitlement frameworks have been extremely limited. The State gave evidence that positive progress had been made to involve First Peoples in water management since 2016. This includes appointing Traditional Owners to governance bodies such as catchment management authorities, water corporation boards and the Victorian Environmental Water Holder, and establishing the Birrarung Council. The State has also used instruments such as ministerial letters of expectations to direct government entities to consider First Peoples' water rights.¹⁶⁰

Yoorrook heard that not all First Peoples see value in being involved in these mechanisms, which do not hand over real power and control. Uncle Brendan Kennedy said:

[T]he Mallee, the Catchment Management Authorities have to have the majority landholders on those boards, or we know the Mallee does. So it's — you know, you have a stacked imbalance there of power and political and agenda situation amongst those types of water boards. So we tend to stay away from those types of government.¹⁶¹

UNCLE BRENDAN KENNEDY

Renewed sustainable water strategies are starting to be developed with stronger partnership models. For example, DEECA told Yoorrook that the Central and Gippsland Region Sustainable Water Strategy has a partnership model and includes chapters on 'Healthy Country and Healthy Mob' and 'Water Justice for Traditional Owners'.¹⁶²

Yoorrook also heard that since 2019, regional catchment strategies must 'have regard to Aboriginal cultural values and traditional ecological knowledge of management of land and water resources'.¹⁶³ There is no statutory requirement, however, for Traditional Owners to be appointed to the boards of water authorities, or for board appointees to have awareness of Aboriginal cultural values.¹⁶⁴

Yoorrook also heard that processes to appoint Traditional Owners to boards or State advisory bodies occur within colonial constructs.¹⁶⁵ Karmen Jobling, an Executive Officer of MLDRIN told Yoorrook that currently people are being 'appointed by a government process, not from a Traditional Owner or collective nation-based process'.¹⁶⁶

Recognising the Birrarung as a living entity

In 2017 Victoria passed the *Yarra River Protection (Wilip-gin Birrarung murrn) Act 2017* (Vic) ('*Birrarung murrn Act*'). This Act recognises the Birrarung (Yarra River) as a living entity and establishes the Birrarung Council with Traditional Owner members as the independent 'voice' and advocate for the river.¹⁶⁷

Dr Erin O'Donnell told Yoorrook that the *Birrarung murrn Act* fundamentally changes the relationship that the settler state and its institutions have with the river:

So it doesn't immediately create new rights and powers for the river, but it does say the mode of caring for, of knowing this river, must change, because it is now alive. And what that does is draw all of the various government agencies, the local governments, the water authorities, Parks Victoria, everyone who's got responsibilities under this legislation for the river, it draws them into a different relationship with this river in which the river is alive and they can start to think about a relationship of reciprocity and obligation, rather than one of exploitation and domination.¹⁶⁸

DR ERIN O'DONNELL

Yoorrook also heard that the *Birrarung murron Act* has significant limitations. The Birrarung Council is not responsible for any of the water that flows into the river. Rather, the Victorian Environmental Water Holder continues to hold the water entitlement on behalf of the environment of the river. The Birrarung Council cannot hold that entity to account.¹⁶⁹ The Birrarung also has a limited amount of land associated with it. MLDRIN representatives said that this should be expanded.¹⁷⁰ Environmental Justice Australia told Yoorrook that the *Birrarung murron Act* is 'a relatively weak model' of water governance 'with limited capacity to deliver water justice'.¹⁷¹

Despite these limitations, the model of recognising legal personhood of water would provide an avenue for legal pluralism, or a recognition that Aboriginal laws and State laws co-exist. For example, Environmental Justice Australia told Yoorrook that the 'living entity' concept in the *Birrarung murron Act* is a 'hybrid proposition: a legal device adopting a principle of Wurundjeri law and lore'.¹⁷² Environmental Justice Australia said:

[T]he use of legal personhood to implement hybrid and co-governance arrangements in lands and waters represents a potentially powerful device with clear resonance in the treaty context. Affinities between statute law and Aboriginal law, lore and cultural authority are readily available, such as where the latter is given force and effect through the legal machinery of the former.¹⁷³

ENVIRONMENTAL JUSTICE AUSTRALIA

***Water is Life* is a step forward but does not go far enough**

Yoorrook heard evidence, particularly from the State, that *Water is Life* represents a significant development in State policy on Aboriginal water rights¹⁷⁴, including by national standards. While the measures in *Water is Life*, if implemented, would provide a step forward for First Peoples' water rights, Yoorrook heard evidence that the policy does not go far enough and that inadequate action has been taken to implement it to date.

Background

Water is Life was announced in 2022, with an allocation of \$3.85 million over two years to 'help improve water access and ownership for First Peoples'.¹⁷⁵ Minister Shing told Yoorrook that *Water is Life* outlines the State's 'commitment to return water to First Peoples as a priority, while also committing to understand, identify and address the systemic barriers within the existing framework'.¹⁷⁶

The State told Yoorrook that *Water is Life* reflects the Victorian Government's increased commitment to improving First Peoples' water rights over time. Firstly, in 2013, the State released the Victorian Waterway Management Strategy. This was the first policy that required DEECA to engage with First Peoples in developing programs and activities consistent with the Victorian Aboriginal Affairs Framework 2013–2018.¹⁷⁷ In 2016, the Government developed *Water for Victoria*, a long-term strategy for managing the State's water.¹⁷⁸ Action 6.3 in *Water for Victoria* was the commitment to develop a strategy,¹⁷⁹ which centred 'First Peoples as partners in the co-design and development of a dedicated roadmap setting the direction for First Peoples water policy in Victoria',¹⁸⁰ which became the *Water is Life* strategy.¹⁸¹

Between 2015 and 2020, the State established the Aboriginal Water Program, which funded projects on recognising Aboriginal values and uses of water and Aboriginal Water Officers. Minister Shing told Yoorrook that *Water is Life* builds on this work.¹⁸²

First Peoples were involved in designing *Water is Life*, but it is a government policy. Minister Shing told Yoorrook that *Water is Life* is a government program that Traditional Owners participate in, rather than being involved in as partners.¹⁸³ This is reflected in the text of the document. *Water is Life* is in two volumes, the second volume consisting of Traditional Owner Nation Statements (see box: Water is Life: Traditional Owner Nation Statements). The first volume clarifies that '[p]ublication of these Nation Statements should not be taken as an endorsement of the policy content by Victorian Government'.¹⁸⁴

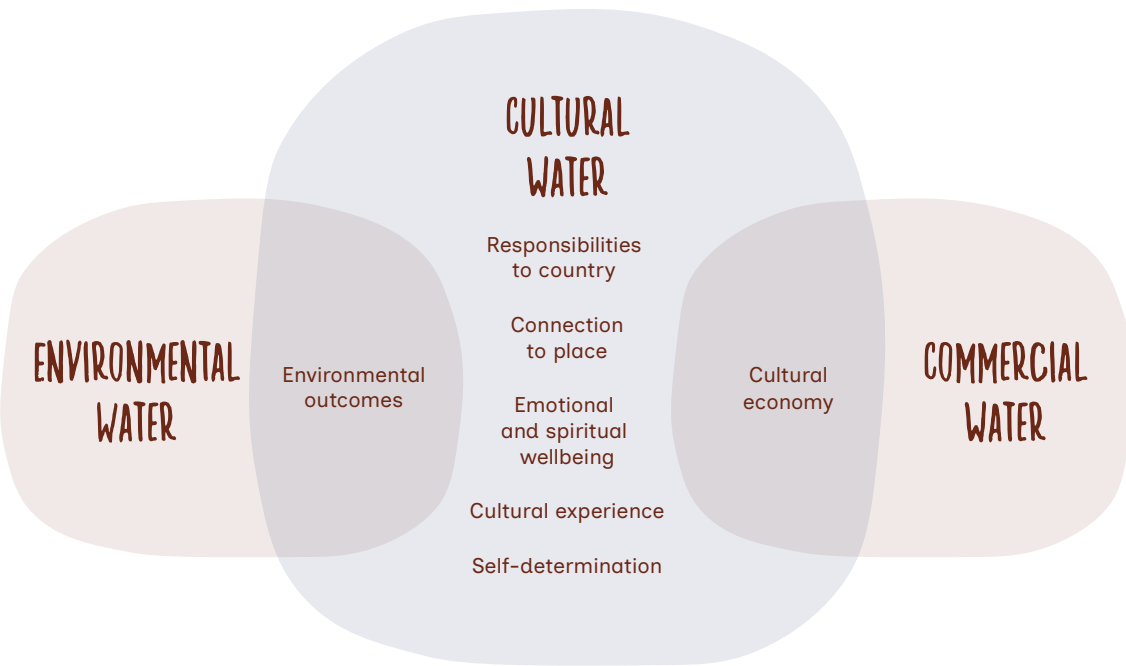
Positive policy developments in *Water is Life*

Water is Life sets out a number of outcomes which would be positive for Traditional Owners if successfully implemented. The policy proposes to improve Traditional Owner opportunities to participate in water management. This includes by enabling Traditional Owners to enter into formal partnerships with catchment management authorities, water corporations and the Victorian Environmental Water Holder to increase levels of Traditional Owners decision-making within these bodies.¹⁸⁵ Traditional Owners would also be provided an increased role in determining how environmental water is used for the purpose of healing Country.¹⁸⁶ In specified locations, Traditional Owners could be recognised as waterway managers and environmental water holders,¹⁸⁷ and work will commence on recognising all waterways as living entities with Traditional Owners as the 'voice' of those entities.¹⁸⁸

In terms of First Peoples' water rights more generally, *Water is Life* proposes to return water to Traditional Owner groups across Victoria through water entitlements.¹⁸⁹ It also proposes to fund Traditional Owners to pay any fees and charges associated with water entitlements (unless use is purely commercial).¹⁹⁰

Water is Life is significant because it acknowledges, from a State policy perspective, that cultural water and cultural flows are broader than environmental or commercial water rights.¹⁹¹ *Water is Life* states: ‘Just as “environmental flows” are needed to sustain the ecological values of waterways, “cultural flows” are needed to support the cultural traditions and community development needs of Traditional Owners’.¹⁹² This includes economic uses of water, including for ‘eel aquaculture, fisheries, and harvests of weaving grasses’.¹⁹³

Figure 14.1: Cultural water outcomes¹⁹⁴



Limitations and criticisms of *Water is Life*

Water is Life has been criticised for having a number of significant limitations from a policy perspective, and the State has been criticised for a lack of action in implementing the policy.

Despite *Water is Life*’s benefits on paper, Yoorrook heard concerns about the lack of speed and transparency in its implementation. As Dr Erin O’Donnell told Yoorrook, there is ‘no indication ... that *Water is Life* is being implemented in anything resembling a timely fashion’.¹⁹⁵ Minister Shing’s description of the policy platform and commitments in *Water is Life* is substantial, spanning six pages, but does not give any concrete examples of what the State has done to action these commitments in the immediate term.¹⁹⁶

A significant limitation of *Water is Life* is the State’s clear desire to maintain the existing water allocation system. Although the policy commits to developing guidelines to give Traditional Owners access to unallocated water, these guidelines will ‘ensure unallocated water is only made available where there are no unacceptable impacts on ... existing entitlement holders’ (e.g. irrigators).¹⁹⁷ Further, the Victorian Government will not establish a direct water purchase program for cultural water.¹⁹⁸ Finally, where Traditional Owners become commercial users of water, they will become responsible for an increasing portion of fees and charges over time to full cost recovery,¹⁹⁹ which is at odds with their inherent rights to water.

Yoorrook heard that *Water is Life* has good aspirations but is ultimately a ‘policy piece but not a strategy’ and will not ‘achieve water justice without significant financial investment’.²⁰⁰ Aside from the initial \$3.85 million allocation, at the time of the hearings, the State had not outlined any additional funding set aside to deliver the policy.

The University of Melbourne Law School told Yoorrook that while the implementation of *Water is Life* ‘would be an important step forward’, it ‘will not deliver water justice’.²⁰¹ Among the criticisms of the policy, Will Mooney told Yoorrook that ‘there would not be a program of direct reinvestment in water allocation’²⁰², meaning that

the historic injustice that continues to be perpetuated for us in negotiations with the government comes back to the fact that these systems are fully allocated and the only way to effect a way to address that dispossession is through entry into the water market.²⁰³

WILL MOONEY

The resounding evidence before Yoorrook was that water buy-backs are the most effective way of providing meaningful water rights to Traditional Owners, but *Water is Life* does not provide an immediate path forward on this.

WATER IS LIFE: TRADITIONAL OWNER NATION STATEMENTS

Alongside a statement of government policy, the *Water is Life* process published 27 independent Traditional Owner Nation Statements. These Nation Statements assert sovereignty and outline different conceptions, pathways and priorities for water.²⁰⁴

A number of Nation Statements made demands for similar types of reforms, including water allocations with no fees or charges,²⁰⁵ reduction of water consumption and better management of waterways²⁰⁶ and fair compensation for stolen water.²⁰⁷

The specific demands of the Gunaikurnai Land and Waters Aboriginal Corporation, the Wurundjeri Woi-Wurrung Cultural Heritage Aboriginal Corporation, the Yorta Yorta people, and Eastern Maar Aboriginal Corporation are set out below.

GLaWAC [Gunaikurnai Land and Waters Aboriginal Corporation] wants the way governments think and make decisions about water to be reframed. Current options start from and are embedded in a western approach to water, which offer (at best) opportunities for Traditional Owners to ‘provide input’ into management plans and other existing tools and instruments. We need systemic changes that empower Traditional Owners to actually shape both the management and decision-making processes and the tangible and intangible outcomes they generate. Such an approach is reflective of Gunaikurnai’s status as rights holders.²⁰⁸

GUNAIKURNAI LAND AND WATERS ABORIGINAL CORPORATION

Wurundjeri Woi-wurrung people want to see healthy and cleaner Country, through well managed and adequately protected hydrological system. This will require the Government to partner with WWCHAC [Wurundjeri Woi-Wurrung Cultural Heritage Aboriginal Corporation] in enabling Wurundjeri Woi-wurrung control of water on Wurundjeri Woi-wurrung Country. ... During the transfer of rights, the Government must work towards enhancing the natural environment and creating economic prosperity, while protecting and celebrating the Cultural Values for water bodies. This must include the development of strategies to establish cultural and environmental corridors, the identification of cultural water (quantity, quality and timing) required to sustain natural, cultural and spiritual values, and the protection of [I]ndigenous knowledge.²⁰⁹

WURUNDJERI WOI-WURRUNG CULTURAL HERITAGE
ABORIGINAL CORPORATION

Since the colonial invasion, water has been turned into property. In marginalising Yorta Yorta on our land, our access to water has also been marginalised. The reservation of water for the environment was a step forward and one that Yorta Yorta campaigned long and hard for in the 1990s and 2000s. But environmental water is not enough. We are the First Nation people of this place the water on our Country is owned and controlled by others. We will not have our water managed on our behalf. We assert our rights to ‘cultural flows’ — the water necessary to our culture, our Country and our economic livelihood. This is our inherent right.²¹⁰

YORTA YORTA PEOPLE

Eastern Maar’s ownership of and/or access to parreeyt cannot, nor should it be, recognised as part of a process founded in the doctrine of aqua nullius as outlined above. Considering the magnitude of the injustice inflicted upon Eastern Maar, it is not acceptable that Eastern Maar be subjected to more trauma by the Crown’s persistence in confining Eastern Maar to a licence/permit model that recognises only limited ‘rights’ and further upholds the notion of aqua nullius. However, it remains Eastern Maar’s strongest desire to work with the Crown to establish a new order of rights recognition and resulting processes and its accompanying mechanisms that acknowledgement Eastern Maar’s parreeyt sovereignty.²¹¹

EASTERN MAAR ABORIGINAL CORPORATION

The way forward

Yoorrook heard First Peoples calling for recognition of their never-ceded water sovereignty. Self-determination in water is not just about water use and entitlements, which are based on the colonial state concept that water is a commercial resource.²¹² Traditional Owners should be recognised as rights-holders, not stakeholders, in relation to water governance.²¹³ That sovereignty was never ceded means that ‘all water is Aboriginal water’²¹⁴ and the Crown should not have ‘sole authority’ in managing water.²¹⁵

Yoorrook calls for First Peoples’ fundamental and inherent rights to water to be recognised. The Victorian Government must embed the cultural flows model in water law and practice, to deliver water rights and enable meaningful Traditional Owner input in managing water landscapes. The State must engage in regulatory reform and provide funding so that First Peoples can use their knowledge and culture to heal and care for Country, to benefit the whole community. These are matters for statewide consideration, including through treaty.

Yoorrook heard different ways of thinking about and acting to recognise First Peoples’ water rights and enable them to care for Country. The cultural flows model provides a path forward for water justice. The Nation Statements in *Water is Life* show that there is strong support for cultural flows among Traditional Owner groups, and each group brings their own perspectives on what needs to be addressed.²¹⁶ These arrangements should be negotiated with Traditional Owner groups.

Yoorrook heard calls to accelerate returning water directly to Traditional Owners for their priorities. This involves Traditional Owners either being given or buying water entitlements. One approach is for governments to commit to prioritising granting unallocated water entitlements to First Peoples.

As Uncle Brendan Kennedy said:

[W]e hear about commitment, we hear about, you know, there is good intention ... the leadership is start returning water back to Traditional Owners. That’s the best way. Just return — start returning significant water back to Traditional Owners as soon as possible and start to build up Traditional Owners’ capacity for us to be able to deliver that water and manage that water for our Country and manage Country. That will be a good place to start ... That’s a good leadership.²¹⁷

UNCLE BRENDAN KENNEDY

Underpinning all potential reforms, Yoorrook heard the need to sustain and expand resources for First Peoples, including to care for Country. This includes resources for First Peoples to undertake work on Country, including more support for Aboriginal employment in the water sector and eco-services,²¹⁸ for Traditional Owners to articulate their cultural landscapes and flows, and to influence and participate in water systems.

Further, Yoorrook recognises that existing funding and programs to restore and protect the health of Victoria’s waters across government is insufficient. Like land, water Country is sick and requires healing. Programs to return waters to First Peoples should not shift the legacy and burden of ongoing, accelerating environmental degradation to Traditional Owners. State investment in Traditional Owner groups to restore and protect waterways needs to increase substantially, including in response to climate change and population growth.

Recommendations

RECOMMENDATION 37

The Victorian Government must recognise Victoria’s First Peoples’ water sovereignty as part of treaty as requested by First Peoples’ Assembly of Victoria or any other First Nation negotiating on its own behalf and through substantive reform of legislation by:

- a. Recognising Traditional Owners’ fundamental and inherent rights to water, including by way of amending Victorian water laws to:
 - i. incorporate UNDRIP standards (as a minimum); and
 - ii. recognise First Peoples’ cultural water rights (including the use of water for commercial purposes, and to support the development of cultural economies) including (without limitation) through amendments to the *Traditional Owner Settlement Act 2010* (Vic) and the *Water Act 1989* (Vic).
- b. Embedding, investing in and implementing a cultural flows model into Victorian water law, practice and governance.

RECOMMENDATION 38

The Victorian Government must commit to:

- a. Accelerating the development of legislative proposals to recognise waterways as living entities and Traditional Owners as a unique voice of those living entities.
- b. Supporting Traditional Owners to achieve their water related aspirations as reflected in individual *Water is Life* Nation Statements.
- c. Enabling First Peoples to assume ‘waterway manager’ responsibilities within the meaning of the *Water Act 1989* (Vic).
- d. Supporting additional Traditional Owner interfaces with, and representation on, other water resource managers including Water Corporations, Catchment Management Authorities and the Victorian Environmental Water Holder.
- e. Providing funding to support Traditional Owners to undertake works to restore waterway health and cultural flows on their Country.
- f. Supporting commercial uses and the growth of water-based cultural economies.
- g. Removing barriers, increasing funding and accelerating action to:
 - i. allocate or support the purchase of water for First Peoples’ cultural flows and economies within existing entitlement frameworks; and
 - ii. support Traditional Owners to directly use and/or realise the economic value of water accessed or returned.
- h. Prioritise allocation to Traditional Owners of unallocated or newly available water including through:
 - i. water freed up by the cessation of industries like coal power;
 - ii. new or alternative water such as desalinated or recycled water; and
 - iii. the establishment of buy-back schemes.
- i. Reviewing, updating (as required) and fully funding relevant strategies such as *Water is Life* to align with the above.

RECOMMENDATION 39

The Victorian Government must treat Traditional Owners as rights holders, not standard ‘water users’, including by exempting them from obligations to pay taxes, rates and charges.

RECOMMENDATION 40

The Victorian Government must establish and implement mechanisms for hypothecation of a proportion of water revenues (surface and groundwater) collected in the State of Victoria to be placed into the Self-Determination Fund for the benefit of Victorian Traditional Owners. The proportion should be agreed in negotiation with the First Peoples’ Assembly of Victoria and relevant Traditional Owners.

RECOMMENDATION 41

The Victorian Government must establish a legislative regime for the recognition of legal identity in waterways and other natural resources which includes the appointment of Traditional Owners as guardians for those entities.

Endnotes

1. Witness Outline of Uncle Brendan Kennedy, 23 April 2024, 13 [125], quoting himself in Jack Latimore, ‘[Once Were Waterways: Cultural Dispersal & Environmental Vandalism in the Lower Murray Darling Basin](#)’ (Webpage, 31 August 2022).

2. Sea Country is addressed specifically in Chapter 15: Earth, sea and living things.

3. University of Melbourne Law School, Submission 334, 8.

4. University of Melbourne Law School, Submission 334, 8; *Water Act 1989* (Vic) s 7(1).

5. Transcript of Uncle Brendan Kennedy, 24 April 2024 (Part 1), 33 [11]–[14].

6. *Water Act 1989* (Vic) s 1(j) and 4A and 4B.

7. Witness Statement of Minister Harriet Shing MP, 12 March 2024, 3–4.

8. This figure was provided in correspondence from the Victorian Government Solicitors Office to King & Wood Mallesons (Solicitors Assisting) dated 13 December 2024. See also Department of Energy, Environment and Climate Action, Response to NTP-003-031 — ‘Annexure C – *Water annual revenue*’, produced by the State of Victoria in response to the Commission’s Request for Information, dated 19 February 2024.

9. University of Melbourne Law School, Submission 334, 9.

10. *Water Act 1989* (Vic), s 8A; *Traditional Owner Settlement Act 2010* (Vic) s 84(a).

In general there is no commercial component to native title rights; cf *Akiba on behalf of the Torres Strait Regional Seas Claim Group v Commonwealth of Australia* (2013) 250 CLR 209, where the High Court of Australia found for the first time that native title rights included commercial rights.

11. *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007) (‘UNDRIP’).

12. Transcript of Will Mooney, 15 April 2024, 74 [44]–75 [5].

13. Department of Environment, Land, Water and Planning (Vic), *Water is Life: Traditional Owner Access to Water Roadmap* (2022).

14. Department of Environment, Land, Water and Planning (Vic), *Water is Life: Traditional Owner Access to Water Roadmap: Section A* (2022), 22–23.

15. *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007), art 25.

16. *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007), art 32.

17. University of Melbourne Law School, Submission 334, 7.

18. Transcript of Dr Katie O’Bryan, 15 April 2024, 85 [16]–[19].

For the State’s approach to UNDRIP, see Chapter 4: Rights.

19. *Charter of Human Rights and Responsibilities Act 2006* (Vic) Preamble.

20. *Charter of Human Rights and Responsibilities Act 2006* (Vic), s 19(2).

21. Department of Energy, Environment and Climate Action, Response to NTP-003-004 — ‘*The legal and policy frameworks concerning the ownership, management, and administration of water*’, 3, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 1 November 2023.

22. Department of Energy, Environment and Climate Action, Response to NTP-003-004 — ‘*The legal and policy frameworks concerning the ownership, management, and administration of water*’, 3, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 1 November 2023.

23. Department of Energy, Environment and Climate Action, Response to NTP-003-004 — ‘*The legal and policy frameworks concerning the ownership, management, and administration of water*’, 3, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 1 November 2023.

24. Department of Energy, Environment and Climate Action, Response to NTP-003-004 — ‘*The legal and policy frameworks concerning the ownership, management, and administration of water*’, 4, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 1 November 2023.

25. Department of Energy, Environment and Climate Action, Response to NTP-003-004 — ‘*The legal and policy frameworks concerning the ownership, management, and administration of water*’, 1, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 1 November 2023.

26. *Water Act 1989* (Vic) pt 1 s 4A, pt 3AA.

27. *Water Act 1989* (Vic) ss 22C(3)(a)(i), 33DD(2)(a), 92(2A)(a), 189(1)(a)(iii) and 190(3)(d)(iii).

28. Department of Energy, Environment and Climate Action, Response to NTP-003-004 — ‘*The legal and policy frameworks concerning the ownership, management, and administration of water*’, 2, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 1 November 2023.

29. *Catchment and Land Protection Act 1994* (Vic) s 24(2)(ba).

30. Department of Environment, Land, Water and Planning (Vic), *Water is Life: Traditional Owner Access to Water Roadmap* (2022), 22.

31. Department of Environment, Land, Water and Planning (Vic), *Water is Life: Traditional Owner Access to Water Roadmap* (2022), 22.

32. Some watercourses pass through the Country of multiple nations and groups that have different terms for them. The river now known as the Murray River is the largest river in Australia and passes through New South Wales, Victoria and South Australia. The river has been known by many names among various First Peoples groups. In Victoria, commonly known names for the river include Dhungala / Dunghala / Tongala and Millewa / Milawa / Mirri / Mile. The river now known as the Darling is also very large and has many names. Due to the variation in names, and the lack of documentation of other names, in this chapter Yoorrook refers to the rivers simply as ‘Murray’ and ‘Darling’.

33. Murray Lower Darling Rivers Indigenous Nations, *MLDRIN Echuca Declaration 2007* (Declaration, 2007), 2.

34. Transcript of Will Mooney, 15 April 2024, 74 [27]–[29].

35. National Cultural Flows Research Project, ‘[About the Project](#)’ (Webpage).

36. Transcript of Dr Erin O’Donnell, 15 April 2024, 90 [28]–[32].

37. Transcript of Dr Erin O’Donnell, 15 April 2024, 90 [37]–[41].

38. Transcript of Dr Erin O’Donnell, 15 April 2024, 90 [42]–91 [14].

39. Transcript of Dr Erin O’Donnell, 15 April 2024, 75 [33]–[36], citing use of the term in Lana D Hartwig, Sue Jackson and Natalie Osborne, ‘Trends in Aboriginal Water Ownership in New South Wales, Australia: The Continuities Between Colonial and Neoliberal Forms of Dispossession’ (2020) 99 *Land Use Policy*. See also Lana D Hartwig, Natalie Osborne and Sue Jackson, ‘Australia’s Legacy of Denying Water Rights to Aboriginal People’ (2020) 17 *Open Rivers: Rethinking Water, Place & Community*.

40. University of Melbourne Law School, Submission 334, 8; Transcript of Dr Erin O’Donnell, 15 April 2024, 75 [32]–76 [39].

41. University of Melbourne Law School, Submission 334, 8.

42. Transcript of Dr Erin O’Donnell, 15 April 2024, 75 [38]–[45].

43. Transcript of Dr Katie O’Bryan, 15 April 2024, 84 [1]–[14].

44. *Water Act 1989* (Vic), s 7(1).

45. Transcript of roundtable with Barengi Gadjin Land Council, 26 October 2023, 24, served on the State of Victoria on 1 April 2024.

46. Transcript of Dr Katie O’Bryan, 15 April 2024, 84 [7]–[13].

47. Transcript of Dr Erin O’Donnell, 15 April 2024, 75 [45]–76 [9].

48. Transcript of Dr Erin O’Donnell, 15 April 2024, 76 [1]–[9].

49. University of Melbourne Law School, Submission 334, 18, citing Katie O’Bryan, ‘The Changing Face of River Management in Victoria: *The Yarra River Protection (Wilip-Gin Birrarung Murrong) Act 2017* (Vic)’ (2019) 44(6–7) *Water International* 769; See also Transcript of Dr Erin O’Donnell, 15 April 2024, 76 [1]–[5]; Erin O’Donnell, ‘Repairing Our Relationship with Rivers: Water Law and Legal Personhood’ in Rhett Larson and Vanessa Casado Pérez (eds), *Research Agenda for Water Law* (Edward Elgar, 2023), 113.

50. *Water Act 1989* (Vic) s 8(1).

51. University of Melbourne Law School, Submission 334, 5.

52. Transcript of Dr Katie O’Bryan, 15 April 2024, 76 [33]–[35].

53. Transcript of Dr Katie O’Bryan, 15 April 2024, 75 [32]–76 [39]. See also Witness Outline of Uncle Brendan Kennedy, 23 April 2024, 14 [135]–[136].

54. Transcript of Will Mooney, 15 April 2024, 81 [30]–82 [5]. See also Witness Outline of Uncle Brendan Kennedy, 23 April 2024, 14 [135]–[136].

55. Erin O’Donnell, ‘Repairing Our Relationship with Rivers: Water Law and Legal Personhood’ in Rhett Larson and Vanessa Casado Pérez (eds), *A Research Agenda for Water Law* (Edward Elgar, 2023), 113, 113, citing John Page and Alessandro Pelizzon, ‘Of Rivers, Law and Justice in the Anthropocene’ (2022) *Geographical Journal* 1, 3.

56. University of Melbourne Law School, Submission 334, 17–8; Transcript of Uncle Brendan Kennedy, 24 April 2024 (Part 1), 33 [9]–[14].

57. University of Melbourne Law School, Submission 334, 8.

58. Transcript of roundtable with Dja Dja Wurrung Clans Aboriginal Corporation, 25 November 2023, 33, served on the State of Victoria on 1 April 2024.

59. Department of Environment, Land, Water and Planning (Vic), *Water is Life: Traditional Owner Access to Water Roadmap* (2022), 183, quoting Aunty Denise Lovett.

60. Transcript of Uncle Brendan Kennedy, 24 April 2024 (Part 1), 15 [40]–[44].

61. See, e.g., Witness Statement of Minister Harriet Shing MP, 12 March 2024, 3–4 [19].

62. Some watercourses pass through the Country of multiple nations and groups that have different terms for them. The river now known as the Murray River is the largest river in Australia and passes through New South Wales, Victoria and South Australia. The river has been known by many names among various First Peoples groups. In Victoria, commonly known names for the river include Dhungala / Dunghala / Tongala and Millewa / Milawa / Mirri / Mile. Due to the variation in names, and the lack of documentation of other names, in this chapter Yoorrook refers to the river simply as ‘Murray’.

63. Summary of site visit with Wamba Wemba Aboriginal Corporation, 9 December 2023.

64. Transcript of roundtable with Dja Dja Wurrung Clans Aboriginal Corporation, 25 November 2023, 33, served on the State of Victoria on 1 April 2024.

65. Summary of roundtable with Boonwurrung Land and Sea Council, 23 November 2023.

66. Transcript of Will Mooney, 15 April 2024, 74 [46]–75 [4].

67. Yoorrook notes that as of December 2024, Gayle Tierney is Minister for Water. Minister Shing is now Minister for the Suburban Rail Loop; Minister for Housing and Building; Minister for Development Victoria and Precincts. See Premier of Victoria, Hon Jacinta Allan MP, ‘[A Strong And Focused Team To Build Homes And Help Families](#)’ (Webpage, 19 December 2024).

68. Witness Statement of Minister Harriet Shing MP, 24 April 2024, 3–4 [19].

69. Witness Statement of Minister Harriet Shing MP, 24 April 2024, 3–4 [19].

70. Transcript of Harriet Shing MP, 24 April 2024, 65. See also Witness Statement of Harriet Shing MP, 24 April 2024, 3–4.

71. Transcript of Minister Harriet Shing MP, 24 April 2024 (Part 2), 65 [9]–[10].

72. This figure was provided in correspondence from the Victorian Government Solicitors Office to King & Wood Mallesons (Solicitors Assisting) dated 13 December 2024.

See also Department of Energy, Environment and Climate Action, Response to NTP-003-031 — ‘Annexure C – *Water annual revenue*’, produced by the State of Victoria in response to the Commission’s Request for Information, dated 19 February 2024.

73. Transcript of Minister Harriet Shing MP, 24 April 2024 (Part 2), 38 [25]–39 [44].

74. Correspondence from the Victorian Government Solicitors Office to King & Wood Mallesons (Solicitors Assisting) dated 13 December 2024.

75. Department of Energy, Environment and Climate Action, Response to NTP-003-004 — ‘*Land, Waters and Resources Revenue Collected by the Victorian Government*’, 13–5, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 2 November 2023.

76. Department of Energy, Environment and Climate Action, Response to NTP-003-004 — ‘*Land, Waters and Resources Revenue Collected by the Victorian Government*’, 13, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 2 November 2023.

77. Department of Energy, Environment and Climate Action, Response to NTP-003-004 — ‘*Land, Waters and Resources Revenue Collected by the Victorian Government*’, 14, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 2 November 2023.

78. University of Melbourne Law School, Submission 334, 9.

79. Transcript of Uncle Brendan Kennedy, 24 April 2024 (Part 1), 33 [8]–[14].

80. Transcript of roundtable with Dja Dja Wurrung Clans Aboriginal Corporation, 25 November 2023, 35, served on the State of Victoria on 1 April 2024.

81. See Department of Energy, Environment and Climate Action, ‘[Fifth tranche of the environmental contribution](#)’ (Webpage, 22 October 2024).

82. Yoorrook have calculated this to be \$674,183,400 based on data provided in Department of Energy, Environment and Climate Action, Response to NTP-003-003–031 — ‘Annexure C – Water annual revenue’, produced by the State of Victoria in response to the Commission’s Request for Information, dated 19 February 2024. See also Department of Energy, Environment and Climate Action, Response to NTP-003-004 — ‘Land, Waters and Resources Revenue Collected by the Victorian Government’, 4, 14, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 2 November 2023.

83. Department of Energy, Environment and Climate Action, Response to NTP-003-004 — ‘Land, Waters and Resources Revenue Collected by the Victorian Government’, 4, 14, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 2 November 2023.

84. Transcript of Minister Harriet Shing MP, 24 April 2024, 72 [42]–[45].

85. Witness Statement of Minister Harriet Shing MP, 12 March 2024, 8 [56]–[57].

86. Witness Statement of Minister Harriet Shing MP, 12 March 2024, 8–9 [57]–[58].

87. Witness Statement of Minister Harriet Shing MP, 12 March 2024, 8 [57].

88. Transcript of Uncle Brendan Kennedy, 24 April 2024 (Part 1), 32 [29]–[36].

89. Witness Statement of Minister Harriet Shing MP, 12 March 2024, 7 [50].

90. The State of Victoria Department of Environment, Land, Water and Planning, *Water for Victoria* (2016), 98.

91. The State of Victoria Department of Environment, Land, Water and Planning, *Water for Victoria* (2016), 100.

92. Department of Environment, Land, Water and Planning (Vic), *Water is Life: Traditional Owner Access to Water Roadmap* (2022), 11.

93. Department of Environment, Land, Water and Planning (Vic), *Water is Life: Traditional Owner Access to Water Roadmap* (2022), 15.

94. The University of Melbourne Law School refers to several examples, including 2 GL of unallocated water from Gippsland’s Mitchell River returned to the Gunaikurnai Land and Waters Aboriginal Corporation (GLaWAC) in March 2021; 2.5 GL of unallocated water from the Palawarra (Fitzroy River) system returned to the Gunditj Mirring Traditional Owner Aboriginal Corporation for Country, including for traditional eel practices, at Budj Bim in September 2022; and 500 ML surface water licence for the Tambo River and a 200 ML groundwater licence in the Buchan Munji aquifer system returned to the GLWAC in 2023: University of Melbourne Law School, Submission 334, 21, 26. See also William Howard, ‘[Water Rights Returned to Gippsland Traditional Owners in Landmark Victorian Government Deal](#)’, *ABC News Online* (Webpage, 2023).

95. Witness Statement of Minister Harriet Shing MP, 12 March 2024, 11 [77]–[79].

96. University of Melbourne Law School, Submission 334, 24, citing Premier of Victoria, ‘[Successful Connections. Project Delivers Extra Water](#)’ (Press Release, 25 February 2022). See also Transcript of Karmen Jobling, 15 April 2024, 92 [43]–[46].

97. University of Melbourne Law School, Submission 334, 23.

98. Premier of Victoria, ‘[Returning Water in the Birrarung to Traditional Owners](#)’ (Webpage, 18 October 2024).

99. Transcript of Dr Erin O’Donnell, 15 April 2024, 102 [42]–[48].

100. University of Melbourne Law School, Submission 334, 23.

101. Witness Outline of Uncle Brendan Kennedy, 23 April 2024, 14 [135]–[137].

In correspondence to Yoorrook, the State noted that further information is available about how the State calculates and accounts for water allocation (See letter the Victorian Government Solicitors Office to King & Wood Mallesons (Solicitors Assisting) dated 13 December 2024. Yoorrook encourages the State to consider additional publications or direct engagement with relevant Traditional Owners on this topic (including possibly through the Aboriginal Water Unit, or treaty-related processes).

102. Witness Outline of Uncle Brendan Kennedy, 23 April 2024, 14 [135]–[136].

103. *Traditional Owner Settlement Act 2010* (Vic) s 82(1)(c).

104. *Traditional Owner Settlement Act 2010* (Vic) s 84(a).

105. Transcript of Dr Erin O’Donnell, 15 April 2024, 88 [39]–[46].

106. Transcript of Dr Katie O’Bryan, 15 April 2024, 86, [14]–[16], 86 [24]–[25].

107. Taungurung Land and Waters Council Aboriginal Corporation, Submission 596 (Land, Sky, Waters), 14.

108. First Principles Review Committee and the Executive Policy Owners Forum, *First Principles Review of the Traditional Owner Settlement Act 2010* (Joint Report, 11 April 2024), 45.

109. First Principles Review Committee and the Executive Policy Owners Forum, *First Principles Review of the Traditional Owner Settlement Act 2010* (Joint Report, 11 April 2024), 46–7.

110. University of Melbourne Law School, Submission 334, 15–6.

111. University of Melbourne Law School, Submission 334, 15–6.

112. Transcript of Aunty Joyce Kennedy, 24 April 2024 (Part 1), 2 [15]–[25].

113. Transcript of Uncle Brendan Kennedy, 24 April 2024 (Part 1), 17 [29]–[37].

114. Murray Lower Darling Rivers Indigenous Nations, *MLDRIN Echuca Declaration 2007* (Declaration, 2007), 1.

115. Transcript of Aunty Joyce Kennedy, 24 April 2024 (Part 1), 2 [15]–[25].

116. Transcript of Ngarra Murray, Co-Chair of First Peoples’ Assembly of Victoria, 17 April 2024, 4 [6]–[10], 29 [26]–[27].

117. Transcript of Ngarra Murray, Co-Chair of First Peoples’ Assembly of Victoria, 17 April 2024, 29 [26]–31 [10].

118. Transcript of Uncle Brendan Kennedy, 24 April 2024 (Part 1), 17 [30]–[35]. See also University of Melbourne Law School, Submission 334, 18; Gunditjmara Nation Statement in Department of Environment, Land, Water and Planning, State Government of Victoria, [Water Is Life: Traditional Owner Access to Water Roadmap](#) (Section B, 2022).

119. Transcript of roundtable with Tati Tati Kaiejin Aboriginal Corporation, 6 December 2023, 34, served on the State of Victoria on 1 April 2024.

120. Witness Statement of Minister Harriet Shing MP, 12 March 2024, 5–6.

121. *Water Act 1989* (Vic) s 33DC, s 33DD(2)(a); See also Witness Statement of Minister Harriet Shing MP, 12 March 2024, 7 [48].

122. *Water Act 1989* (Vic) s 33DF.

123. See box: What is the Murray–Darling Basin Plan? See also *Water Amendment (Restoring Our Rivers) Act 2023* (Cth); Parliament of Australia, Bills and Legislation, ‘[Water Amendment \(Restoring Our Rivers\) Bill 2023](#)’ (Webpage).

124. *Water Act 1989* (Vic) s 33DC.

125. *Water Act 1989* (Vic) s 33DD(1).

126. *Water Act 1989* (Vic) s 34A.

127. *Water Act 1989* (Vic) s 33DD(2)(a).

128. *Water and Catchment Legislation Amendment Act 2019* (Vic).

129. Witness Statement of Minister Harriet Shing MP, 12 March 2024, 7 [48].

130. *Water Act 1989* (Vic) s 33DF.

131. Witness Statement of Minister Harriet Shing MP, 12 March 2024, 8–9 [56]–[58].

132. Transcript of Dr Erin O’Donnell, 15 April 2024, 99 [33]–[40].

133. Transcript of Dr Erin O’Donnell, 15 April 2024, 99 [39]–100 [4].

134. Transcript of Uncle Brendan Kennedy, 24 April 2024 (Part 1), 32 [10]–[17].

135. Department of Climate Change, Energy, the Environment and Water, ‘[Murray–Darling Basin](#)’ (Webpage); Australian Government, Murray–Darling Basin Authority, ‘[The Basin](#)’ (Webpage, 11 December 2023).

136. The agreement was made in 2008 and is now codified in Schedule 1 to the *Water Act 2007* (Cth). The first version of a water-sharing agreement for the Murray–Darling Basin was signed in 1914.

137. Murray–Darling Basin Authority ‘[Governance of Water Management in the Murray–Darling Basin](#)’ (Webpage).

138. Australian Government, Murray–Darling Basin Authority, ‘[Basin Plan timeline and history](#)’ (Webpage, 19 September 2024).

139. Department of Energy, Environmental and Climate Action, ‘[What is the Murray–Darling Basin Plan?](#)’ (Webpage).

140. Department of Energy, Environmental and Climate Action, ‘[Sustainable diversion limits](#)’ (Webpage, 8 September 2023).

141. Murray–Darling Basin Authority, [Authority Response to Minister’s Request for Advice: Advice on Basin Plan Implementation](#) (July 2023), 5.

142. Commonwealth Government et al, [Agreement of Murray–Darling Basin Ministers to Deliver the Basin Plan in Full](#) (22 August 2023).

143. Parliament of Australia, Bills and Legislation, ‘[Water Amendment \(Restoring Our Rivers\) Bill 2023](#)’ (Webpage).

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Chapter 15: Earth, sea and living things

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Traditional Owners inherent rights over resources extend far beyond simply the land that they have inhabited for thousands of years. Among other things, Traditional Owners have never ceded rights over their waterways and the fish that inhabit them, their forests and sea Country, the minerals underneath their Country, the skies above it and the carbon, ecosystem services, biodiversity, wind and solar radiation, all derived from Country.¹

FEDERATION OF VICTORIAN TRADITIONAL OWNER CORPORATIONS

There's huge profits being made out of the ... illegal occupation of our land, the tearing it apart and extracting all the resources. That's what it's really all about. ... But it's not sustainable.²

UNCLE ROBBIE THORPE / DJURAN BUNJILINEE

Introduction

The theft and commodification of First Peoples' resources (forests and sea Country, earth, metals and minerals, fish, animals and plants)³ has generated billions of dollars for the State and the Victorian economy.⁴ None of that wealth has gone directly to Traditional Owners.⁵ The State's enthusiasm to fully exploit the resources of the lands and seas is matched by a historical continuation of denial of First Peoples' resource rights.

A persistent theme throughout Yoorrook's inquiries is the ongoing failure of the State to implement its promises to First Peoples. Multiple ministers came before Yoorrook and gave evidence of the significant prosperity that has flowed to the State through the exploitation of natural resources. All acknowledged that, to date, none of this prosperity has been shared with Traditional Owners. Each made commitments and expressed their dedication to ensuring change, including leading and implementing specific strategies. However, there has yet to be any tangible implementation of these stated commitments and an acute imbalance in resource allocation and profit distribution remains. This is unacceptable. Immediate action by the State is required as set out in the recommendations following this chapter.

Yoorrook heard that a key barrier to First Peoples achieving justice and prosperity is State recognition of rights to resources.⁶ Yet as witnesses repeatedly stated, the State continues to disregard or de-prioritise First Peoples' rights and interests in resources, denying both cultural rights and the wealth they may generate. First Peoples also highlighted access to natural resources and hunting and fishing rights as key concerns.⁷ Where rights are recognised they are often limited to non-commercial uses,⁸ but being able to access resources for commercial activities and revenue are fundamental rights of Traditional Owners.⁹ As well as redress for the past, First Peoples want a share of the future. Yoorrook learned about substantial, unexplored opportunities for Traditional Owners to engage in resource industries such as mining and forestry, described in this chapter. The State should provide the necessary support and resources to help make those and other opportunities a reality.

Rights to resources

First Peoples’ rights to resources are recognised internationally in the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP).¹⁰ These rights encompass not just access to resources, but authority over their use, development and protection. Article 26 of UNDRIP states:

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.¹¹

Article 32 of UNDRIP affirms First Peoples’ right to determine resources development priorities:

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.¹²

Despite these clearly articulated rights, the Victorian Government’s actions continue to fall far short of international standards. As Minister for Energy and Resources and Climate Action the Hon Lily D’Ambrosio MP acknowledged:

The resources sector is probably the one that is the most underdone in acknowledgement in actually turning things around, so that we actually do deliver real benefits for ... Traditional Owners.¹³

MINISTER LILY D’AMBROSIO MP

The gap between international rights recognition and local implementation remains a critical barrier to First Peoples’ self-determination and economic independence. While the State verbally acknowledges these rights, its actions — particularly around resource management and benefit sharing — continue to perpetuate historical injustices.

What Yoorrook heard

State wealth is built on the theft of First Peoples’ resources

It is horrifying and unforgiveable that we have allowed this situation for many of ... us [to] benefit from it at the expense of First Peoples, and ... it continues because we have not fixed it.¹⁴

MINISTER LILY D’AMBROSIO MP

The foundation of Victoria’s wealth rests upon the theft of First Peoples’ Country and its resources.¹⁵ From the beginning, colonisation deliberately excluded First Peoples from any negotiation over the taking and using of their lands, waters and resources.¹⁶ Minister D’Ambrosio’s testimony acknowledged this historical truth:

[T]he State-sanctioned dispossession of First Peoples’ land and waters ... was fuelled in large part by the quest for wealth in the form of what the colonial State conceptualised as ‘resources’ for the creation of wealth, including gold and other metals and minerals and rich pastures to enable large scale agriculture, including wool production. History shows that these were viewed as riches for easy exploitation by the settlers and the colonising State alike ...

First Peoples were dispossessed of all resources which were considered of value in the colony by the same legal concepts and frameworks which enabled them to be dispossessed of their traditional lands.¹⁷

MINISTER LILY D’AMBROSIO MP

This dispossession was not merely historical; it continues through current Victorian law. From its establishment, Victoria claimed ownership of all resources, including gold, earth minerals, timber and stone, regardless of land ownership.¹⁸ As Minister D’Ambrosio explained, this dispossession of First Peoples and the legislation that vested ownership of all resources in the Crown remains largely in place:

The legacy of the colonial structures ... continue today. The State of Victoria continues to maintain ownership of Victoria’s minerals and petroleum until the resource is lawfully removed from the land under a licence, lease, permit or authority to explore for, mine or otherwise extract the resource with royalties paid to the State on resources extracted.¹⁹

MINISTER LILY D’AMBROSIO MP

Minister D’Ambrosio further acknowledged that these frameworks actively perpetuate injustice against First Peoples:

These frameworks have played a significant role in perpetuating land injustice against First Peoples while simultaneously enabling others to generate wealth. This continues to this day, to enable the State and those permitted by the State, to benefit from the multitude of opportunities which Victoria’s rich resources provide.²⁰

MINISTER LILY D’AMBROSIO MP

Systemic exclusion from resource wealth

[A]lthough First Peoples were required by the law of the time to be treated as equal to all ‘British subjects’, they were excluded from not only their traditional Country and all its bounty but from all aspects of the development and life of Victoria. Critically, while many early settlers found great wealth and prosperity by using the land and waters which had been taken from their Traditional Owners and custodians, including through wool production and gold prospecting and mining, those who had been dispossessed suffered devastating consequences.²¹

MINISTER LILY D’AMBROSIO MP

Minister D’Ambrosio recognised that allowing Traditional Owners to share in the income and revenue generated from resources is essential for self-determination and economic prosperity.²² Yet First Peoples continue to receive no direct benefit from the revenue generated from resources on their lands.²³ Table 15.1 shows the stark reality of this exclusion from key resource revenue streams for the Victorian Government.

Table 15.1: Key natural resource revenue streams for the State²⁴

Revenue source	Overall revenue for 2021–22 financial year	Revenue shared with Traditional Owners
Extractive industries (quarries) on Crown land	\$7.8 million	\$0
Gold on private and Crown land (where annual production is in excess of 2,500 ounces)	\$42.8 million	\$0
Coal on private and Crown land	\$79.2 million	\$0
Other minerals on private and Crown land	\$3.2 million	\$0
Onshore and offshore petroleum	\$9.2 million	\$0
Revenue from sale of forest products, including sawlogs and pulp logs, firewood and other niche log products	\$88.36 million gross sales revenue from log products	\$0
Revenue collected from recreational fisheries licences	\$7.7 million	\$0
Revenue collected from commercial fisheries licences	Not publicly reported	\$0
Revenue collected from game hunting licences	\$4.007 million	\$0
Revenue collected from wildlife owners to ensure legal ownership, trading and handling of Australian native wildlife	Not reported individually	\$0
Total revenue	\$242.27 million	\$0

Gold and other mining

As outlined in Chapter 7: How colonisers stole Country, the discovery of gold accelerated the dispossession of First Peoples. The scale of this theft is staggering: since 1851, more than 2400 tonnes of gold has been extracted in Victoria.²⁵ The value of that gold based on current prices is about \$287.4 billion.²⁶ First Peoples have not received any of that wealth.²⁷

Yoorrook heard that from 1851 to 2020, all wealth from gold extraction went directly into private hands.²⁸

[W]ith the finding of gold and therefore its extraction and the wealth that came from that, there was a great boom in building construction ... and the broader wealth throughout the economy that all people benefitted from at that time. But certainly Traditional Owners were not included [in that].²⁹

MINISTER LILY D’AMBROSIO MP

This exclusion of First Peoples from gold mining wealth continues. Until 2020, the State received indirect revenue from gold through taxes and issuing licences.³⁰ Despite frequently stated intentions of the State to share gold revenue, First Peoples were excluded from a royalty on gold produced in Victoria which was introduced in 2020.³¹ Since the royalty was introduced, \$149.4 million in royalties from gold has been received by the State.³²

The wealth generated by other mining ventures is also substantial. Yoorrook heard that since 2010, the State has received more than \$1 billion in royalties for mineral, stone and petroleum resources.³³ In that period, the State received \$885.6 million in royalties from minerals other than gold (predominantly coal)³⁴ and \$79.5 million in royalties from sandstone and gravel on Crown land.³⁵ Between 2010 and 2023, the State collected \$41.6 million in royalties from oil and gas.³⁶

First Peoples do not benefit from these resource extraction activities. The Department of Energy, Environment and Climate Action (DEECA) reported that in 2020 it had commissioned a report on ‘Understanding Traditional Owner attitudes to earth resource industry’, including ‘an impact analysis and a community benefits framework’.³⁷ The report included eight recommendations which have not been implemented.³⁸ DEECA noted several opportunities for community benefit, sharing that ‘[t]hese aspirations are important’ and that ‘[f]urther work with Traditional Owners is needed’.³⁹ However, DEECA stated that ‘[f]ollowing the completion of the report no further work has commence[d]’ and there are no proposed further actions.⁴⁰ Yoorrook considers this to be an alarming example of a report being commissioned in which the time, effort and expertise of Traditional Owners have been used by the State, only for the identified priorities and recommendations to remain unimplemented over a period of years, with no subsequent action taken.

Minister D’Ambrosio accepted that ‘there is ... currently no mechanism that would allow First Nations people to participate in the generation of wealth based on their traditional ownership of their lands’.⁴¹ In relation to existing extractive industries, the Minister accepted that the State has put nothing in place to facilitate community benefit and revenue sharing.⁴² Minister D’Ambrosio acknowledged that ‘that is our failing’ and her aim was to ‘work towards turning that around’.⁴³ Yoorrook heard that multinational corporations that profit from land and its resources should be compensating Traditional Owners.⁴⁴ As expressed by participants at a roundtable with Gunaikurnai Land and Waters Aboriginal Corporation:

Instead of taking it out of the taxpayers’ pockets let these multinational companies that are over here making trillions for years, right, start to whack up what they — what they should be whacking up.⁴⁵

PARTICIPANT, GUNAIKURNAI LAND AND WATERS ABORIGINAL CORPORATION ROUNDTABLE

You need to be able to actually shift power meaningfully, by ensuring that there is that enduring revenue and resourcing, absolutely. You know, we’re kidding ourselves as a government if we think that self-determination can be achieved ... through more tentative arrangements when it comes to ... wealth sharing ... we have got to now start delivering outcomes and results that people can judge us by.⁴⁶

MINISTER LILY D’AMBROSIO MP

Such compensation is not compelled by the *Traditional Owner Settlement Act 2010* (Vic) (‘TOSA’) or other legislation. These legislative omissions keep Traditional Owners at legal, informational, political and economic disadvantage compared to renewable energy corporations.⁴⁷ Minister D’Ambrosio said that to get Traditional Owners ready to participate in the resources sector requires an acknowledgement by the State that things must be done differently.⁴⁸

Minister D’Ambrosio told Yoorrook the State is currently developing ‘a strategy for critical minerals’ and that she intends to ‘not repeat the mistakes of the past’.⁴⁹ Victoria has identified what the Minister described as a ‘bonanza ... of potential minerals of significant value globally that can contribute to renewable energy development and other types of production.’⁵⁰ The Minister said that her ‘intention is to embed within a critical mineral strategy’ a ‘concept of community benefit-sharing, Traditional Owner benefit-sharing’.⁵¹

My commitment is to seek to apply the same approach to future extraction of resources, the approach being that it is not just about the revenue sharing, it’s also about informed consent ... and the principles that are certainly embedded in the [United Nations Declaration on the Rights of Indigenous Peoples].⁵²

MINISTER LILY D’AMBROSIO MP

The State has informed Yoorrook that the notion of community benefit sharing has now been committed to as part of the *Victorian Critical Minerals Roadmap*, released by DEECA in December 2024.⁵³ More broadly, the State has provided in-principle-only agreement to recommendations of the *First Principles Review of the Traditional Owner Settlement Act 2010*,⁵⁴ despite repeated statements of intent. These recommendations relate to future community benefit sharing, subject to consultation with ‘affected third parties’, legislative process and consideration of financial implications⁵⁵ (see further Chapter 11: Traditional Owner settlements). Yoorrook has not been made aware of any official or practical steps to ensure the participation of Traditional Owners in the resource sector.

Forestry

We had to get permission from the Forestry Commission to cut wood from our own Forest, from the trees that they had marked with a crown stamp. There were Forestry Commission signs throughout the bush saying that permission had to be granted before you could enter the Forest. I asked Grandfather what did the signs mean and he said: ‘It doesn’t mean anything to us, because this is Our Land, Our Forest, Our Country, and we will make our own tracks through it, and come and go as we please’.⁵⁶

UNCLE JIM BERG

Harvesting forests was key to the establishment of the Victorian colony. In the early 1800s, Victoria’s forests were decimated by logging and land clearing by colonisers, resulting in a huge loss of forests and forested area.⁵⁷ During the 1860s the number of sawmills across the state increased to at least 141.⁵⁸ Commercial forestry supported the establishment of the building industry, large pulp and paper mills, and an export pulp industry.⁵⁹

VicForests — a state-owned business established in 2004 and disbanded in mid-2024 following the end of native timber harvesting — managed the harvest, sale and regrowth of the State’s forests. The State received \$1.385 billion in revenue from sales and income and royalties from commercial native timber harvesting from 2010 to the present.⁶⁰ None of that revenue was distributed to Traditional Owners,⁶¹ despite the ‘destructive over-exploitation of their forest resources’.⁶²

Yoorrook was told that under TOSA Land Use Activity Agreements there is a formula (the community benefits formula) ‘for dividend payments from VicForests to the government to be shared with Traditional Owners’.⁶³ The First Principles Review of TOSA found that in practice, this formula is not fit for purpose and has not been used.⁶⁴ The Federation of Victorian Traditional Owner Corporations (FVTOC) submitted that ‘With the end of native timber harvesting, this part of the agreements has effectively been removed without consultation.’⁶⁵

FVTOC submitted that ‘the harvesting regime in itself was viable but no dividends were [paid] and as such Traditional Owners have not seen any benefit from the forests’.⁶⁶ Therefore, FVTOC said that ‘the potential opportunity to transfer assets to Traditional Owners has also been “skipped” as part of the process, failing to recognise Traditional Owner interests.’⁶⁷

The Minister for Environment the Hon Steve Dimopoulos MP accepted that no revenue had been distributed to Traditional Owners under the community benefits formula.⁶⁸ When asked why, he explained that government had deliberately set the community benefits threshold ‘for Traditional Owners not to meet’⁶⁹:

I can give you the official answer and then maybe the technical answer. The official answer is because it never met the threshold. But the real answer is the threshold was set in a way to exclude Traditional Owners. That’s the reality.⁷⁰

MINISTER STEVE DIMOPOULOS MP

Grazing and land licenses

Since 2010, the State has received approximately \$1.89 billion in revenue from grazing and government land licenses. Minister Dimopoulos confirmed that none of this revenue went to Traditional Owners.⁷¹ The State has not articulated plans to redirect any of this revenue to Traditional Owners.

Sea Country

Yoorrook heard concerns about the ongoing exploration activities of multinational oil and gas companies, particularly seismic testing, with the potential to impact sea Country, marine life and places of cultural significance to First Peoples.⁷² For example, an anonymous submission to Yoorrook detailed concerns about damage to songlines and totems in sea Country:

The most important thing to me is the misappropriation and desecration of the oldest living Songline on the planet — the biggest continuum from oldest to newest. Seismic blasting will destroy our marine life and in particular, our Whales. Our Whales have the oldest story to tell. Human occupation is tiny in comparison. It is our duty to protect them.⁷³

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Yoorrook heard First Peoples are not meaningfully consulted and their knowledge and rights are not acknowledged in the development of commercial activities on sea Country.⁷⁴ For example, TGS-NOPEC Geophysical Company Pty Ltd is seeking approval to conduct 3D seismic testing in a large area of sea Country off the Otway Basin in

Commonwealth waters, to detect natural gas under the sea bed.⁷⁵ Seismic blasting poses serious threats to the ecosystem and marine life and is known to kill fish.⁷⁶ The National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) undertook a consultation process in relation to the request.⁷⁷ The South-West Coast Scientific Group submitted that there had been no assessment of the potential impact on the Budj Bim UNESCO World Heritage Site or its eel population.⁷⁸

Offshore energy projects and renewable energy projects are discussed in Chapter 16: Climate change, renewables and emergencies.

Regulation disregards First Peoples’ rights and interests

My hopes are that the aspect of the mineral wealth removed from the land since settlement is finally sorted out and we’re paid something from that funding, that money that they’ve taken out of the ground and made on the ground. We haven’t seen a drop in the bucket in regard to that. So, I think that those things need to be sorted out. Give us some kind of reparation.⁷⁹

ALAN COE

First Peoples’ rights to benefit from the use of their earth resources has remained unrecognised. This absence is particularly stark in the ongoing development of Victoria’s earth resource regulatory regimes.⁸⁰

Licensing and approval of exploration, mining and quarrying of earth resources is overseen by DEECA’s Earth Resources Regulator).⁸¹ Approximately 40 per cent of Victoria is subject to exploration licences.⁸² Those licences apply over freehold property, allowing the extraction of resources regardless of freehold titles.⁸³ This is subject to requirements for consultation and engagement with freehold owners, but not with Traditional Owners.⁸⁴ Aboriginal title and First Peoples’ connection to Country are not required to be considered when granting exploration licences.⁸⁵

First Peoples are afforded very limited opportunities to exercise their rights and interests in earth resources. As outlined by Alan Coe (Wiradjuri, Gadigal, Yorta Yorta), First Peoples ‘haven’t seen a drop in the bucket’.⁸⁶ Consideration of First Peoples’ rights and interests to access natural resources on their own land is limited to what is negotiated in a Natural Resource Agreement as part of a TOSA settlement agreement or as recognised under the *Native Title Act 1993* (Cth) (‘NTA’).⁸⁷ Natural Resource Agreements permit access, use and dealings in natural resources in accordance with the agreement (see Chapter 11: Traditional Owner settlements). Similar rights to natural resources may be recognised as part of a native title determination.⁸⁸ Traditional Owners may have rights to influence decisions to grant rights in natural resources or for the use of public land if they have a Land Use Activity Agreement under TOSA, or under the ‘future acts’ regime in the NTA (e.g. if the Traditional Owner group has an Indigenous Land Use Agreement or a positive Native Title determination).⁸⁹

Environmental Justice Australia explained that Land Use Activity Agreements negotiated as part of recognition and settlement agreements ‘provide procedural rights in relation to identified activities such as mining ... Typically this is in the form of a right to negotiate or be advised of those activities’.⁹⁰ As discussed in Chapter 10: Native title, the NTA has not led to significant benefits for Traditional Owners in Victoria as it has done in other Australian jurisdictions, as most native title rights and interests recognised in Victoria are non-exclusive.⁹¹

Despite multiple acknowledgements from ministers of the need for change, Yoorrook is concerned that the exclusion of First Peoples persists in recent legal developments. Yoorrook heard that amendments to Victorian mining laws in 2023 created no additional rights or obligations benefiting Traditional Owners.⁹² The amendments introduced a new general duty to ‘eliminate or minimise any risk posed to the environment, to any member of the public or to land, property or infrastructure by exploration, extractive industry, mining or rehabilitation of land’.⁹³ This scheme may have implications for Traditional Owners in the protection of their rights and interests in land on which mining may occur.⁹⁴

Environmental Justice Australia submitted that the meaning of ‘risk posed’ should have included risks to Traditional Owners values, rights and interests in the land.⁹⁵

Mining has caused extensive impacts on and damage to Aboriginal peoples’ Country and it has contributed to ruptures in connection between Aboriginal peoples and their Country. Certain provisions exist presently, such as through land use agreements, giving recognised Traditional Owner entities a formal role in decisions concerning mining activities. These rights are limited in scope, geography and effect. New mining laws may provide a pathway indirectly for Traditional Owners to influence decision-making concerning mining in Victoria but the manner and scope of that influence is not presently known. Pathways to land justice in respect of mining in Victoria are uncertain.⁹⁶

ENVIRONMENTAL JUSTICE AUSTRALIA

Yoorrook is concerned to note the continued inconsistency between the commitments expressed by ministers and what is actually being done.

Exclusion from hunting, fishing and other resource rights

We still haven’t got our right, traditional rights, to go into the forest to hunt our food or to get our wood.⁹⁷

UNCLE COLIN WALKER

Victorian First Peoples utilised extensive trade routes, with commerce based on hunting, fishing and the collection of other resources forming a central aspect of First Nations societies.⁹⁸ These trade routes were devastated by colonisation (see Chapter 6: Country, Chapter 36: Economic prosperity and Chapter 37: Political life). In contemporary times, First Peoples continue to face significant barriers to accessing the resources of the land. Although in recent years the State has granted very limited access to certain resources, there remain substantial obstacles for First Peoples seeking to engage in fishing and hunting for personal, communal and cultural purposes.⁹⁹ As Uncle Colin Walker (Yorta Yorta) outlined, First Peoples rights to hunting, fishing and other resources is lacking.

FISHING AND HUNTING: COMMERCIAL, RECREATIONAL AND CULTURAL USE

First Peoples’ activity in commercial fishing, recreational fishing and hunting is regulated in Victoria by the key mechanisms of cultural heritage regulation. These include Traditional Owner Recognition and Settlement Agreements (including Natural Resource Agreements), native title, and authorisations and orders through the *Wildlife Act 1975* (Vic) and the *Conservation, Forests and Lands Act 1987* (Vic).¹⁰⁰

HUNTING

The Department of Jobs, Skills, Industry and Regions told Yoorrook that ‘Traditional Owner groups and Aboriginal Victorians have legal rights to access game and native species for personal, communal and cultural purposes.’¹⁰¹ Traditional Owners are afforded an exemption from prosecution in accessing and using natural resources, under section 211 of the NTA.

- the NTA provides for ‘the preservation of Traditional Owner rights to access natural resources.’¹⁰²
- under TOSA, Traditional Owner Natural Resource Agreements may ‘recognise Traditional Owners’ rights to take and use specific natural resources.’¹⁰³ A Natural Resource Agreement may provide for members of the Traditional Owner group to carry out certain activities on land, including to access, hunt, take, use or interfere with animals. Traditional Owners acting in accordance with a Natural Resource Agreement are exempt from the requirement to hold a Game Licence and from game hunting laws regarding season length, restrictions on species and bag limits under the *Wildlife Act 1975* (Vic) and *Wildlife (Game) Regulations 2012* (Vic).
- the *Wildlife Act 1975* (Vic) provides for authorisations and orders for the taking of wildlife for Aboriginal cultural purposes (s 28A).¹⁰⁴

FISHING

‘Traditional Owner groups and Aboriginal Victorians have legal rights to access fish for personal, communal and cultural purposes.’¹⁰⁵ without a fishing licence.

- Traditional Owners who are recognised native title holders can take fish within the area of native title for personal, communal and cultural purposes without the need to obtain a recreational fishing licence.¹⁰⁶ Traditional Owners are not constrained by recreational fishing rules (e.g. size and bag limits, methods and season dates) but must comply with laws of general application (e.g. cannot take prohibited species or from prohibited areas) and must not use fish for commercial purposes.¹⁰⁷
- Traditional Owners who have reached settlement under TOSA can take fish on Crown land or their own properties within their settlement area for personal, communal and cultural purposes without the need to obtain a recreational fishing licence.¹⁰⁸ Traditional Owners can decide how many fish are taken but must not use fish for commercial purposes.¹⁰⁹
- any person who identifies as Aboriginal or Torres Strait Islander is exempt from the requirement to obtain a recreational fishing licence, subject to compliance with all other recreational fishing rules.¹¹⁰

Regardless of cultural use provisions in legislation, Yoorrook heard that First Peoples are sometimes unable to access and use their natural resources even for cultural purposes¹¹¹ and continue to face barriers to hunting and fishing.¹¹² Traditional Owners’ ability to legally access and use resources (including water, game, fish, food and medicine, timber and minerals) for cultural purposes is patchy, recent and conditional.¹¹³

Access to possum skins

POSSUM SKIN CLOAKS

Possum skins hold significant cultural value for First Peoples in Victoria.¹¹⁴ The creation of possum skin cloaks is a particularly important tradition.¹¹⁵ Dr Aunty Vicki Couzens (Keerray Wooroong Gunditjmara) has written about the important roles of possum skin cloaks in communities:

Cloaks were used in daily activity, to keep warm, to sleep in and carry our babies. Cloaks were an important trade item. Cloaks were significant in ritual and ceremony. We were buried in our cloaks — ‘wrapped in our Country.’¹¹⁶

DR AUNTY VICKI COUZENS

These cloaks are not only functional but also serve as a canvas for storytelling. They can be decorated with designs that hold cultural and spiritual meaning,¹¹⁷ depicting ‘stories of clan and Country’.¹¹⁸ The process of making these cloaks is time- and labour-intensive and often communal, involving the sharing of skills and knowledge among community members.

Inspired by two possum skin cloaks from the 1870s held by the Melbourne Museum and the vision of their Old People, First Peoples (including Vicki Couzens, Debra Couzens, Lee Darroch, Treahna Hamm and Maree Clarke) led a regeneration and revival of the possum skin cloak.¹¹⁹ This culminated in the 2006 Possum Skin Cloak project ‘made in collaboration with language groups across Victoria for the opening ceremony of the Melbourne Commonwealth Games’.¹²⁰ This was ‘the largest gathering of Aboriginal people in cloaks in over 150 years to represent their People; clans and communities’.¹²¹ Today possum skin cloaks are used in ceremonies, community events and for everyday purposes.¹²² Dr Aunty Vicki Couzens has said:

The impact of the revival of possum skin cloaks as a community cultural practice has been significant and profound. The healing experience of a possum skin cloak is immediate, powerful and lasting. However the cloaks are encountered their effect reaches to the person’s spirit, giving strength and healing.¹²³

DR AUNTY VICKI COUZENS

Pictured right: A possum skin cloak made by Dr Aunty Vicki Couzens.



Possums in Victoria are protected under the *Wildlife Act 1975* (Vic).¹²⁴ Yoorrook heard that Traditional Owners in Victoria are generally not able to hunt possums on their own Country.¹²⁵ This includes parks where possums are culled:

Yes, well, we are not allowed to. They are protected. So I know some mobs are having talks with parks and whoever like out at Werribee where they do culling. In some of the parks, they cull possums. So some of the mob are now negotiating to access that so they are not wasted. But, technically, we can't hunt possums still.¹²⁶

DR AUNTY VICKI COUZENS

This means that First Peoples must source possum skins from New Zealand.¹²⁷ Dr Aunty Vicki Couzens told Yoorrook: ‘So we buy them back from New Zealand, which is, you know, like the world has gone crazy.’¹²⁸ Participants at a roundtable with the Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation similarly emphasised the importance of

freedom to practice culture. There's a lot of restrictions — for instance we have to outsource like possum hunt and stuff like that. Truly significant things to our cultural practices that have been restricted and if not outlawed, to the point where you get stuff from New Zealand or Tasmania.¹²⁹

PARTICIPANT, WURUNDJERI WOI-WURRUNG CULTURAL HERITAGE ABORIGINAL CORPORATION ROUNDTABLE

The Victorian Government should make provision for First Peoples to hunt and access possums on Country in Victoria for cultural purposes.

Hunting rights

Traditional Owners may have their rights to ‘access game and native species for personal, communal and cultural purposes’¹³⁰ recognised as part of a Natural Resource Agreement under *TOSA*,¹³¹ or through native title rights.¹³² In most cases, Traditional Owners are not able to hunt (or take other natural resources) for commercial purposes under *TOSA* or *NTA*.¹³³

Members of the general public wishing to hunt game in Victoria must hold a current Victorian Game Licence (or authorisation, and offences usually apply for hunting without authorisation).¹³⁴

Traditional Owners may obtain an exemption from these requirements through *TOSA*, which allows them to negotiate access to fauna on their land (that is, defined public land and private land owned by the Traditional Owner Corporation or its members) as part of a Natural Resource Agreement. This may include a right to hunt fauna. Hunting rights are limited to ‘traditional purposes’.¹³⁵ Traditional Owners cannot be pursued for offences for hunting fauna without authorisation under the *Wildlife Act 1975* (Vic) and corresponding regulations if they do so in accordance with their rights under a natural resources agreement.¹³⁶ A Natural Resource Agreement does not provide a general exemption and some offences still apply regardless of whether a group member is hunting in accordance with the agreement (e.g. hunting at night or hunting using motor vehicles).¹³⁷

Members of a Traditional Owner group with rights recognised in a native title determination may also be exempt from inconsistent State laws that restrict them from hunting in accordance with their native title rights.¹³⁸ Section 211 of the *NTA* provides a possible defence to prosecutions of Traditional Owners for hunting without a permit, depending on the specific rights and interests recognised in the native title determination. Common limitations on hunting rights in consent determinations in Victoria to date include, for example:

- the right to hunt may only be exercised for personal, domestic or communal needs (as opposed to commercial needs)¹³⁹
- the recognised native title rights and interest are expressly subject to laws of general application, for example, Victorian laws protecting threatened species.¹⁴⁰

The State told Yoorrook there are strategies in place to improve engagement with Traditional Owners around hunting. The government’s Sustainable Hunting Action Plan 2021–2024 (following the Sustainable Hunting Action Plan 2016–2020) commits to partnership with Traditional Owners through a co-governance group overseeing implementation of a Traditional Owner Game Management Strategy and establishment of four pilot projects that will build Traditional Owner participation in hunting, land management and conservation.¹⁴¹ Some progress has been made on both these actions but, as Yoorrook has consistently observed across many areas, the State has failed to fully support and implement its own commitments to First Peoples.

The Traditional Owner Game Management Strategy

Under the Sustainable Hunting Action Plan 2016–2020, FVTOC was funded by the Department of Jobs, Precincts and Regions to develop the Traditional Owner Game Management Strategy.¹⁴² The Strategy sets out a pathway for increasing the participation of Traditional Owners in game and wildlife management in Victoria.¹⁴³ FVTOC worked with Traditional Owners and the State to develop an Implementation Plan for the Strategy.¹⁴⁴ The key action areas in the Strategy are:

- collaborative management through a holistic partnership approach
- employment and economic opportunities for Traditional Owners through active participation, contracting and Traditional Owner-led projects
- recognition and respect for Country, species, cultural and natural heritage value.¹⁴⁵

Under the Sustainable Hunting Action Plan 2021–2024, FVTOC was funded to coordinate a co-governance group meeting and a communications event, but this was dependent on the pilot projects being up and running.¹⁴⁶ FVTOC submitted that there are still ‘significant barriers’ to Traditional Owners’ exercise of hunting rights. It said that to remove these barriers, the Government must ensure ‘that all relevant agencies stick to the actions they have committed to’ in the Traditional Owner Game Management Strategy.¹⁴⁷ The Victorian Government has not publicly released reporting or accountability measures on the actions in the Strategy and Yoorrook has not been provided with information on this.

FVTOC told Yoorrook that in the longer term ‘there is a real desire to see State Game Reserves returned to Traditional Owners through pathways identified in the *Public Land Act* review’.¹⁴⁸ Traditional Owners also want to share in the economic benefits of the game hunting sector, including developing their own commercial businesses.¹⁴⁹

Hunting-related pilots

In relation to the second commitment under the Sustainable Hunting Action Plan, the State reported that in 2022, \$965,000 was provided to DEECA to enter grant agreements with four Traditional Owner corporations to deliver hunting-related pilots:

- First Peoples of the Millewa Mallee Aboriginal Corporation
- Dja Dja Wurrung Clans Aboriginal Corporation
- Gunaikurnai Land and Waters Aboriginal Corporation
- Taungurung Land and Waters Council Aboriginal Corporation.¹⁵⁰

The State told Yoorrook that there had been ‘delays in executing the grant agreements with some pilot projects’¹⁵¹ and has not provided further information about the progress of these projects.

Fishing rights

The same goes for fishing. Things are tightening up, and the government want us to get fishing licences. We don't need the government to be telling us which fish to throw back. If one is spawning, or has eggs, you let it go. It it's too little, you let it go. We know. Our Elders taught us. And we pass that on to the next generations.¹⁵²

UNCLE COLIN WALKER

Traditional Owners have never ceded their rights to access fish and marine resources. First Peoples sustainably managed fisheries according to cultural protocols for tens of thousands of years¹⁵³ and have an ongoing obligation to look after them.¹⁵⁴

Yoorrook heard that Victorian laws do not adequately recognise First Peoples' rights to sea Country.¹⁵⁵ FVTOC submitted that this must be addressed immediately, particularly given the increasing number of offshore energy projects being proposed in Traditional Owners' waters.¹⁵⁶

It is critical that Traditional Owners are recognised as rights holders, equal to the State, in the development of fisheries management programs to heal country and restore fish populations to sustainable levels.¹⁵⁷

FEDERATION OF VICTORIAN TRADITIONAL OWNER CORPORATIONS

Yoorrook heard that First Peoples want access to commercial opportunities to build economic independence 'so that we have a future'.¹⁵⁸ The Victorian Fisheries Authority 'requires all new entrants to the current commercial wild catch fisheries to purchase an existing licence and existing quota/catch or obtain a permit authorising the take for sale of fish'.¹⁵⁹

In the First Principles Review of TOSA, the First Principles Review Committee (representing Traditional Owners) recommended that TOSA Natural Resource Agreements be amended to accommodate the commercial use of fish.¹⁶⁰ As discussed in Chapter 11: Traditional Owner settlements, the Victorian Government has not accepted this recommendation. This position was reiterated to Yoorrook by the Minister for First Peoples and Treaty the Hon Natalie Hutchins MP.¹⁶¹

The Department of Jobs, Skills, Industry and Regions stated that commercial fishing is not permitted under key legislative mechanisms:

This is because most of Victoria's commercial fisheries are fully allocated. This means the maximum number of licences available in each fishery has already been issued ... In the case of quota-managed or catch-limited fisheries, the maximum number of fish available are already being taken (i.e., the maximum number of fish is being removed from the system that will not result in over-fishing). Hence, new entrants are required to purchase an existing licence and existing quota/catch to ensure fishing remains sustainable.¹⁶²

DEPARTMENT OF JOBS, SKILLS, INDUSTRY AND REGIONS

CEO of FVTOC Paul Paton (Gunnai, Monaro, Gunditjmara) told Yoorrook that the reason given by government — that fisheries are overallocated — highlights the need for systemic reform and review of the current barriers.¹⁶³

[I]t seems to me that the State is kind of protecting those assets, and ... knowing the value that that provides to the State and the State's bottom line, then ... that's the only conclusion I can come to in regards to why those are off the table, and I note ... the response ... from Fisheries is somewhat opaque and doesn't provide an adequate reasoning as to why fisheries have been excluded.¹⁶⁴

PAUL PATON

Minister Dimopoulos, whose responsibilities include fisheries, told Yoorrook:

I understand and acknowledge that the legal frameworks that enabled lands to be sold or transferred by lease or licence have also excluded First Peoples from sharing the economic benefits of Victoria's waters ... As all available commercial wild catch licences are currently allocated, a licence can currently only be obtained via a commercial transaction for transfer of an existing licence. Accordingly, I have instructed the Victorian Fisheries Authority to commit to a regular schedule of meetings across Victoria with each Traditional Owner Group to investigate aspirations for access to Victoria's waters for commercial purposes, including both wild catch, commercial use and aquaculture operations ... and to explore opportunities for their increased participation in the commercial fishing industry in Victoria.¹⁶⁵

MINISTER STEVE DIMOPOULOS MP

In 2023, eight of the 11 recognised Traditional Owner groups called for the development of a Traditional Owner Fisheries Strategy to identify barriers and opportunities to Traditional Owner management of fisheries.¹⁶⁶ FVTOC told Yoorrook that despite Traditional Owners' attempts to partner with the Victorian Fisheries Authority on this issue, the Victorian Fisheries Authority has declined to meet.¹⁶⁷ FVTOC said:

There has been little willingness or enthusiasm from either the [Victorian Fisheries Authority] or the Victorian Government to fund this work to date. The [Victorian Fisheries Authority] has declined repeated offers to meet collectively with the CEOs of the Traditional Owner Corporations to discuss in-principle support for a partnership approach via the proposed strategy.¹⁶⁸

FEDERATION OF VICTORIAN TRADITIONAL OWNER CORPORATIONS

In correspondence to Yoorrook, the State explained that Victorian Fisheries Authority representatives met with FVTOC on 28 November 2022, 27 April 2023 and 14 June 2023, with the discussions 'centr[ing] on the proposal for a partnership approach between the [Victorian Fisheries Authority] and Victorian Traditional Owner corporations to develop a Traditional Owner Fisheries Strategy'.¹⁶⁹

Save for the examples of the Gunaikurnai oyster project, the Gunditjmara eel aquaculture project, and the Dja Dja Wurrung yabby farm (identified elsewhere in this chapter), Yoorrook is troubled by the apparent failures of state agencies to meaningfully act and engage with Traditional Owners, despite explicit commitments. Yoorrook calls on the State to urgently provide additional, enduring opportunities for Traditional Owners' increased participation in the fishing industry in Victoria.¹⁷⁰

In response to questions taken on notice, Yoorrook was told that Minister Dimopoulos 'has requested that [the Victorian Fisheries Authority] develop a plan for commercial fishing opportunities for Traditional Owners in Victoria by 30 July 2024'.¹⁷¹ The State said that this plan will be developed in partnership with Traditional Owners over coming months and 'seek to deliver tangible commercial fishing actions and outcomes for Victorian Traditional Owners, in a manner consistent with the Victorian Government's commitment to self-determination'.¹⁷² There is no publicly available information on the

development of the plan and Yoorrook has not been informed about its further progress, or expected completion which was due to occur by 30 July 2024.

The State told Yoorrook it is currently working on the following projects with Traditional Owners:

- a trail with Gunaikurnai Land and Waters Aboriginal Corporation for a rock oyster farm¹⁷³
- a project with Gunditjmara people to support an eel farming / aquaculture business at Tae Rak (Lake Condah) and Budj Bim¹⁷⁴
- a project with Dja Dja Wurrung Clans Aboriginal Corporation (DJAARA) to support a yabby farm.¹⁷⁵

Opportunities

Yoorrook was told of significant untapped opportunities for self-determined involvement of Traditional Owners in resource industries, including mining and forestry. However, the State has so far failed to provide adequate support and resources to facilitate the realisation of these opportunities.

Remediation of Country

Hand that ... land back to our mob ... there could be 30 years of employment there for our mob in doing the [mine] rehabilitation ... it could be a small business for some community members or in the planting of seeds and trees and native plants.¹⁷⁶

PARTICIPANT, GUNAIKURNAI LAND AND WATERS ABORIGINAL CORPORATION ROUNDTABLE

Yoorrook heard about the extensive damage to Country caused by mining¹⁷⁷ and calls for this damage to stop. Minister D’Ambrosio acknowledged that the historical exploitation of the land and resources since the 1800s means ‘Victoria is dotted with unrehabilitated holes in the ground’.¹⁷⁸

Participants at a roundtable with Gunaikurnai Land and Waters Aboriginal Corporation told Yoorrook that there could be economic opportunities in the remediation of mines.¹⁷⁹ Mining companies should fund and undertake the technical, dangerous and expensive work of remediation itself. However, Traditional Owners should have the right to approve remediation plans and employment opportunities in parts of the remediation process. Where First Peoples choose to take on remediation activities, they should be supported with adequate authority to self-determine approaches and adequate resources to conduct activities.¹⁸⁰

Successful remediation of mines depends on the adequacy of the bond that is lodged with the government and the solvency of the operator.¹⁸¹ Minister D’Ambrosio said: ‘Bonds are paid ... as a surety for the progressive rehabilitation of mining activity.’¹⁸² It is not mandatory to engage with Traditional Owners on rehabilitation.¹⁸³ If the bond is inadequate or the operator is insolvent or wound up, the burden falls on government to remediate the mines, along with landholders and First Peoples.¹⁸⁴

Minister D’Ambrosio told Yoorrook that remediation bonds have not traditionally considered First Peoples’ perspectives, for example damage to cultural heritage.¹⁸⁵ This could be addressed through legislative changes, which the Minister said that she was prepared to explore so that bonds reflect the real harm of extractive industry.¹⁸⁶ Yoorrook again notes the gap between professed good intentions in ministerial statements and the actions of the State which continue to fail First Peoples.

Minister D’Ambrosio noted that the government is working through a rehabilitation strategy for the Latrobe Valley coal mines and power stations, including engagement with Traditional Owners. For example, in 2023, Gunaikurnai Land and Waters Aboriginal Corporation partnered with Habitat Creations and the Mine Land Rehabilitation Authority to establish the Gippsland Seed Bank, a joint venture focused on collecting, protecting and preserving endemic species of plants for the rehabilitation of Latrobe Valley mine sites.¹⁸⁷ The Minister acknowledged involving Traditional Owners only at this point in the process ‘is far too late’¹⁸⁸ and ‘not good enough’.¹⁸⁹

Managing Country

Commercial native timber harvesting ended in Victoria on 1 January 2024.¹⁹⁰ Yoorrook heard that the Victorian Government decided to end native timber harvesting without any engagement with Traditional Owners,¹⁹¹ but that:

Traditional Owners have since invited the State to partner with them to determine how those state forests which were previously ... [allocated] for native timber harvest will be used and managed into the future.¹⁹²

FEDERATION OF VICTORIAN TRADITIONAL OWNER CORPORATIONS

FVTOC told Yoorrook that former Minister for Environment the Hon Ingrid Stitt MP committed to a partnership with Traditional Owners on state forest management, and ‘this was upheld by the new Environment Minister Steve Dimopoulos’.¹⁹³ However, FVTOC said there has been no comprehensive resourcing to Traditional Owners to enable this partnership.¹⁹⁴ Yoorrook has not been informed about further resourcing dedicated to enabling this partnership and there is no publicly available information on this.

FVTOC said the end of native timber harvesting presents ‘an excellent opportunity’ for the State to keep ‘the commitments it made in the Cultural Landscapes Strategy and enable Traditional Owners to take the lead in governing, planning and managing Country.’¹⁹⁵

The public land legislation reform may provide greater opportunities for Traditional Owners to be involved managing Country.¹⁹⁶

Flora and fauna protections

As described in Chapter 6: Country, certain flora and fauna species are culturally significant to First Peoples, holding kinship, totemic or other values integral or inherent to law, lore and cultural authority. Yoorrook heard that flora and fauna management legislation such as the *Flora and Fauna Guarantee Act 1988* (Vic) and *Wildlife Act 1975* (Vic) should ensure First Peoples law, lore and cultural authority is used as a basis for protection and management.¹⁹⁷

Environmental Justice Australia submitted that this could be achieved through, for example:

- scope for nomination and protection of totemic or culturally-significant species (whether or not they are threatened species) in accordance with Aboriginal law, lore and cultural authority
- scope for nomination and implementation of culturally and ecologically beneficial processes in accordance with Aboriginal law, lore and cultural authority
- Traditional Owner-led recovery planning for listed species or ecological communities, including use of conservation instructions
- Traditional Owner management of wildlife and similar reserves.¹⁹⁸

2019 reforms to the *Flora and Fauna Guarantee Act 1988* (Vic) introduced a general principle that proper consideration is given Traditional Owner rights and interests when making decisions. However, Yoorrook heard this does not confer any substantive obligations.¹⁹⁹

PROTECTION OF THE DINGO

Yoorrook heard from some Traditional Owners (Wadawurrung and Tati Tati, among others) that a key priority is the protection of the dingo.²⁰⁰ Environmental Justice Australia says it has acted for Traditional Owners in relation to the protection of totemic species, including the dingo.²⁰¹ This species is designated as threatened in Victoria,²⁰² but is subject to conflicting and contradictory management objectives.²⁰³

Native food and botanicals

First Peoples cultivated native foods, fibres and botanicals sustainably for thousands of years.²⁰⁴ Despite their knowledge of and responsibility for Country, Traditional Owners only play a minor role and derive limited benefits from a growing food and fibre sector based on native plants.²⁰⁵

First Peoples expressed concerns about non-Indigenous businesses selling native foods and medicines, telling Yoorrook this is a form of cultural appropriation.²⁰⁶ In correspondence to Yoorrook, the State noted that the provisions of the *Aboriginal Heritage Act 2006* (Vic) dealing with intangible cultural heritage may provide protection for First Peoples foods and medicines in certain circumstances. Traditional Owners would first need to apply to the Secretary to register their intangible cultural heritage. Once registered, it is an offence to knowingly use Aboriginal intangible heritage for commercial purposes, without the consent of Traditional Owners (under section 79G).²⁰⁷ First Peoples want to be able to grow, access and sell their native foods and medicines for their own communities and for wider commercial benefit and economic empowerment.²⁰⁸ Yoorrook heard from Traditional Owners that they want to lead the native foods and botanicals sector.²⁰⁹

Traditional Owners partnered with Agriculture Victoria to develop the 2021 Victorian Traditional Owner Native Foods and Botanicals Strategy.²¹⁰ The strategy notes the value of the Australian native foods and botanicals sector is around \$50 million per year with growth potential of upwards of \$250 million.²¹¹ The strategy identifies the need to:

- reform legislation, regulation and policy to recognise Traditional Ownership
- build investment and partnerships
- protect Traditional Owner intellectual property.²¹²

Yoorrook heard calls from FVTOC and DJAARA for the Victorian Government to fully resource and implement the Traditional Owner Native Foods and Botanicals Strategy.²¹³ Yoorrook expresses significant disappointment regarding the lack of resourcing and implementation of yet another strategy. This has been a consistent pattern in Yoorrook’s inquiries.

DJAKITJ

In May 2023, DJAARA launched a new bush food enterprise called DJAKITJI, which means ‘dining room’ in djali (the Dja Dja Wurrung Language).²¹⁴ DJAARA invested its own funds to buy land back to establish the business.²¹⁵

DJAARA is researching, developing and growing traditional native ingredients that have cultural importance to Dja Dja Wurrung (Djaara) people. This includes investigating the establishment of a yabby farm, one of the largest in the southern hemisphere, with ‘more than 50 yabby ponds ... as well as research and development areas for aquaculture and native plants and bush foods.’²¹⁶

DJAARA has also been researching the commercial viability of buwatj (kangaroo grass).²¹⁷ Buwatj is a native perennial seed crop that is an extremely ‘resilient agricultural product, that supports a healthy ecosystem, cultural practice and economic empowerment’.²¹⁸

DJAARA told Yoorrook that it would like to implement farming systems for buwatj and possibly other traditional foods and fibres such as murna (yam daisy) to be sold as commercial products.²¹⁹ DJAARA said there is also potential for partnerships with farmers that would have benefits for all Victorians through improved ecosystem function and climate resilience.²²⁰

The way forward

Since colonisation, the State has asserted ownership of First Peoples’ natural resources and collected billions of dollars of revenue from their exploitation and use. Yoorrook heard how Victoria’s society and economy is grounded in the use of natural resources, from the gold rush to energy to irrigated agriculture. Many businesses and companies have and continue to profit from the use of resources such as fish, game, minerals, coal and gas. First Peoples have been excluded from the resources sector and its benefits.

This is a grave injustice. First Peoples’ self-determination and cultural and human rights require access to and power over resources on Country.²²¹ Across all resources (land, waters, seas, forests, earth, plants and animals), which are variously defined and regulated, First Peoples are seeking similar things:

- opportunities to return Country and resources or at least First Peoples-led, self-determined management
- consistent self-determined rights to traditional cultural practices and uses on Country
- opportunities and support for commercial use and development to support economic independence
- a direct share of benefits, including royalties, from use of resources and revenue streams
- full, prior and informed consent to specific developments.

Ministers and the State have made multiple promises and commitments, both to First Peoples and in evidence before Yoorrook, that they have largely failed to deliver. The State has not demonstrated that it has a substantive reform agenda to address First Peoples’ dispossession of resources or clear mechanisms to translate commitments into action. The following strategies have been promised but not properly resourced or implemented:

- strategy for critical minerals
- partnership with Traditional Owners on state forest management
- Sustainable Hunting Action Plan 2021–2024
- Traditional Owner Game Management Strategy
- Traditional Owner Fisheries Strategy
- Traditional Owner Native Foods and Botanicals Strategy.

This trend of inaction, non-delivery and lack of transparency is a systemic failure and a breach of First Peoples’ rights. The Victorian Government must, as a starting point, fully commit to and fund the implementation of key strategies on resources (see Chapter 5: Accountability).

There are currently significant opportunities to realise First Peoples’ rights and aspirations in the resources sector and in the management and healing of public land, including long-term employment and economic development on Country. The Government must recognise that different Traditional Owner groups have different priorities and are on different pathways and timelines. Treaties, both statewide and with Traditional Owner groups, provide a vehicle for realising these goals. Other emerging and new markets based on First Peoples’ natural resources should be developed and regulated in a way that fully recognises Traditional Owner sovereignty, values and intellectual property and shares economic benefits.

Recommendations

RECOMMENDATION 42

The Victorian Government must partner with Traditional Owner groups in respect of future forestry management and operations (native and plantation) on public lands, especially to:

- a. Implement effective benefit-sharing arrangements; and
- b. Protect culturally significant public land and ecosystems from damage.

RECOMMENDATION 43

In consultation with the First Peoples’ Assembly of Victoria, the Victorian Government must conduct a review of:

- a. Existing mechanisms for Traditional Owner consultation and consent in the development of minerals, resources and extractive projects (whether on private or public land) at least to ensure consistency with the principles of free, prior and informed consent in UNDRIP;
- b. Traditional Owner participation in the development and implementation of rehabilitation and remediation plans, making them consent authorities;
- c. Mechanisms for greater Traditional Owner participation in:
 - i. rehabilitation works; and
 - ii. the management of post-mining land (including under Part 7C of the *Mineral Resources (Sustainable Development) Act 1990* (Vic)).
- d. Opportunities for the return to Traditional Owners of post-mining land (including for commercial and cultural economy purposes) as a default provision.

Endnotes

1. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 23.

2. Transcript of Uncle Robbie Thorpe (Djuran Bunjilinee), 27 March 2024, 64 [9]–[16].

3. This is chapter First Peoples' resources including forests, sea Country, earth, metals and minerals, animals and plants are referred to as 'resources' or 'natural resources', but Yoorrook acknowledges that this kind of categorisation is not consistent with how First Peoples view their Country from a holistic and interconnected perspective. 'Resources' should be understood in the broadest terms to override complex, reductive regulatory regimes and to capture emerging markets.

4. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 23.

5. Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 23 [44]–[46], 34 [22]–[25].

6. Dja Dja Wurrung Clans Aboriginal Corporation, Dhelkunya Dja Policy team, Submission 594 (Economic Prosperity), 5.

7. Wamba Wemba Aboriginal Corporation, Submission 349 (Land, Sky, Waters), 20.

8. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 28–29.

9. Transcript of Minister Natalie Hutchins MP, 18 April 2024, 54 [2]–[17].

10. *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007) ('UNDRIP').

11. *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007) ('UNDRIP'), art 26.

12. *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007) ('UNDRIP'), art 32.

13. Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 23 [8]–[11].

14. Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 25 [41]–[43].

15. See e.g., Witness Statement of Minister Lily D'Ambrosio MP, 8 March 2024, 9 [41]–[42], 10 [44]–[45], 10 [47]–11 [48]; Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 7 [18]–[39].

16. Witness Statement of Minister Lily D'Ambrosio MP, 8 March 2024, 9 [41]–[42].

17. Witness Statement of Minister Lily D'Ambrosio MP, 8 March 2024, 9 [41]–[42].

18. Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 8 [27]– 9 [24]; Witness Statement of Minister Lily D'Ambrosio MP, 8 March 2024, 9 [41]–[42].

19. Witness Statement of Minister Lily D'Ambrosio MP, 8 March 2024, 10 [47], citing *Mineral Resources (Sustainable Development) Act 1990* (Vic) ss 9(1), 11, 12 and *Petroleum Act 1998* (Vic) ss 13, 149.

20. Witness Statement of Minister Lily D'Ambrosio MP, 8 March 2024, 11 [48].

21. Witness Statement of Minister Lily D'Ambrosio MP, 8 March 2024, 11 [51].

22. Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 24 [32]–[45].

23. Department of Energy, Environment and Climate Action, Response to NTP-003-004 — '*Land, waters and resources revenue collected by the Victorian Government*', 10–12, produced by the State of Victoria in response to the Commission's Request for Information dated 9 November 2023; Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 23 [44]–[46], 34 [8]–[25].

24. Department of Energy, Environment and Climate Action, Response to NTP-003-004 — '*Land, waters and resources revenue collected by the Victorian Government*', 10–12, produced by the State of Victoria in response to the Commission's Request for Information dated 9 November 2023. See also Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 34 [8]–[40].

25. Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 10 [15]–[16].

26. Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 10 [16]–[18].

27. Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 10 [20]–[24]

28. Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 10 [28]–[31].

29. Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 10 [37]–[40].

30. Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 11 [2]–[8].

31. Department of Jobs, Precincts and Regions, [Gold Royalty Information Sheet](#) (Fact Sheet); Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 10 [46]–[47].

32. Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 12 [1]–[4].

33. Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 17 [6]–[9].

34. Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 17 [24]–[33].

35. Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 17 [35]–[37].

36. Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 36 [25]–[28].

37. Department of Energy, Environment and Climate Action, Response to NTP-003-031 — '*Annexure B - Self Determination Frameworks*', 6–7, produced by the State of Victoria in response to the Commission's Request for Information dated 9 November 2023.

38. Department of Energy, Environment and Climate Action, Response to NTP-003-031 — '*Annexure B - Self Determination Frameworks*', 6–7, produced by the State of Victoria in response to the Commission's Request for Information dated 9 November 2023.

39. Department of Energy, Environment and Climate Action, Response to NTP-003-031 — '*Annexure B - Self Determination Frameworks*', 6–7, produced by the State of Victoria in response to the Commission's Request for Information dated 9 November 2023.

40. Department of Energy, Environment and Climate Action, Response to NTP-003-031 — '*Annexure B - Self Determination Frameworks*', 6–7, produced by the State of Victoria in response to the Commission's Request for Information dated 9 November 2023.

41. This statement was put to the Minister by Fiona McLeod AO SC (Senior Counsel Assisting) in Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 20 [20]–[24].

42. Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 28 [43]–29 [43].

43. Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 29 [18]–[21].

44. Transcript of roundtable with Gunaikurnai Land and Waters Aboriginal Corporation, 30 November 2022 (Part 3), 5, served on the State of Victoria on 12 April 2024.

45. Transcript of roundtable with Gunaikurnai Land and Waters Aboriginal Corporation, 30 November 2022 (Part 3), 5, served on the State of Victoria on 12 April 2024.

46. Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 25 [15]–[22].

47. Lily O'Neill et al, '[Renewable energy development on the Indigenous Estate: Free, prior and informed consent and best practice in agreement-making in Australia](#)' (2021) 81 *Energy Research & Social Science*, 102252.

48. Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 24 [2]–[11].

49. Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 24 [10]–[14].

50. Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 24 [16]–[18].

51. Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 24 [20]–[22].

52. Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 27 [2]–[6].

53. Correspondence from the Victorian Government Solicitors Office to King & Wood Mallesons (Solicitors Assisting) dated 13 December 2024; Victorian Government, *Critical Minerals Roadmap* (December 2024), 29.

54. Victorian Government, *First Principles Review of the Traditional Owner Settlement Act 2010: Joint Report of the First Principles Review Committee and the Executive Policy Owners Forum* (Report, 2021), 41.

55. Victorian Government, [First Principles Review Recommendations by Category](#) (2024), 1.

56. Uncle Jim Berg, Submission 464 ('Walk the River: A Journey through Country'), 4.

57. Ellie Florence and Angus Tonkin, *Victoria's Timber Industry in a Time of Transition* (Research Paper, Parliament of Victoria, October 2023), 5.

58. Andrew Beveridge and Mike Leonard, '[The Evolution of Legislated Obligations for Forest Areas in Victoria](#)', *Victoria's Forestry Heritage* (Web Page, 26 July 2024), quoting Francis Robert Moulds, *The Dynamic Forest: A History of Forestry and Forest Industries in Victoria* (Lynedoch Publications, 1991) 4.

59. Ellie Florence and Angus Tonkin, 'Victoria's Timber Industry in a Time of Transition' (Research Paper No 3, Parliament of Victoria, October 2023) 5–9.

60. Transcript of Minister Steve Dimopoulos MP, 16 April 2024, 38 [33]–[39]; Department of Energy, Environment and Climate Action, Response to NTP-003-031— '*Yoorrook Justice Commission – DEECA Environment – RFI Responses – Annexure D – Annual Revenue*', produced by the State of Victoria in response to the Commission's Notice to produce dated 20 February 2024.

61. Transcript of Minister Steve Dimopoulos MP, 16 April 2024, 38 [41]–[46].

62. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 29.

63. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 30.

64. Victorian Government, *First Principles Review of the Traditional Owner Settlement Act 2010: Joint Report of the First Principles Review Committee and the Executive Policy Owners Forum* (Report, 2021), 65, 111–112.

65. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 30.

66. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 30.

67. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 30.

68. Transcript of Minister Steve Dimopoulos MP, 16 April 2024, 38 [40]–[45].

69. Transcript of Minister Steve Dimopoulos MP, 16 April 2024, 40 [2].

70. Transcript of Minister Steve Dimopoulos MP, 16 April 2024, 39 [5]–[8].

71. Transcript of Minister Steve Dimopoulos MP, 16 April 2024, 38 [15]–[23].

72. Anonymous 283, Submission 283, 3.

73. Anonymous 283, Submission 283, 3.

74. Transcript of roundtable with Nindi-Ngujarn Ngarigo Monero, 13 November 2023 (Part 2), 14–15, 37, served on the State of Victoria on 12 April 2024; South-West Coast Scientific Group, Clean Ocean Foundation, Submission 322, 1–2; University of Melbourne Law School, Submission 334 (Land, Sky, Waters), 16–17.

75. National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA), '[Otway Basin 3D Multi-Client Marine Seismic Survey](#)' (Webpage, 20 September 2022).

76. South-West Coast Scientific Group, Clean Ocean Foundation, Submission 322, 1–2.

77. National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA), 'Key Matters Report - [Otway Basin 2D MC Marine Seismic Survey Environment Plan](#)' (November 2019); South-West Coast Scientific Group, Clean Ocean Foundation, Submission 322, 1.

78. South-West Coast Scientific Group, Clean Ocean Foundation, Submission 322, 1–2.

79. Alan Coe, Submission 273, 3.

80. Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 10 [35]–[40], 16 [35]–[45].

81. Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 16 [1]–[5]. See also Witness Statement of Minister Lily D'Ambrosio MP, 8 March 2024, 7–8 [32]; Resources Victoria, '[Earth Resources Regulator](#)' (Webpage).

82. Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 16 [12]–[15].

83. Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 16 [17]–[29].

84. Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 16 [32]–[38].

85. Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 16 [40]–[45].

Separately from State decisions to grant exploration licenses, Traditional Owners may have procedural rights in relation to resource activities if the land is covered by a Land Use Activity Agreement (see Chapter 11: Traditional Owner settlements) or a positive native title determination (see Chapter 10: Native title).

86. Alan Coe, Submission 273, 3.

87. Environmental Justice Australia, Submission 346 (Land, Sky, Waters 1), 35.

88. See *Native Title Act 1993* (Cth) s 211

89. See *Traditional Owner Settlement Act 2010* (Vic) pt 4; *Native Title Act 1993* (Cth) pt 2 div 3.

90. Environmental Justice Australia, Submission 346 (Land, Sky, Waters 1), 35.

91. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 26. See Chapter 10: Native title.

92. Environmental Justice Australia, Submission 346 (Land, Sky, Waters 1), 35.

93. *Mineral Resources (Sustainable Development) Amendment Act 2023* (Vic) s 12C.

94. Environmental Justice Australia, Submission 346 (Land, Sky, Waters 1), 35.

95. Environmental Justice Australia, Submission 346 (Land, Sky, Waters 1), 35.

96. Environmental Justice Australia, Submission 346 (Land, Sky, Waters 1), 36.

97. Transcript of Uncle Colin Walker, 27 May 2022, 247 [45].

98. Transcript of Professor Julie Andrews, 26 March 2024, 16–17.

99. Department of Jobs, Skills, Industry and Regions, Response to NTP-003-008 — ‘Commercial Practises and Recreational Fishing and Hunting, Intersections with Aboriginal Cultural Heritage and the Involvement of Traditional Owners in Decision Making’, 2–8, produced by the State of Victoria in response to the Commission’s Request for Information dated 9 November 2023.

100. Department of Jobs, Skills, Industry and Regions, Response to NTP-003-008 — ‘Commercial Practises and Recreational Fishing and Hunting, Intersections with Aboriginal Cultural Heritage and the Involvement of Traditional Owners in Decision Making’, 1, produced by the State of Victoria in response to the Commission’s Request for Information dated 9 November 2023.

101. Department of Jobs, Skills, Industry and Regions, Response to NTP-003-008 — ‘Commercial Practises and Recreational Fishing and Hunting, Intersections with Aboriginal Cultural Heritage and the Involvement of Traditional Owners in Decision Making’, 6, produced by the State of Victoria in response to the Commission’s Request for Information dated 9 November 2023.

102. Department of Jobs, Skills, Industry and Regions, Response to NTP-003-008 — ‘Commercial Practises and Recreational Fishing and Hunting, Intersections with Aboriginal Cultural Heritage and the Involvement of Traditional Owners in Decision Making’, 6, produced by the State of Victoria in response to the Commission’s Request for Information dated 9 November 2023, citing Native Title Act 1993 (Cth) ss 2, 211.

103. Department of Jobs, Skills, Industry and Regions, Response to NTP-003-008 — ‘Commercial Practises and Recreational Fishing and Hunting, Intersections with Aboriginal Cultural Heritage and the Involvement of Traditional Owners in Decision Making’, 6, produced by the State of Victoria in response to the Commission’s Request for Information dated 9 November 2023, citing Traditional Owner Settlement Act 2010 (Vic) Div 2A.

104. Department of Jobs, Skills, Industry and Regions, Response to NTP-003-008 — ‘Commercial Practises and Recreational Fishing and Hunting, Intersections with Aboriginal Cultural Heritage and the Involvement of Traditional Owners in Decision Making’, 6–7, produced by the State of Victoria in response to the Commission’s Request for Information dated 9 November 2023, citing Wildlife Act 1975, 4c.

105. Department of Jobs, Skills, Industry and Regions, Response to NTP-003-008 — ‘Commercial Practises and Recreational Fishing and Hunting, Intersections with Aboriginal Cultural Heritage and the Involvement of Traditional Owners in Decision Making’, 5, produced by the State of Victoria in response to the Commission’s Request for Information dated 9 November 2023.

106. Department of Jobs, Skills, Industry and Regions, Response to NTP-003-008 — ‘Commercial Practises and Recreational Fishing and Hunting, Intersections with Aboriginal Cultural Heritage and the Involvement of Traditional Owners in Decision Making’, 5, produced by the State of Victoria in response to the Commission’s Request for Information dated 9 November 2023.

107. Department of Jobs, Skills, Industry and Regions, Response to NTP-003-008 — ‘Commercial Practises and Recreational Fishing and Hunting, Intersections with Aboriginal Cultural Heritage and the Involvement of Traditional Owners in Decision Making’, 5, produced by the State of Victoria in response to the Commission’s Request for Information dated 9 November 2023, citing Native Title Act 1993 (Cth) s 211(2).

108. Department of Jobs, Skills, Industry and Regions, Response to NTP-003-008 — ‘Commercial Practises and Recreational Fishing and Hunting, Intersections with Aboriginal Cultural Heritage and the Involvement of Traditional Owners in Decision Making’, 5, produced by the State of Victoria in response to the Commission’s Request for Information dated 9 November 2023, citing Traditional Owner Settlement Act 2010 (Vic) Pt 6.

109. Department of Jobs, Skills, Industry and Regions, Response to NTP-003-008 — ‘Commercial Practises and Recreational Fishing and Hunting, Intersections with Aboriginal Cultural Heritage and the Involvement of Traditional Owners in Decision Making’, 5, produced by the State of Victoria in response to the Commission’s Request for Information dated 9 November 2023, citing Traditional Owner Settlement Act 2010 (Vic) ss 79, 84.

110. Department of Jobs, Skills, Industry and Regions, Response to NTP-003-008 — ‘Commercial Practises and Recreational Fishing and Hunting, Intersections with Aboriginal Cultural Heritage and the Involvement of Traditional Owners in Decision Making’, 5, produced by the State of Victoria in response to the Commission’s Request for Information dated 9 November 2023, citing Fisheries Regulations 2019 (Vic), reg 98(1)(f).

111. Transcript of roundtable with Gurnaikurnai Land and Waters Aboriginal Corporation, 30 November 2022 (Part 3), 20, served on the State of Victoria on 12 April 2024.

112. Transcript of roundtable with Gurnaikurnai Land and Waters Aboriginal Corporation, 30 November 2022 (Part 3), 20, served on the State of Victoria on 12 April 2024.

113. Wamba Wemba Aboriginal Corporation, Submission 349, 20; Transcript of Dr Aunty Vicki Couzens, 28 March 2024, 41 [15]–[20]; Transcript of roundtable with Wurundjeri Woi-Wurrung Cultural Heritage Aboriginal Corporation, 10 November 2023, served on the State of Victoria on 1 April 2024.

114. Dr Aunty Vicki Couzens, ‘[Kooramook yakeen: Possum dreaming](#)’, Victorian Collections (Webpage). See also AIATSIS, ‘[Possum skin cloak](#)’ (Webpage).

115. Victorian Collections, ‘[Possum skin cloaks](#)’ (Webpage).

116. Dr Aunty Vicki Couzens, ‘[Kooramook yakeen: Possum dreaming](#)’, Victorian Collections (Webpage); see also AIATSIS, ‘[Possum skin cloak](#)’ (Webpage).

117. Victorian Collections, ‘[Possum skin cloaks](#)’ (Webpage).

118. Dr Aunty Vicki Couzens, ‘[Kooramook yakeen: Possum dreaming](#)’, Victorian Collections (Webpage).

119. Dr Aunty Vicki Couzens, ‘[Kooramook yakeen: Possum dreaming](#)’, Victorian Collections (Webpage). See also AIATSIS, ‘[Possum skin cloak](#)’ (Webpage).

120. AIATSIS, ‘[Possum skin cloak](#)’ (Webpage)

121. Dr Aunty Vicki Couzens, ‘[Kooramook yakeen: Possum dreaming](#)’, Victorian Collections (Webpage).

122. Dr Aunty Vicki Couzens, ‘[Kooramook yakeen: Possum dreaming](#)’, Victorian Collections (Webpage).

123. Dr Aunty Vicki Couzens, ‘[Kooramook yakeen: Possum dreaming](#)’, Victorian Collections (Webpage). See also AIATSIS, ‘[Possum skin cloak](#)’ (Webpage).

124. Wildlife Act 1975 (Vic) Pt VII.

125. Transcript of Dr Aunty Vicki Couzens, 28 March 2024, 41 [15].

As noted elsewhere, mechanisms which Traditional Owners can rely on to access natural resources (including possums) include native title determinations, Natural Resource Agreements and authorisations and orders under the Wildlife Act 1975 (Vic). There is, however, limited awareness of these mechanisms amongst Traditional Owners and their processes, requirements and conditions may create barriers to their use.

126. Transcript of Dr Aunty Vicki Couzens, 28 March 2024, 41 [15].

127. Transcript of Dr Aunty Vicki Couzens, 28 March 2024, 41 [15]–[20].

128. Transcript of Dr Aunty Vicki Couzens, 28 March 2024, 41 [15].

129. Transcript of roundtable with Wurundjeri Woi-Wurrung Cultural Heritage Aboriginal Corporation, 10 November 2023, 28, served on the State of Victoria on 1 April 2024.

130. See Department of Jobs, Skills, Industry and Regions, Response to NTP-003-008 — ‘Commercial Practises and Recreational Fishing and Hunting, Intersections with Aboriginal Cultural Heritage and the Involvement of Traditional Owners in Decision Making’, 6, produced by the State of Victoria in response to the Commission’s Request for Information dated 9 November 2023.

131. Traditional Owner Settlement Act 2010 (Vic) pt 6 div 2A. See also Chapter 11: Traditional Owner settlements.

132. Native Title Act 1993 (Cth) ss 2 and 211 provide for the preservation of Traditional Owner rights to access natural resources. See also Chapter 11: Traditional Owner settlements and Chapter 10: Native title.

133. See Chapter 11: Traditional Owner settlements and Chapter 10: Native title; Traditional Owner Settlement Act 2010 (Vic) ss 79 and 84(b); Cf Akiba on behalf of the Torres Strait Regional Seas Claim Group v Commonwealth of Australia (2013) 250 CLR 209.

134. See Wildlife Act 1975 (Vic) Pt III (game licences) and Pt IIIA (authorisations to take wildlife). It is an offence to hunt threatened or protected wildlife, or game, unless a person holds a licence or authorisation (see Pt VII).

135. See Chapter 11: Traditional Owner settlements; Traditional Owner Settlement Act 2010 (Vic) ss 79, 82 and 84(b). The term ‘traditional purposes’ is defined in s 79 as providing for ‘any personal or domestic needs of the members of the traditional owner group’ or ‘any non-commercial communal needs of the members of the traditional owner group’.

136. Wildlife Act 1975 (Vic) s 4C; Wildlife Regulations 2024 (Vic) reg 6.

137. See, e.g., Wildlife Regulations 2024 (Vic) reg 6(2)(f) and (i).

138. Native Title Act 1993 (Cth) s 211.

139. See, e.g. Mullett on behalf of the Gunai/Kurnai People v State of Victoria [2010] FCA 1144, [5](c).

140. See, e.g. Mullett on behalf of the Gunai/Kurnai People v State of Victoria [2010] FCA 1144, [9](b); cf Akiba on behalf of the Torres Strait Regional Seas Claim Group v Commonwealth of Australia (2013) 250 CLR 209.

141. Department of Jobs, Skills, Industry and Regions, Response to NTP-003-008 — ‘Commercial Practises and Recreational Fishing and Hunting, Intersections with Aboriginal Cultural Heritage and the Involvement of Traditional Owners in Decision Making’, 10–11, produced by the State of Victoria in response to the Commission’s Request for Information dated 9 November 2023.

142. Department of Jobs, Skills, Industry and Regions, Response to NTP-003-008 — ‘Commercial Practises and Recreational Fishing and Hunting, Intersections with Aboriginal Cultural Heritage and the Involvement of Traditional Owners in Decision Making’, 10, produced by the State of Victoria in response to the Commission’s Request for Information dated 9 November 2023.

143. Federation of Victorian Traditional Owner Corporations, [Traditional Owner Game Management Strategy](#) (Strategy, 2021), 4.

144. Department of Jobs, Skills, Industry and Regions, Response to NTP-003-008 — ‘Commercial Practises and Recreational Fishing and Hunting, Intersections with Aboriginal Cultural Heritage and the Involvement of Traditional Owners in Decision Making’, 10, produced by the State of Victoria in response to the Commission’s Request for Information dated 9 November 2023.

145. Federation of Victorian Traditional Owner Corporations, [Traditional Owner Game Management Strategy](#) (Strategy, 2021), 4.

146. Department of Jobs, Skills, Industry and Regions, Response to NTP-003-008 — ‘Commercial Practises and Recreational Fishing and Hunting, Intersections with Aboriginal Cultural Heritage and the Involvement of Traditional Owners in Decision Making’, 10, produced by the State of Victoria in response to the Commission’s Request for Information dated 9 November 2023.

147. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 28.

148. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 28.

149. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 28.

150. Department of Jobs, Skills, Industry and Regions, Response to NTP-003-008 — ‘Commercial Practises and Recreational Fishing and Hunting, Intersections with Aboriginal Cultural Heritage and the Involvement of Traditional Owners in Decision Making’, 11, produced by the State of Victoria in response to the Commission’s Request for Information dated 9 November 2023.

151. Department of Jobs, Skills, Industry and Regions, Response to NTP-003-008 — ‘Commercial Practises and Recreational Fishing and Hunting, Intersections with Aboriginal Cultural Heritage and the Involvement of Traditional Owners in Decision Making’, 11, produced by the State of Victoria in response to the Commission’s Request for Information dated 9 November 2023.

152. Witness Statement of Uncle Colin Walker, 27 May 2022, 8 [59].

153. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 28.

154. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 24.

155. University of Melbourne Law School, Submission 334, 16.

156. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 24; University of Melbourne Law School, Submission 334, 16.

157. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 28.

158. Transcript of roundtable with Nindi Ngujarn Ngarigo Monero, 13 November 2023 (Part 2), 15, served on the State of Victoria on 12 April 2024.

159. Department of Jobs, Skills, Industry and Regions, Response to NTP-003-008 — ‘Commercial Practises and Recreational Fishing and Hunting, Intersections with Aboriginal Cultural Heritage and the Involvement of Traditional Owners in Decision Making’, 6, produced by the State of Victoria in response to the Commission’s Request for Information dated 9 November 2023.

160. Victorian Government, [First Principles Review of the Traditional Owner Settlement Act 2010](#) (Final Report, 15 March 2024), 46–7.

161. Witness Statement of Minister Natalie Hutchins MP, 18 March 2024, 56–7 [280].

162. Department of Jobs, Skills, Industry and Regions, Response to NTP-003-008 — ‘Commercial Practises and Recreational Fishing and Hunting, Intersections with Aboriginal Cultural Heritage and the Involvement of Traditional Owners in Decision Making’, 6, produced by the State of Victoria in response to the Commission’s Request for Information dated 9 November 2023.

163. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 29.

164. Transcript of Paul Paton, 17 April 2024, 73 [20]–[25].

165. Witness Statement of Minister Steve Dimopoulos MP, 8 March 2024, 15 [79].

166. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 28.

Yoorrook notes that the current Victorian Aboriginal Fishing Strategy referred to by Government is a short document released in 2012 by a predecessor department and focused mainly on training, engagement and consultation: see Department of Primary Industries, [Victorian Aboriginal Fishing Strategy](#) (2012).

167. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 29.

168. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 29.

169. Correspondence from the Victorian Government Solicitors Office to King & Wood Mallesons (Solicitors Assisting) dated 13 December 2024.

170. In correspondence from the Victorian Government Solicitors Office to King & Wood Mallesons (Solicitors Assisting) dated 13 December 2024, a further example of ‘supporting Wudawurrung to develop a new aquaculture venture in the Aquaculture Fisheries Reserve that has been set aside for them in Port Phillip Bay’ was noted, alongside the Victorian Fisheries Authority’s position that the examples cited do not represent the full extent of the Victorian Fisheries Authority’s engagement with Traditional Owners and their participation with the Victorian Fisheries Authority’s activities.

171. Department of Energy, Environment and Climate Action, Response to questions taken on notice by Minister Steve Dimopoulos MP, on behalf of Minister Natalie Hutchins MP, on 18 April 2024, Attachment A, 6.

172. Department of Energy, Environment and Climate Action, Response to questions taken on notice by Minister Steve Dimopoulos MP, on behalf of Minister Natalie Hutchins MP, on 18 April 2024, Attachment A, 6.

173. Department of Energy, Environment and Climate Action, Response to questions taken on notice by Minister Steve Dimopoulos MP, on behalf of Minister Natalie Hutchins MP, on 18 April 2024, Attachment A, 6.

174. Department of Energy, Environment and Climate Action, Response to questions taken on notice by Minister Steve Dimopoulos MP, on behalf of Minister Natalie Hutchins MP, on 18 April 2024, Attachment A, 6.

175. Department of Energy, Environment and Climate Action, Response to questions taken on notice by Minister Steve Dimopoulos MP, on behalf of Minister Natalie Hutchins MP, on 18 April 2024, Attachment A, 6.

176. Transcript of roundtable with Gunaikurnai Land and Waters Aboriginal Corporation, 30 November 2022 (Part 2), 6, served on the State of Victoria on 12 April 2024.

177. Transcript of roundtable with Gunaikurnai Land and Waters Aboriginal Corporation, 30 November 2022 (Part 2), 6, served on the State of Victoria on 12 April 2024; Dale McDonald, Submission 398, 4, 12; Sandy Barber (nee Rowe), Submission 15 (Part 2), 4.

178. Transcript of Minister Lily D’Ambrosio MP, 22 April 2024, 21 [11]–[13].

179. Transcript of roundtable with Gunaikurnai Land and Waters Aboriginal Corporation, 30 November 2022 (Part 2), 6, served on the State of Victoria on 12 April 2024.

180. Transcript of roundtable with Gunaikurnai Land and Waters Aboriginal Corporation, 30 November 2022 (Part 2), 6, served on the State of Victoria on 12 April 2024.

181. Transcript of Minister Lily D’Ambrosio MP, 22 April 2024, 30 [29]–[35].

182. Transcript of Minister Lily D’Ambrosio MP, 22 April 2024, 21 [45].

183. Transcript of Minister Lily D’Ambrosio MP, 22 April 2024, 22 [9]–[13].

184. Transcript of Minister Lily D’Ambrosio MP, 22 April 2024, 30 [37]–[46].

185. Transcript of Minister Lily D’Ambrosio MP, 22 April 2024, 31 [5]–[12].

186. Transcript of Minister Lily D’Ambrosio MP, 22 April 2024, 31 [21]–[25].

187. Premier of Victoria, ‘[Planting the Seeds of Regeneration for the Latrobe Valley](#)’ (Webpage, 29 May 2023).

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Chapter 16: Climate change, renewables and emergencies

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So we need to facilitate and enable First Peoples to have that ongoing secure revenue stream over a long period of time so that the governance piece for Traditional Owners which I often hear from them, is ... one that they must be able to create for themselves for them to then be able to use that as a ... springboard to really develop up their own economic prosperity in the future.¹

MINISTER LILY D'AMBROSIO MP

Introduction

First Peoples' capacity to fulfil their responsibilities to Country is challenged by the existential threat of climate change. Country faces increasing risks from chronic climate changes leading to heat stress, prolonged drought and rising sea levels. It also faces increasing risks from acute events such as riverine and coastal flooding, bushfires and increasingly severe storms.² These events damage Country and have significant short- and long-term effects on First Peoples' communities. These include effects on health, housing and energy security, cultural and spiritual wellbeing, and capacity to remain living on Country.³ Meeting these challenges requires coordinated global action to mitigate climate change through emissions reduction. It also requires local action to adapt to climate change and respond to climate emergencies.⁴

To support global mitigation efforts, the Victorian Government has committed to achieving net-zero greenhouse gas emissions by 2045,⁵ in line with global standards. Part of the emissions reduction pathway is the transition to renewable energy generation.⁶ Yoorrook heard that the development of the renewable energy sector presents risks to land and sea Country due to the impact of building infrastructure without proper consent.⁷

Yoorrook also heard that the transition creates opportunities for Traditional Owners to share in the benefits of emerging industries, including new revenue streams, employment, capacity building and renewable energy sources for communities.⁸ However, Traditional Owners have not yet shared in these benefits in Victoria.⁹ The State has acknowledged that First Peoples' knowledge and responsibility to look after lands and waters is not sufficiently recognised or respected in renewable energy projects and policies. The State has also admitted that engagement by Government and industry has been fragmented, underfunded and too late to have a genuine impact.¹⁰

Adaptation to the impacts of climate change is critical to support First Peoples. Adaptation includes creating more resilient, accessible and culturally-safe health systems, as well as improving liveability and security of housing. Yoorrook heard that adaptation also requires a climate emergency prevention and response system informed by First Peoples' knowledge of caring for and healing Country, and culturally safe services to respond to the immediate and long-term impacts of emergencies.¹¹

First Peoples have both the knowledge and the responsibility to care for land and waters affected by climate change and climate emergencies. It is essential that First Peoples are resourced to be involved in efforts to mitigate and adapt to climate change, and to protect and heal Country. This involvement must occur in a coordinated and self-determined way. It must take place from the start of policy development, through implementation to ongoing operation and monitoring. This chapter sets out the evidence into the climate change-related challenges and opportunities for First Peoples in Victoria.

STATE TRANSITION TO RENEWABLE ENERGY

The Victorian Government has set a Renewable Energy Target that 65 per cent of Victoria’s energy will come from renewable sources by 2030.¹² This pledge was supported by \$1.6 billion in funding for clean energy in the Victorian State Budget 2020–21.¹³ As of April 2024, more than 39 percent of Victoria’s electricity was generated from renewable sources over the last year, increasing from 10.8 percent in 2014.¹⁴

The transition to renewables requires the development of large-scale energy industries supported by significant investment in new infrastructure, which is being built across land and sea. Since 2014, 25 large-scale wind projects and 34 large-scale solar projects have been commissioned in Victoria.¹⁵ As of April 2024, a further 17 large-scale wind and solar projects were under commission or construction.¹⁶ These developments are privately owned and funded, facilitated by the State through a series of auctions and contracts.¹⁷ The State is also intending to invest directly in renewable energy projects, such as a large battery system through a partnership between the State Electricity Commission and a private sector investor.¹⁸

What Yoorrook heard

Climate change is harming Country and wellbeing

CLIMATE CHANGE IMPACTS IN VICTORIA

Victoria is experiencing the impacts of climate change. Since 1910, the average annual temperature has increased by 1.2 degrees Celsius.¹⁹ Victoria has also experienced a decrease in average rainfall and significant increase in fire danger in spring.²⁰ According to *Victoria’s Climate Change Strategy*, if global emissions continue to increase, by the 2050s Victoria may experience:

- an average annual temperature increase of 2.4 degrees Celsius
- double the number of very hot days
- rising sea levels by around 24 centimetres
- longer fire seasons with double the number of high fire danger days
- more intense downpours
- a decline in cool season rainfall
- a decline in alpine snowfall of between 35 to 75 percent.²¹

Impacts on Country

Country is suffering from the impacts of climate change. Yoorrook heard about changes in seasons, loss of animals, changes in animal behaviour, damage to waterways and increased risk of climate emergencies.²² Describing the changes to ecosystems around Murray River,²³ Uncle Colin Walker (Yorta Yorta) told Yoorrook:

We look after the Country that our Elders handed down to us. They were concerned about issues like food, fish and turtles. We don’t get as many turtles that we used to. We want to know why. The broad shell long neck turtle is our totem, they are not about like they used to be ... We used to get swan eggs and emu eggs ... Things are changing. The forest is deteriorating. Many of the animals are now confused. Emus used to lay eggs once a year. Now they lay eggs three to four times a year. Why is that? I think it is the change in climate, and they don’t know what’s going on.²⁴

UNCLE COLIN WALKER

Similarly, Uncle Brendan Kennedy (Tati Tati) spoke about waterways suffering and the loss of fish, birds and plants. Referring to Margooya Lagoon, a culturally-significant wetland on Tati Tati Country, he stated:

Well, I can remember — it’s changed so much even in the last 10 years. It’s just deteriorated and as a wetland and a water landscape it ... should be full of fish, birds, plants, and you should be hearing so much but you don’t. You will see a few pelicans and water birds around, but you won’t see fish in there ... where is all the water plants, aquatic plants in there. ... [The fish] can’t get in.²⁵

UNCLE BRENDAN KENNEDY

First Peoples linked the changes caused by climate change to harmful land management practices which treat Country as a resource to be used and fail to recognise the role of custodianship.²⁶ For example, participants at a roundtable with Gunaikurnai Land and Waters Aboriginal Corporation stated:

The environment’s very different now ... from when our ancestors were ... living here ... because the country’s been fundamentally altered, cleared, dried, hydrology, the plants are growing up with very little water, so it makes it dry. I often explain to different peoples how they made a fire-prone country. It wasn’t always like that, not here. ... They are supposed to be living with Mother Earth not against her. So that’s the difference ... people are dictating the terms from a dominant possession sort of way of attitude, ownership attitude: We do what we like with it and buy and sell. Versus custodian.²⁷

PARTICIPANT, GUNAIKURNAI LAND AND WATERS ABORIGINAL CORPORATION
ROUNDTABLE

Djirra highlighted the link between European land management practices, increasing climate emergencies and the impact on community, stating:

The physical destruction of land through clearing, non-Aboriginal farming practices and the neglect of ecosystems and waterways has increased the risk of fire, flood and environmental degradation. In our work we see the particular impact that an increase in disaster events, like bushfires and flooding, have had on the women and children that we work with.²⁸

DJIRRA

Some First Peoples pointed to environmental harm and crises, and harms to people as stemming from damage to Country. For example, Uncle Robbie Thorpe (Krauatungalung Gunaikurnai), who is also known by his cultural name of Djuran Bunjilinee, told Yoorrook:

The true law of this land, you know, if you don’t look after it, it will punish you. And you can see that’s going on today. And that’s what we were afraid of would happen. ... I see a connection between the genocide, the ecocide and the suicide.²⁹

UNCLE ROBBIE THORPE / DJURAN BUNJILINEE

Impacts on wellbeing

First Peoples’ evidence emphasised the disproportionate impacts of chronic and acute climate change and emergencies on communities.³⁰ The Lowitja Institute noted:

While contributing the least to climate change in Australia, Aboriginal and Torres Strait Islander peoples are some of the most severely impacted by it. ... [S]ocial determinants such as poor-quality housing and energy poverty are widespread among Aboriginal and Torres Strait Islander communities, which creates vulnerability to extreme heat and weather events. Other factors also contribute, such as socio-economic status.³¹

LOWITJA INSTITUTE

Climate change is also impacting First Peoples’ health and wellbeing. The Lowitja Institute said: ‘Our peoples view our health and the health of Country holistically: as inextricably linked’.³² This ‘compounds already existing health inequities resulting from the impacts of colonisation’.³³ The Lowitja Institute gave practical examples of health impacts:

Inadequate housing, energy poverty and insecurity, and a lack of proper infrastructure in various communities across the country means that households and communities are vulnerable to exacerbated health impacts from the changed climate. For example, energy poverty and the real and frequent risk of disconnection makes it difficult for communities to stay safe from the heat, to keep food from spoiling, and to keep medications at a safe temperature.³⁴

LOWITJA INSTITUTE

The Lowitja Institute also noted the link between biodiversity loss arising from climate change and ‘impacts on physical, emotional, cultural, and spiritual health’.³⁵ The Lowitja Institute and others including Executive Director of First Nations Clean Energy Network Karrina Nolan (Yorta Yorta) explained how First Peoples may be separated from community and Country or be unable to live on Country due to inundation and rising sea levels.³⁶

Climate change presents a disproportionate threat to First Peoples. The Victorian Aboriginal Community Controlled Health Organisation (VACCHO) told Yoorrook: ‘The multitude of threats posed by climate change and other destructive forces like feral animals disproportionately impact our communities’.³⁷ VACCHO explained the effects of the climate crisis include ‘intense, uncontrolled bushfires, unprecedented flooding, intensifying storm surges and ocean acidification’.³⁸ Indigenous land management expert Bhiamie Williamson (Euahlayi) has written:

These crises disrupt Indigenous peoples’ ways of life. They degrade or destroy our cultural heritage and natural resources such as plants, grasses, native timber, and clean running water, which provide a basis for our peoples to practice culture.³⁹

BHIAMIE WILLIAMSON

The Victorian Aboriginal Legal Service (VALS) noted that the United Nations Human Rights Committee recently found that Australia’s inaction on climate change ‘had violated its human rights obligations to the Traditional Owners of the island of Masig in the Torres Strait’.⁴⁰ VALS said it is therefore ‘in the government’s interest to ensure that adequate steps and protections are implemented to protect against further injustice relating to access to, and enjoyment of, traditional lands’.⁴¹

The Victorian Minister for Climate Action and Energy and Resources the Hon Lily D’Ambrosio MP acknowledged the link between climate change and the wellbeing of First Peoples, stating:

I am mindful of the impact that the work of government in relation to the energy and resources and climate action portfolios, for which I am responsible, has on Country and on culture and in turn on the spiritual, emotional and physical wellbeing of First Peoples.⁴²

MINISTER LILY D’AMBROSIO MP

Minister D’Ambrosio also acknowledged that climate change has had a significant impact on Country,⁴³ and recognised that ‘climate change and ... as colonisers, our contribution to that, ... has devastated many Traditional Owner communities and the lands’.⁴⁴ The Minister agreed that global warming will have a particularly severe impact on First Peoples, confirming ‘[m]ore so than any other peoples, yes’.⁴⁵

Systemic injustices in renewable energy projects

State investment in Traditional Owner initiatives is inadequate

Traditional Owners are actively engaging in the transition to renewable energy and designing and implementing adaptation initiatives to benefit their communities. Despite these efforts, Yoorrook has found that the State is not providing sufficient investment in these and other activities.

TRADITIONAL OWNERS’ ENERGY TRANSITION AND ADAPTATION INITIATIVES

Examples of Traditional Owner energy transition and adaptation initiatives include:

- *Turning ‘wrong way’ climate, ‘right way’: Dja Dja Wurrung climate change strategy 2023–2024* which outlines First Peoples-led ‘land management practices [that] can enhance carbon storage and increase resilience across cultural landscapes’⁴⁶
- *Gunaikurnai and Offshore Energy: Aspirations for a better future (2023)*, a statement to government and developers, which outlines Gunaikurnai Land and Waters Aboriginal Corporation’s expectations for negotiating offshore wind agreements⁴⁷
- Gunaikurnai Land and Water Aboriginal Corporation Renewable Energy Strategy, which the corporation is preparing ‘to ensure that mob are well represented and that the rights and views of the Traditional Owners of Country are respected and understood through the transition’⁴⁸
- Gunditjmara Position Statements on Climate Change⁴⁹ and Renewable Energy⁵⁰ which as of June 2024 were still in development
- installation of solar and battery systems by Wadawurrung Traditional Owners Corporation and Dja Dja Wurrung Clans Aboriginal Corporation⁵¹
- various community projects funded by the 2019 Community Climate Change Adaptation Grants⁵²
- First Nations Clean Energy Network, which is a national network ‘working in partnership to ensure that First Nations communities share in the benefits of the clean energy boom’.⁵³

CURRENT STATE INVESTMENT IN TRADITIONAL OWNER INITIATIVES

The Victorian Government has established several grant programs designed to support engagement of Traditional Owners in renewable energy transition and adaptation and climate emergency responses, including:

- Traditional Owner Renewable Energy Program: In 2020, the Government announced \$1.1 million in funding for Registered Aboriginal Parties (RAPs) to apply for grants of up to \$100,000 each to invest in renewable energy projects.⁵⁴ As of February 2024, nine RAPs had received funding for completed milestones (totalling \$838,000) until June 2024.⁵⁵
- First Peoples’ Adoption of Renewable Energy Program: The Government allocated \$960,000 in funding for Traditional Owner corporations to ‘build renewable energy capacity and capability’.⁵⁶ In July 2023, five Traditional Owner corporations had applied and were approved for \$450,000 in funding.⁵⁷
- Offshore Wind Traditional Owner Grant Program: The Government has allocated \$4.827 million between 2022–23 and 2024–25 to support Traditional Owners to engage in the development of proposed offshore wind projects.⁵⁸
- Traditional Owner Climate Action grants: This funding is available to recognised Traditional Owner Corporations. Projected expenditure in 2022–23 was \$1,000,000 with a further \$100,000 budgeted in 2023–24.⁵⁹
- Victoria to New South Wales Interconnector West Development funding:⁶⁰ The Government has allocated funding for Traditional Owners to engage in the development of a transmission line connecting Victoria to New South Wales. Projected expenditure in 2022–23 was \$237,500, with a further \$950,000 budgeted in 2023–24.⁶¹

When asked whether the Traditional Owner Renewable Energy Program grants of up to \$100,000 were enough, Minister D’Ambrosio responded: ‘It is nowhere near enough’.⁶² The Minister further stated:

Whether it is 100,000 or a million, it’s still nowhere near enough whilst this is a start, it’s a small start and my — my aim and my government’s aim is to not repeat the mistakes of the past and to actually establish a system that — soon I’ll be able to talk more about — that will actually provide a far more meaningful acknowledgment of the — the wealth that must be given to Traditional Owners from the land.⁶³

MINISTER LILY D’AMBROSIO MP

Yoorrook heard that Traditional Owner groups’ preparedness to engage in the energy transition varied and that different groups require different levels of support, for example the Federation of Victorian Traditional Owner Corporations (FVTOC) said:

While some better resourced Traditional Owner groups have prepared nation-scale renewable energy strategies which articulate their objectives and strategies for engaging in the Renewable Energy transition, other groups are struggling to keep up with the pace of change.⁶⁴

FEDERATION OF VICTORIAN TRADITIONAL OWNER CORPORATIONS

To address different community needs, Karrina Nolan told Yoorrook about different tools and supports that government should resource. These include guides to negotiation and developing community energy projects, and sending ‘SWAT teams to the hotspots to talk about Country planning and really resource people’.⁶⁵

Engagement with Traditional Owners is insufficient

Traditional Owners’ ability to engage meaningfully with the State and industry is reliant on their internal capacity and resourcing. Traditional Owners whose lands are affected by proposed wind, solar, and transmission line developments have rarely had enough time or funding for effective engagement and capacity building.⁶⁶ Yoorrook also heard that Traditional Owners are frequently consulted too late in the planning process, rendering consultation processes meaningless.⁶⁷

Participants at a roundtable with Bunurong Land Council said Traditional Owners have not been ‘adequately resourced’ to engage effectively with the Department of Energy, Environment and Climate Action (DEECA) on renewable energy projects:

DEECA ... want to have that conversation with us, but we’ve ... said we need to capacity to do so. ... Because they are such massive projects. ... when things like that or projects like that reach out to us, well, this is something new and you have to make sure that people are adequately resourced on so many different levels to deal with something like that.⁶⁸

PARTICIPANT, BUNURONG LAND COUNCIL ROUNDTABLE

Roundtable participants at Bunurong Land Council also said there had been difficulties navigating where to get funding from ‘because there’s so many different departments’, and the need for ‘having the space and time to actually fully comprehend everything, getting the right people in and community consultation as well’.⁶⁹

First Peoples witnesses emphasised the need for early engagement rather than coming late to the process after key decisions are made.⁷⁰ Representatives from the Barngarla Aboriginal Determination Corporation, the registered native title services provider for the Eyre Peninsula (Barngarla, Nauo/Nhawu, Wirangu, Mirning and Kokatha Country) in South Australia, gave evidence to Yoorrook.⁷¹ They reflected on their experience with the South Australian government in renewables projects and offered guidance to Traditional Owners in Victoria.⁷² Chair of Barngarla Determination Aboriginal Corporation Jason Bilney emphasised the need for the State to engage Traditional Owners from the very start of projects:

[W]e need to be involved from the start, so ... we are going out to some places they want to put a wind farm or solar farm, and fair enough, but there are some places they can’t build it, where you know, there is that tangible and intangible connection to Country, those storylines, those songlines and burial sites and sites of significance. First Nations people need to be involved from the start so they can protect and ... preserve those areas.⁷³

JASON BILNEY

Minister D’Ambrosio recognised the critical need to engage First Peoples in decision-making.⁷⁴ Referring to First Peoples’ right to self-determination under the *United Nations Declaration on the Rights of Indigenous Peoples* (‘UNDRIP’) (see Chapter 4: Rights), the Minister stated:

I recognise that only when First Peoples are central to the decision-making processes, in the sense of being fully and meaningfully involved or consulted in decisions that affect their lives, will we start to see sustainable improvement in the wellbeing and health of Country, and in turn in the health, prosperity, cultural preservation, and other improved outcomes for First Peoples.⁷⁵

MINISTER LILY D’AMBROSIO MP

Despite this declaration from the Minister, Yoorrook notes that this is not the experience of Traditional Owners. Instead, there is a lack of genuine engagement and decision-making power for First Peoples. The State’s rhetoric does not align with its actions.

Traditional Owners’ rights

[W]e need to be engaged because ... the renewable energy question is here, it’s happening and we need to be engaged with that. Not just as a ... stakeholder... we are not stakeholders. It is everyone else with stakes in our Country. We are the rights holders and the Crown really needs to recognise that.⁷⁶

DAMEIN BELL

Traditional Owners have rights under recognition regimes, international human rights law and the *Charter of Human Rights and Responsibilities Act 2006* (Vic) that must be upheld.⁷⁷ However, First Peoples have had little influence on how renewable energy projects are delivered on their Country.⁷⁸ Yoorrook heard that Traditional Owner groups are often not listened to about the impacts of renewable projects on Country. For example, describing the development of projects in Gunditjmara Country, one roundtable participant told Yoorrook:

We are not believed by the Victorian government. If somebody wants to come down here and build something that’s on sacred, important land to us the government will back them. They don’t listen to what we’re saying. They’ve got to start listening or else we’re going to lose more and more, and more of our sacred country. When the wind towers were put in down at ... Point Danger [near Portland] ... We said, ‘No. We don’t want them there’ because of the birds that come in and because they’re a bloody eyesore down there. But protect Country, protect what’s already there? No. ‘We’re going to build it anyway. We’re going to give the money to Parks Victoria’. You know, they were paying what, \$10,000 per tower at that time ... When we ask to do a broader exploration of our country before they put gas pipes through whatever, ‘No. No. No. We’re going to use up this little bit of space here. We only want you to go out and look at this little space here’. What about what’s happening around that space? And we tried to do that and got knocked back.⁷⁹

PARTICIPANT, GUNDITJ MIRRORING TRADITIONAL OWNERS ABORIGINAL CORPORATION ROUNDTABLE

FVTOC similarly emphasised the need for Traditional Owners to be listened to and have control in decision-making with regard to renewable energy projects:

Traditional Owners have obligations to protect Country, and it’s critical that they are empowered to demarcate areas not appropriate for renewable energy developments due to unacceptable harms to Country, and to be actively involved with management actions to minimise other impacts.⁸⁰

FEDERATION OF VICTORIAN TRADITIONAL OWNER CORPORATIONS

The disregard that the State and industry have for First Peoples’ right to free, prior and informed consent⁸¹ was identified as an issue.⁸² Yoorrook heard that this principle was not always understood or adhered to by government and industry in their engagement with Traditional Owners. For example, Rebecca Halliday from GIRA First Nations Advisory stated:

It’s not fully understood ... by government or developers, in our opinion, what free, prior, informed consent actually means, that it’s not more than a once-off process, and how that fits into the entirety of the principles of UNDRIP, and we’ve witnessed some really counterproductive behaviours and actions, despite Traditional Owners’ best endeavours to communicate and engage in a meaningful way in Victoria.⁸³

REBECCA HALLIDAY

Under the key Victorian land acquisition legislation, only parties with a formal proprietary interest ‘divested or diminished by the acquisition of [an] interest’ have a claim for compensation.⁸⁴ Where freehold land is acquired for a renewable energy project, Traditional Owners would typically not be regarded as a relevant interest holder (instead, it is commonly the freehold, leasehold or licence interest holders who would be compensated).⁸⁵ In the case of Crown lands and waters, Traditional Owners’ procedural rights are generally limited to those provided for in Land Use Activity Agreements under the *Traditional Owner Settlement Act 2010* (Vic) (which differentiate routine, advisory, negotiation and agreement activities)⁸⁶ and the *Native Title Act 1993* (Cth) future act regime (Part 2, Div 3).⁸⁷ These include any rights to compensation for the construction of works or the acquisition of proprietary interests.

Offshore wind energy zones

The Commonwealth Government has declared two offshore wind energy zones in waters off the Victorian coastline: one in Bass Strait (in 2022) and one in the Southern Ocean (in 2024).⁸⁸ These areas are in the sea Country of the Gunaikurnai people and the Gunditjmara and Eastern Maar peoples respectively. The development of these areas requires coordination between the Commonwealth and Victorian Governments.⁸⁹ At the time of writing, several feasibility licenses for offshore wind projects have been granted to developers.⁹⁰

Yoorrook heard that Traditional Owners’ experiences of government consultation regarding the development of these offshore wind energy zones was flawed and that the approach of the Commonwealth and Victorian Governments was poorly integrated.⁹¹ The Gunditj Mirring Traditional Owners Aboriginal Corporation (GMTOAC) is a Registered Native Title Body Corporate under the *Native Title Act 1993* (Cth) and a Registered Aboriginal Party under the *Aboriginal Heritage Act 2006* (Vic).⁹² Following the declaration of the Southern Ocean Zone in March 2024, GMTOAC released a statement expressing their concern that there had been a ‘complete lack of appropriate and meaningful consultation between the Commonwealth government and the Gunditjmara community’.⁹³ GMTOAC said:

Whilst GMTOAC supports the agenda for environmental protection and climate change, this decision undermines our sovereignty as land rights holders.⁹⁴

GUNDITJ MIRRORING TRADITIONAL OWNERS ABORIGINAL CORPORATION

GMTOAC’s concerns were explained to Federal Energy Minister the Hon Chris Bowen MP in two letters and a submission.⁹⁵ In one of the letters, GMTOAC stated:

Nyamat Mirring (sea country) holds deep cultural value and is fundamental to our wellbeing. As custodians of the land, the responsibility to care for country is deeply rooted in us through our ancestors ... By excluding us from the decision-making process, the government has not only demonstrated a disregard for our voices, perspectives and rights, it has overlooked an opportunity to engage and learn the true value and history of our sea country from its traditional owners.⁹⁶

GUNDITJ MIRRORING TRADITIONAL OWNERS ABORIGINAL CORPORATION

A spokeswoman for Minister Bowen said he had considered all community feedback and stakeholder submissions, including from Traditional Owners, before determining a final area.⁹⁷ Minister D’Ambrosio said she was aware that the Eastern Maar and Gunditjmara peoples ‘were disappointed and opposed to the process undertaken, and had been very clear about the fact that they do not accept the outcome’.⁹⁸ This was ‘primarily, not only, because of the spiritual values of sea Country’.⁹⁹

In 2022, in response to the proposed offshore wind energy zone in Bass Strait, Gunaikurnai Land and Water Aboriginal Corporation prepared a position statement on the development of offshore renewable energy projects.¹⁰⁰ The submission stated, ‘Any development that is undertaken in the proposed renewable energy zone must seek to fulfil our fundamental needs as custodians of these lands’.¹⁰¹ It further stated, ‘The rights and views of the Traditional Owners of Gunaikurnai Country must be respected and understood’.¹⁰² Gunaikurnai Land and Water Aboriginal Corporation produced a further statement to government and developers in September 2023,¹⁰³ and is preparing a Renewable Energy Strategy.¹⁰⁴

Renewable energy zones

The Victorian Government is currently establishing the Victorian Transmission Investment Framework to support planning for transmission and development of renewable energy zones.¹⁰⁵ These zones are areas of the State that the government has identified as having abundant renewable energy resources and being appropriate for development.¹⁰⁶ VicGrid is responsible for implementing the Victorian Transmission Investment Framework.¹⁰⁷

The State told Yoorrook that it is consulting with Traditional Owners on how they would like to be partnered with and how their concerns and priorities will be considered.¹⁰⁸ It stated that Traditional Owners will share in the benefits of renewable energy developments.¹⁰⁹ Evidence from First Peoples indicates that State engagement processes to date have been unsatisfactory.¹¹⁰ For example, Jonathan Kneebone, Director of Policy and Engagement at the First Nations Clean Energy Network reflected on how Traditional Owners have had little engagement on the location of renewable energy zones:

I think there is a long way to go, and we haven’t got the policy settings right. When it comes to Victoria, there are initiatives here that could be done far better, for example, when it comes to the release of areas in what are called Renewable Energy Zones which essentially are areas of high prospectivity for wind or solar designed on engineer’s desktops, you’d say, in distant areas. There is little input from those — into those areas by local communities, by Traditional Owners. And so of course, when people find out about them they are surprised, to start with.¹¹¹

JONATHAN KNEEBONE

Paul Paton (Gunnai, Monaro, Gunditjmara) CEO of FVTOC stated: ‘My understanding is that there is an opportunity for Traditional Owners, through those strategic land use assessments, to inform the final results of where those Renewable Energy Zones ultimately lie’.¹¹² Despite the opportunity for Traditional Owners to be engaged, Paul Paton observed that to date the process had not been self-determining and final details had not yet been revealed.¹¹³

Paul Paton noted that the Government has started to establish benefit-sharing arrangements through the Victorian Transmission Investment Framework. He expressed concern that currently, there is a lack of incentive for landowners to negotiate directly with Traditional Owners, stating:

The government has recognised the need ... for Traditional Owners to be involved and has started to establish processes such as benefit sharing through the Victorian Transmission Investment Framework that will see benefits flow to Traditional Owners. However, we're concerned that that might disincentivise any direct negotiations with Traditional Owners ... and also have the view that that process hasn't been self-determining. It hasn't been designed by Traditional Owners, and ... the final details are not there yet, so it's hard for us to fully comment on that until those ... processes are revealed.¹¹⁴

PAUL PATON

Rebecca Halliday expressed similar concerns:

[T]here's two critical leverage points that should be the points of attention. Both the regulatory, land management, environmental, heritage protection, community development, and of course assertion of [Traditional Owners'] rights and their interests. Secondly, contractual, procurement, incentivisation of public good outcomes, government as the client. We would argue that government has not yet fully explored how these powerful levers could be used to work in the service of genuine self-determination for Australia's First Peoples.¹¹⁵

REBECCA HALLIDAY

Some renewable energy infrastructure is damaging Country

The development of energy industries in Victoria has damaged Country both directly, through the installation of infrastructure, and indirectly, via climate change. Traditional Owners have seen few benefits from the development of these industries.¹¹⁶

FEDERATION OF VICTORIAN TRADITIONAL OWNER CORPORATIONS

As outlined in Chapter 15: Earth, sea and living things, traditional energy and resource extraction industries in Victoria have caused significant damage to Country and conferred few benefits on Traditional Owners. Yoorrook heard that similar harm is continuing with the development of renewable energy infrastructure.

First Peoples told Yoorrook about the impact of energy transmission lines cutting across Country and songlines, on- and off-shore wind turbines changing cultural landscapes, and activities disrupting wildlife and marine life.¹¹⁷ Referring to wind turbines, one Nindi-Ngujarn Ngarigo Monero roundtable participant said: 'my mum calls them "aliens on our landscape"' ¹¹⁸ and reflected on their impact on the landscape, songlines and totems.¹¹⁹ Similarly, a participant in a roundtable with GMTOAC reflected on the impact of wind farms:

It's getting really hard to see ourselves as Gunditjmara people in our country. They talk about the wind towers and bringing the wind towers into sea Country and it would be that there's a 360-degree surrounded by wind towers and you can't see yourself. You can't see yourself.¹²⁰

PARTICIPANT, GUNDITJ MIRRORING TRADITIONAL OWNERS
ABORIGINAL CORPORATION ROUNDTABLE

Several participants in a roundtable with Gunaikurnai Land and Waters Aboriginal Corporation also expressed concern about the impact of offshore wind turbines on marine life, which are ancestral totems:

[W]hales and dolphins and all the rest of the marine mammals out there ... it's a natural migration for these ancestral totems ... they have an eco-location system ...

Now, the wind farms ... water amplifies sound ... so it concerns me that the whales and the dolphins and the rest of the marine mammals that are in that water when they put these wind farms out ... that they're going to be affected ... they want ... green electricity. Well, hang on. At what expense? ... they're our ancestors ... And that's their song line.¹²¹

PARTICIPANTS, GUNAIKURNAI LAND AND WATERS ABORIGINAL CORPORATION
ROUNDTABLE

While many First Peoples expressed a willingness to engage in the renewable energy transition, some also expressed anguish about the impact of new infrastructure on Country. For example, a participant in a roundtable with the Wurundjeri Woi-Wurrung Cultural Heritage Aboriginal Corporation said:

The conversation amongst Traditional Owner corporations is there for renewable energies, across the whole field of them, not only that engagement when the infrastructure's being built but also the impacts of what that infrastructure does on country as well, coz it's like a second colonisation. It's traditional Country. You're still fixing the world.¹²²

PARTICIPANT, WURUNDJERI WOI-WURRUNG CULTURAL HERITAGE ABORIGINAL
CORPORATION ROUNDTABLE

Similarly, Damein Bell (Gunditjmara, Boandik) reflected that Traditional Owners consider renewable energy on a case-by-case basis, considering the costs and benefits with regard to heritage, costs and sustainability. He said:

[I]t's terrible talking it about it from a Traditional Owner perspective, but what's the gross benefit, what's the net benefit for the world? We still have to give up part of our Country. Even though it's for, you know, wind farms, wind energy, solar. It's something that we have — case-by-case it comes up and it's something we have to consider because we have got — this place runs off solar, we made that a point. The keeping place up at the mission, that runs off solar. We have made those decisions there not only to save some money, but also to demonstrate sustainability.¹²³

DAMEIN BELL

Sharing in the benefits of the renewable energy transition

First Peoples have not benefitted fairly from the renewable energy industry

First Peoples have not received a fair share of the benefits derived from the emerging renewable energy industry. As this sector continues to grow, it presents a valuable opportunity for establishing sustainable revenue streams for First Peoples and Traditional Owners. State representatives acknowledged during hearings before Yoorrook that First Peoples are entitled to participate in these benefits. This is not only a matter of basic fairness but is also consistent with minimum standards under *UNDRIP* (see Chapter 4: Rights and Chapter 15: Earth, sea and living things) and the sovereign rights of First Peoples.

The transition to renewable energy in Victoria has the potential to create significant opportunities. Traditional Owners recognise these opportunities, for example FVTOC said:

The renewable energy transition is happening at a rapid pace in Victoria. Now is the time to ensure that Traditional Owners are not left behind, as they have been previously with historic large-scale energy developments. Traditional Owner groups need to be adequately resourced to build capacity, capability and strategies to fully engage with the renewable energy sector.¹²⁴

FEDERATION OF VICTORIAN TRADITIONAL OWNER CORPORATIONS

The realisation of opportunities for Traditional Owners will not eventuate without the necessary resourcing, capacity, strategic and regulatory support.¹²⁵ Yoorrook heard that to date, Traditional Owners have shared in few benefits from developments.¹²⁶ For example, GMTOAC provided an overview of existing renewable energy developments and proposals on Gunditjmara Country, including wind farms, renewable energy storage (batteries), green energy transmission lines and a renewable methanol facility.¹²⁷ GMTOAC noted repeatedly that most renewable energy developments had no Cultural Heritage Management Plan or Cultural Values Assessment, did not engage the ‘future acts’ regime of the *Native Title Act 1993* (Cth), and provided little or no community and social benefits to the Gunditjmara people.¹²⁸

Yoorrook heard that opportunities arising from the renewable energy transition could include First Peoples being actively engaged to protect and manage impacts on Country; new employment and procurement activities; benefit-sharing arrangements with developers and governments; and energy security for communities.¹²⁹ FVTOC submitted:

With appropriate policy and legislative settings, resourcing and support services, the Renewable Energy transition can provide opportunities for Traditional Owners to rebuild their economic base and gain access to non-government income streams that may support greater economic independence from government.¹³⁰

FEDERATION OF VICTORIAN TRADITIONAL OWNER CORPORATIONS

Minister D’Ambrosio recognised the historical failure of governments to share the benefits of the resources and energy sectors with First Peoples, stating: ‘we have failed for decades to acknowledge that the land that was about to be exploited and was exploited came ... with no benefit to Traditional Owners and certainly was despite Traditional Owners’.¹³¹ The Minister confirmed that the Government is committed to supporting First Peoples to share in the benefits from the renewable energy sector:

[I]n terms of potential for wealth sharing and enduring wealth sharing, we are very much looking at embedding, in a legal sense, benefit-sharing arrangements from infrastructure projects around transmission infrastructure but also Renewable Energy Zones and projects that are built.¹³²

MINISTER LILY D’AMBROSIO MP

When asked about compensation for Traditional Owners in relation to transmission projects, the Minister stated that the government is pursuing two main initiatives. The first is to ‘create that community benefit-sharing framework that will afford Traditional Owners of lands that these projects are built on a right to a particular revenue stream’.¹³³ The second is to incorporate compensation in the tender process for offshore wind energy developments.¹³⁴ In her evidence to Yoorrook, Minister D’Ambrosio stated the government intends to require proponents participating in the tender process to have ‘permanent struck agreements with the relevant Traditional Owner communities in terms of what benefit-sharing they wish to achieve from that proponent if they were to go ahead to build the project’.¹³⁵ In subsequent correspondence to Yoorrook, DEECA noted that the final design of the tender is still under development, is subject to further government decision making and is expected to be finalised in mid-2025.¹³⁶ Further, DEECA noted that the Minister expects proponents to work with Traditional Owners towards striking an agreement prior to the tender process.¹³⁷

Minister D’Ambrosio acknowledged that securing First Peoples’ self-determination was linked to generating reliable revenue which would provide economic prosperity.¹³⁸ However, the Minister also accepted that it would take years for benefits from renewable energy developments to be realised.¹³⁹

The State must enable a wide range of benefits

Yoorrook heard that government should support Traditional Owners to have the power, authority, control and resources to engage in a self-determining process that generates a range of ongoing benefits.¹⁴⁰ Yoorrook heard that Traditional Owners are concerned that this is not happening fast enough and that the State may have been delaying action until treaty negotiations began (Yoorrook notes that statewide treaty negotiations began in late 2024). For example, a participant at a roundtable with Barengi Gadjin Land Council said:

[T]he excuse now is you’ve got to wait to Treaty. Like, it’s not going to be the be all and end all. How do we renegotiate now, for us, for our people here? And it’s around those other areas of non-governmental organisations, individuals, how do we put those stipulations in that they have to work with us?¹⁴¹

PARTICIPANT, BARENGI GADJIN LAND COUNCIL ROUNDTABLE

Barngarla Determination Aboriginal Corporation told Yoorrook that regulation for renewable energy projects should set Key Performance Indicators (KPIs) for operators to ensure economic benefits flow to First Peoples. These should include clear and measurable targets for First Peoples’ employment and career pathways; procurement and business development opportunities for First Peoples-owned businesses; and training and education for First Peoples.¹⁴² Financial penalties could apply for failing to meet these targets.¹⁴³

Rebecca Halliday emphasised that these benefits should take a holistic approach to meet communities’ strategic objectives beyond construction, and should include ‘operations and maintenance, rehabilitation and repatriation’.¹⁴⁴ Similarly, one participant in a roundtable with Barengi Gadjin Land Council said:

[E]conomical investment into the community is an area that we need to focus on. To build stuff up as much as possible. Like look at the windfarms that are coming through this area, coming through our Country. Mining that's coming through. It's having a better say and a better control. And when we talk about what we need from the government, when we come to agreements, reconciliation, those areas, it needs to be a joint partnership. Not a thing of oh yeah, you get a couple of scholarships out of it, or we'll support or sponsor a couple of your events, or we'll put on a training.¹⁴⁵

PARTICIPANT, BARENGI GADJIN LAND COUNCIL ROUNDTABLE

Yoorrook also heard that government should create regulatory structures to promote joint ventures and other partnership arrangements between private operators and Traditional Owners, with the potential to transfer 100 per cent ownership to Traditional Owners.¹⁴⁶ Further, Yoorrook heard that developments should create reliable, long-term revenue streams for Traditional Owners, for example through equity or rental arrangements. This would ensure Traditional Owners have a share in the benefit of the billions of dollars to be generated from renewable energy projects on Country.¹⁴⁷ Paul Paton advocated for Traditional Owners being able to 'negotiate outcomes according to their own needs and priorities' and therefore establish a strong economic base.¹⁴⁸

Yoorrook also heard that benefit-sharing should include providing social benefits to local First Peoples' communities.¹⁴⁹ This could include energy security through provision of renewable energy.¹⁵⁰ For example, Karrina Nolan said:

[T]he other thing is around this access to clean affordable power. We are also seeing some of the large projects at this point propose to export power past communities that need it the most, and they are not including those in the negotiations that actually those small towns and communities should have power themselves.¹⁵¹

KARRINA NOLAN

Similarly, a participant at a roundtable with First People of Millewa Mallee Aboriginal Corporation stated:

I'd love to see five acres of solar power there so we can run the place without power, have a solar panel wi-fi, you know, ... because we have no power out there. We have to run a generator. So that that is not good for the environment and all that. But the whole of it is then you can make money.¹⁵²

PARTICIPANT, FIRST PEOPLE OF MILLEWA MALLEE ABORIGINAL CORPORATION ROUNDTABLE

Reflecting on the current position of First Peoples in relation to the energy transition, Karrina Nolan stated:

I think we have changed the story, and there is a recognition that if we change policy and we resource properly, that actually this revolution can be done differently. I also think the government federally — and I think we are now seeing in different jurisdictions — realise it can't be done without us, couldn't be done without our cultural knowledge, our leadership and also our Traditional Owner groups being resourced. That is a change. So I think while we are at that first phase, I think this is a critical moment to make sure we back it in.¹⁵³

KARRINA NOLAN

First Peoples' knowledge and responsibility

First Peoples have knowledge about how to treat the land and waters which should be utilised for the benefit of the whole community. First Peoples also have a responsibility to act as custodians of Country. For these reasons, First Peoples have a right to have a say in the treatment of land and waters. That has been acknowledged by the State, but implementation has been lacking.

As outlined in earlier chapters, First Peoples' knowledge and holistic understanding of Country developed over thousands of generations, contrasting with current State use-based and extractive land management practices.¹⁵⁴ First Peoples organisations submitted:

In the 21st century, land justice will necessarily be tethered to climate change experienced by First Nations' peoples. Traditional knowledges and expertise around land management based on thousands of years of care and custodianship should be respected in the face of a global climate crisis, and government should engage meaningfully with First Nations people to incorporate learnings and practices that will protect Country.¹⁵⁵

VICTORIAN ABORIGINAL LEGAL SERVICE

It is essential that our knowledges and ways of doing are central to work being done to minimise the impacts of anthropogenic climate change — harm to Country and the environment that we have least contributed to but whose effects will be hardest felt.¹⁵⁶

VICTORIAN ABORIGINAL COMMUNITY CONTROLLED HEALTH ORGANISATION

Despite the need for a radical change in approach to mitigate and adapt to climate change, Yoorrook heard that First Peoples have not been listened to and have been left out of policy making.¹⁵⁷ The Lowitja Institute submitted: 'Policy making did not consider the health of Country as an important priority and our peoples were locked out of decision-making regarding our lands, waterways, and seas'.¹⁵⁸ Yoorrook heard that government should recognise First Peoples' wisdom, knowledge and research in caring for and healing Country to respond to the impacts of climate change. VALS said:

Adaptation in the context of land justice is knowledge held by First Nations people, based on thousands of years in this land. Governments should engage meaningfully with First Nations people to learn from them as to adaptations, responses and measures to combat climate change.¹⁵⁹

VICTORIAN ABORIGINAL LEGAL SERVICE

Yoorrook heard that learning from First Peoples' knowledges will benefit all Victorians.¹⁶⁰ Associate Professor Nikki Moodie (Gomerioi) said:

The fullest expression of Indigenous rights benefits not just First Nations. Our knowledges of land, sky and water are essential to mitigate against climate change. Our knowledges of land show that there are healthier, more profitable and more sustainable opportunities for development that benefit all Victorians.¹⁶¹

ASSOCIATE PROFESSOR NIKKI MOODIE

Dr Aunty Vicki Couzens (Keerray Wooroong Gunditjmara) gave examples of how First Peoples' knowledges can be incorporated into land management practices and generate broader benefits:

Economically speaking, Language contains embedded knowledges; knowledge of ecological systems, of Earth and Sea Country; fire management, seasonal change and experience of climate change events. This knowledge is directly applicable through land management systems, and can be channelled through Traditional Custodian organisations and agencies like Parks Vic, translating directly into jobs as Rangers, in the co-management of parks and protected areas, employment in national parks, emergency services and environmental custodianship.¹⁶²

DR AUNTY VICKI COUZENS

Co-Chair of the First Peoples’ Assembly of Victoria Ngarra Murray (Wamba Wamba, Yorta Yorta, Dhudhuroa, Jupagulk, Baraparapa, Wiradjuri, Dja Dja Wurrung) also reflected on how First Peoples caring for Country can have wider social benefits, including for the broader community:

[W]hen First Peoples care for Country everyone benefits ... the work that Traditional Owner groups like the Gunaikurnai or the [Dja Dja Wurrung] are doing in relation to climate strategies and fire strategies and renewable energy and things that can benefit all people who live on their Countries. That is what they contribute, you know, to those regions. There are some really successful initiatives that Traditional Owner groups have in place, to care for Country and that includes everyone who lives on that Country. That is part of our culture and who we are, that we look after everyone, we have a responsibility to heal the land and to make sure that there is a healthy and balanced Country for everyone that lives on it.¹⁶³

NGARRA MURRAY, CO-CHAIR OF FIRST PEOPLES’ ASSEMBLY OF VICTORIA

First Peoples’ knowledge is critical in responding to climate change and First Peoples are already engaged in mitigation and adaptation activities. There remains a demonstrable and acknowledged need for more formal coordination of efforts to engage with First Peoples and respond to climate change. For example, VACCHO recommended the establishment of ‘an Aboriginal Climate Justice Strategy to address impending climate change impacts on Country and health and wellbeing’.¹⁶⁴ In relation to the environment and conservation, Minister for Environment the Hon Steve Dimopoulos MP said that First Peoples-led custodianship was ‘the best environmental outcome’,¹⁶⁵ and would benefit all Victorians:

What I accept is that the best for land conservation, to use your language, let alone everything else about civilisation and culture and connection to country, the best for conservation is First Peoples-led custodianship over public lands for the benefit of all Victorians.¹⁶⁶

MINISTER STEVE DIMOPOULOS MP

The contribution of First Peoples’ knowledges should also be recognised and remunerated.¹⁶⁷ As part of this, there is a need to ensure that First Peoples’ intellectual and cultural property rights are protected.¹⁶⁸ For example, Dhelkunya Dja Policy team at Dja Dja Wurrung Clans Aboriginal Corporation said:

In developing such commercial opportunities to heal Country a critical area of focus is the protection of Indigenous Cultural and Intellectual Property (ICIP), to ensure that Djaara [Dja Dja Wurrung people] benefit economically from the application of Traditional Ecological knowledge.¹⁶⁹

DJA DJA WURRUNG CLANS ABORIGINAL CORPORATION

Intellectual and cultural property rights include intangible and tangible knowledge and cultural practices, including ecological knowledge.¹⁷⁰ For example, FVTOC explained:

[I]t is imperative that Traditional Owners are able to give free, prior and informed consent for the use of their intellectual and cultural property.¹⁷¹

FEDERATION OF VICTORIAN TRADITIONAL OWNER CORPORATIONS

Climate emergency responses must be culturally safe and protect cultural heritage

Climate change is causing more frequent and intense climate emergencies on Country. Extended fire seasons, prolonged heatwaves, intense storms and flooding have immediate and long-term impacts on Country and First Peoples’ communities.¹⁷² Djirra described some of the impacts and long-term pressures caused by climate disaster events. These include financial pressures leading to increased family violence incidents and removal of children; displacement of community members; breakdowns in family contact and significant housing shortages in rural areas.¹⁷³

Yoorrook heard that First Peoples’ needs and priorities are sometimes overlooked or minimised in emergency prevention, response, relief and recovery efforts.¹⁷⁴ In relation to prevention, Yoorrook heard about government-led preventative burn programs to minimise bushfire risk.¹⁷⁵ These programs incorporate advice from First Peoples regarding cultural sites requiring protection, but Yoorrook heard that this advice was not necessarily well-received.¹⁷⁶ For example, a Nindi-Ngujarn Ngarigo Monero roundtable participant said:

[M]y job was based in the Planned Burn Unit to assess their burn program to identify the risks to sites and find them burns that they could go ahead with that aren’t going to impact on things, and find mitigations for cases with sites. And they don’t really want to do it. And it’s really hard to get them to stop it.¹⁷⁷

PARTICIPANT, NINDI-NGUJARN NGARIGO MONERO ROUNDTABLE

Traditional Owners are responding, in part by working with Government to enable a new approach to land management through initiatives such as the *Victorian Traditional Owner Cultural Landscapes Strategy* and cultural burning.¹⁷⁸ As outlined in Chapter 13: Joint management, the Government funded Traditional Owners to develop *The Victorian Traditional Owner Cultural Fire Strategy*.¹⁷⁹ The Strategy recognises that: ‘The Victorian government’s fire management agencies have to date, applied a risk-based approach that emphasises the protection of life and property, and impeded Traditional Owner rights and obligations to care for Country.’¹⁸⁰

The purpose of *The Victorian Traditional Owner Cultural Fire Strategy* is ‘to reinvigorate cultural fire through Traditional Owner led practices across all types of Country and land tenure; enabling Traditional Owners to heal Country and fulfil their rights and obligations to care for Country’.¹⁸¹

CULTURAL FIRE

Cultural burning¹⁸² is a land management practice that has been used by First Peoples for thousands of years.¹⁸³ Cultural burning typically involves the deliberate and controlled burning of small areas of land, at different times, creating a mosaic or patchwork pattern.¹⁸⁴ Cultural burns are based on ecological knowledge, including seasonal knowledge and environmental indicators.¹⁸⁵ Cultural fire is critical to healthy Country, supporting plant regeneration and biodiversity.¹⁸⁶ This is sometimes referred to as having ‘the right fire for Country’.¹⁸⁷ The Dja Dja Wurrung people use the term *djandak wi* to mean ‘healthy fire’.¹⁸⁸ First Peoples told Yoorrook that cultural burning is about ‘reading Country’.¹⁸⁹ John Clarke (Maar/Mara Gunditjmarra) said:

It’s more than a dreamtime story ... this is actually a management plan. ... [T]he role of fire in bandicoot Country is going to be very different to the role of fire in she-oak Country. So once we understand what the objectives are in that landscape based on what we know, what the old people were doing, they were proactively burning for a specific outcome. That is cultural burn, because the cultural objective is very clear.¹⁹⁰

JOHN CLARKE

Colonisation has damaged Country and ecosystems and disrupted First Peoples’ cultural burning practices, increasing the risk of bushfires.¹⁹¹ Bushfires are becoming more frequent due to climate change¹⁹² and also accelerate climate change, releasing massive amounts of carbon dioxide into the atmosphere.¹⁹³

Today, First Peoples in Victoria are reinvigorating cultural burning practices,¹⁹⁴ with promise for stemming climate change and offering an alternative to mainstream bushfire risk management. Compared to mainstream fire management practices, cultural fire is safer for the environment and for people; burns are highly localised, fire remains low to the ground and moves slowly, limiting intensity and heat (cool burning).¹⁹⁵ Due to the low heat and intensity of cultural burns, they produce less smoke and emissions than mainstream fire reduction burns.¹⁹⁶

there is risk in fire, but the risk is born out of current practices ... there is a psyche, a national psyche in Australia that is scared of fire. You know, we should be wary of it but not scared of it ... and the difference between a raging bushfire as opposed to ... doing those burns for cultural objectives and purposes, they are palpable.¹⁹⁷

JOHN CLARKE

Katherine Mullet (Gunaikurnai, Monero Ngarigo) from the Gunaikurnai Land and Water Aboriginal Corporation explained:

You put a small ignition in and you can see the bugs moving, you can see the animals scamper out of the way. You can walk on the landscape with bare feet because it is cooled down so quickly. It is not hot ... You are not burning the logs, animals are protected. The safety of all those things that you are burning for are there and looked after and cared for.¹⁹⁸

KATHERINE MULLET

Yoorrook heard that current legislative and policy frameworks ‘impede [First Peoples] obligations to apply medicine to Country, to apply fire to Country,’¹⁹⁹ Since 2019, the *Victorian Traditional Owner Cultural Fire Strategy*²⁰⁰ has provided ‘a framework across Victoria’s fire and land management agencies to support Traditional Owners to undertake cultural burning for the range of cultural values entailed in caring for Country’.²⁰¹ However, Yoorrook heard that the Strategy is lacking in authority and rarely utilised in planning.²⁰² The guiding reference on burning on Crown land in Victoria, the *Code of Practice for Bushfire Management on Public Land*,²⁰³ does not refer to the Strategy, cultural fires or traditional knowledge.²⁰⁴ State land management practices must properly incorporate cultural burning to help address environmental impacts and climate change.

Yoorrook heard that enabling cultural burning and cultural landscapes approaches to be done properly, by First Peoples, is a positive step as part of adaptation to climate change and management of bushfires.²⁰⁵ For example, a participant in a roundtable with Wurundjeri Woi-Wurrung Cultural Heritage Aboriginal Corporation reflected on the importance of their natural resource management team, referred to as the Narrap (meaning Country in Woi-Wurrung) Team:

[W]ith the fire, we have the Narrap Team who go out and do the cultural burns on our Country. I think that might help with our summer coming up, in those areas, because climate change is here and we know that. And it's gonna melt. It's gonna melt us, the heat when it comes.²⁰⁶

PARTICIPANT, WURUNDJERI WOI-WURRUNG CULTURAL HERITAGE ABORIGINAL CORPORATION ROUNDTABLE

However, Paul Paton noted *The Victorian Traditional Owner Cultural Fire Strategy* has not received sufficient funding for implementation to meet its objectives.²⁰⁷

When climate disasters and emergencies occur, Yoorrook heard that mainstream emergency agencies' priorities sometimes differ to First Peoples' priorities, resulting in the destruction of cultural heritage.²⁰⁸ For example, participants from a roundtable with Gunaikurnai Land and Water Aboriginal Corporation expressed concern that sacred sites are in danger of being bulldozed to create access pathways for emergency services during bushfires and floods.²⁰⁹ Similarly, a participant from a roundtable with Nindi-Ngujarn Ngarigo Monero reflected that during climate emergencies, the protection of private property is often prioritised over cultural heritage:

[I]n an emergency, if it's declared an emergency they can do whatever they want. But I would still sit in the emergency control centre doing a report, generating a report every 30 minutes and updating on any risks to cultural heritage still, but if it's an emergency they can just do it. ... It's always reasonable, that when there's an emergency and human life is most important. Yes, they can see that. But when they want to bulldoze sites to protect someone's property, that's when it becomes an issue.²¹⁰

PARTICIPANT, NINDI-NGUJARN NGARIGO MONERO ROUNDTABLE

In response, First Peoples communities sometimes step in to protect Country and cultural sites, with limited government support. The Lowitja Institute told Yoorrook:

In Victoria, during the floods on Yorta Yorta Country, community members banded together to place sandbags and protect the Cummeragunja cemetery from rising flood waters. The state government and local emergency services did not consider this a priority, but the Aboriginal community does. So, it was the Aboriginal community which mobilised quickly and acted to protect what was a priority to them, without any additional support. Their strong connected community and holistic approach meant effective and efficient mobilisation.²¹¹

LOWITJA INSTITUTE

In relation to emergency response efforts, Yoorrook heard that it is important that services are culturally safe and appropriately funded to meet the needs of First Peoples' communities and individuals.²¹² Some First Peoples' community-led services are available:

VALS supports Aboriginal community-led preparedness and recovery initiatives across the state, in particular in response to bushfires, flooding and the COVID-19 pandemic. Aboriginal and Torres Strait Islander people are uniquely and disproportionately affected by disasters, and in light of this disaster preparedness, response and recovery activities need to be guided by, and be respectful of, cultural heritage, knowledges and expertise.²¹³

VICTORIAN ABORIGINAL LEGAL SERVICE

However, Djirra highlighted that funding to First Peoples community-led organisations for climate disaster response and relief is often ad hoc and time-limited:

Djirra, like other services, has received funding on an ad hoc basis from the Victorian Government reflecting the increase in service demand in impacted communities. While this investment has been very welcomed and appreciated, this funding is often time limited. This means that Djirra is faced with funding cliffs which constrain how we plan and invest in our workforce. Given the increase in disaster events, we urge the Government to ensure increased and ongoing funding to enable organisations to focus on disaster preparedness, and better resource statewide services like Djirra to respond.²¹⁴

DJIRRA

VALS also called for adequate funding to support 'a coordinated and proactive Aboriginal-led approach in preparation, response, care and recovery for any climate disasters or health emergencies in the future'.²¹⁵

While Aboriginal-led services offer culturally-safe services, Yoorrook heard that mainstream services also need to be culturally safe and inclusive.²¹⁶ May Pearce (Monero, Gunai, Mutti Mutti) told Yoorrook of her experience of feeling excluded from a mainstream service as a First Peoples person:

I went there for help because we lost everything in the bushfires out there. I come into town and ... was persuaded by bushfire people at the centre that day and said, 'You have a case to also probably apply for those payments'. ... I went there and there was Red Cross there I went in and I walked up, and they approached me and said, 'How can I help you?' and I said, 'Well, I'm here to help get relief. We lost our house in the bushfire'. And I was told by two non-Aboriginal people, 'Well, your people have an organisation, the Aboriginal coop around there. Why don't you go around there?' And my reply back to them was shock, but then I said, 'Well, first of all this is a relief centre that helps everyone, aren't it? And it's the government that's doing stuff. I'm just anyone else; black, blue or brindle that needs support around the bushfires'. I left that place crying because I was judged on the colour of my skin. They didn't say that to non-Indigenous people. We were one of the Aboriginal families that lost our house here in Gippsland that I know of We lost everything. We got out with the clothes on our backs and our vehicles, you know? ... So that's my story and whether it happens again with fires, natural disaster, floods it's going to happen again. But how do we train non-Indigenous people not to be racist and treat us not by colour, but by the experience that we went through like non-Aboriginal people.²¹⁷

MAY PEARCE

VALS highlighted the need for culturally safe and First Peoples-led responses to extend to the recovery process, stating:

What is often missed in disaster management in the recovery process is the need for healing, ... a healing-informed approach to disaster recovery offers opportunities to better support all communities affected by disasters, by unsettling assumptions and enabling holistic understandings of complex interactions between multiple disasters, community contexts and systemic inequities. Traditional Owner groups and [Aboriginal Controlled Community Organisations] need to be properly funded to be able to deliver a coordinated and proactive approach in preparation, response, care and recovery for any climate disasters of health emergencies in the future.²¹⁸

VICTORIAN ABORIGINAL LEGAL SERVICE

The way forward

Climate justice would empower us to reconnect with and care for Country, improving our individual and collective strength, resilience and readiness for climate adaptation.²¹⁹

VICTORIAN ABORIGINAL COMMUNITY CONTROLLED HEALTH ORGANISATION

State and industry land management practices and resource extraction have driven climate change. First Peoples' knowledge is critical to pathways to mitigate and adapt to climate change and help heal Country. First Peoples are willing to share this knowledge for the benefit of all. To enable this, the State must ensure that First Peoples have the power, authority, control and resources to engage in a self-determining process.

These processes need to be supported by time, capacity building and coordination to enable First Peoples to:

- protect and heal Country and sea Country from the impacts of climate change, including from more severe climate emergencies such as fire and flood, and the development of renewable energy infrastructure
- share in the economic and social benefits of the development of renewable energy projects on Country and sea Country, which have the potential to provide for economic independence and prosperity, supporting self-determination
- provide culturally safe and responsive emergency services from prevention through to recovery, protect cultural sites, and ensure mainstream support services are culturally-safe and informed.

In setting out the way forward, First Peoples organisations called for improved strategy and coordination to support First Peoples' involvement in the renewable energy sector.²²⁰ FVTOC submitted: 'As well as resourcing for individual Traditional Owner Corporations, there is need for immediate collective strategic work to support state-wide reform in the renewable energy sector'.²²¹

A State Aboriginal Climate Strategy should be developed in line with First Peoples' advocacy to recognise 'the impact of renewable energy projects on Country', to enable Traditional Owners 'to have a say in the planning process' and to uphold UNDRIP rights and the principles of free and informed consent.²²² The Government should 'right the wrongs of the past of the energy sector and the opportunities that have been missed by Traditional Owners to be able to benefit from those ... activities'.²²³ The call for coordinated action was reflected at a federal level,²²⁴ where the First Nations Clean Energy Network has developed Aboriginal and Torres Strait Islander Best Practice Principles for Clean Energy Projects and is working towards the development of a First Nations Clean Energy Strategy.²²⁵

Secure and ongoing funding is required to support Traditional Owner groups and Aboriginal Community Controlled Organisations to respond to climate disasters. This will enable them to develop coordinated and proactive responses while prioritising the protection of Country and cultural heritage.

Recommendations

RECOMMENDATION 44

Led by First Peoples, the Victorian Government must enable, support and prioritise the development of a First Peoples’ Renewable Energy Strategy for Traditional Owner groups underpinned by UNDRIP principles, which:

- a. Recognises First Peoples’ self-determination and direct interest in relation to the renewables; and
- b. Provides perpetual funding, resourcing and support for First Peoples to engage at all stages with the renewable energy sector.

RECOMMENDATION 45

Led by First Peoples, the Victorian Government must enable and support the development of a First Peoples’ Climate Justice Strategy for Traditional Owner groups underpinned by UNDRIP principles, which provides perpetual funding, for Traditional Owner groups to deliver environmental projects on their Country which will assist in mitigating, adapting and/or responding to climate change including through the Self-Determination Fund.

RECOMMENDATION 46

Working with First Peoples, the Victorian Government must conduct a review of all emergency management legislation (including the *Emergency Management Act 2013* (Vic), *Country Fire Authority Act 1958* (Vic), *Forest Act 1958* (Vic), *Public Health and Wellbeing Act 2008* (Vic) and their related regulations standard operating procedures, policies and other relevant documents:

- a. Formalise an ongoing role for Traditional Owner groups and ACCOs in incident planning, response and recovery frameworks.
- b. Provide Traditional Owner groups, ACCOs and ACCHOs, with secure, ongoing, self-determined funding to assist in the preparation for, response to and recovery from natural disasters (including fire, flood), emergency incidents, and health emergencies in the future.
- c. In the processes in (b), give weight to Traditional Owner voices regarding the protection of Country and cultural heritage.

Endnotes

1. Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 24 [40]–[45].

2. For an overview of the global physical hazards and socioeconomic impacts of climate change, see: McKinsey Global Institute, *Climate Risk and Response: Physical Hazards and Socioeconomic Impacts* (Report, January 2020). See also *Victoria's Climate Change Strategy* for a snapshot of potential impacts in Victoria of increasing global emissions: State Government of Victoria (Department of Environment, Land, Water and Planning), *Victoria's Climate Change Strategy* (May 2021), 9.

3. Lowitja Institute, Submission 331 (Land, Sky, Waters), 5–6, 12–13; Royal Australian College of General Practitioners, Submission 439, 6.

4. For a discussion of coordinated global mitigation and adaption efforts to address climate change, see Intergovernmental Panel on Climate Change, *Climate Change 2023: Synthesis Report* (Report, 2023) section 4.

5. Department of Energy, Environment and Climate Action, *Victoria's 2035 Emissions Reduction Target* (May 2023); See also Victorian Department of Energy, Environment and Climate Action, '*Climate action targets*' (Webpage); *Climate Change Action Act 2017* (Vic) s 6(1); Independent Expert Panel on Interim Emissions Reduction Targets for Victoria, *Interim Emissions Reduction Targets for Victoria (2021–2030)* (March 2019), 11–16.

6. Department of Environment, Land, Water and Planning, *Victoria's Climate Change Strategy* (May 2021), 19–20.

7. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 27; Transcript of roundtable with Gunaikurnai Land and Waters Aboriginal Corporation, 30 November 2023 (Part 2), 2–3, served on the State of Victoria on 12 April 2024.

8. Transcript of Paul Paton, 22 April 2024, 86.

9. Transcript of roundtable with Gunditj Mirring Traditional Owners Aboriginal Corporation, 19 January 2024, 7, served on the State of Victoria on 12 April 2024; Transcript of Rebecca Halliday, 22 April 2024, 91 [11]–[17].

10. Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 62 [20]–64 [14].

11. Witness Outline of Ngarra Murray, Co-Chair of First Peoples' Assembly of Victoria, 11 April 2024, 21–2; Witness Outline of Uncle Brendan Kennedy, 23 April 2024, 16 [163]; Transcript of Minister Steve Dimopoulos MP, 16 April 2024, 48 [24]–[27].

12. *State Government of Victoria*, '*Victorian Renewable Energy and Storage Targets*' (Webpage).

The Victoria Renewable Energy Targets are set under the *Renewable Energy (Jobs and Investment) Act 2017* (Vic) s 7. The current target of 65 percent was set in 2024, revising the original target of 50 percent set in 2019.

13. Department of Environment, Land, Water and Planning (Vic), *Cutting Victoria's Emissions 2021–2025: Energy Sector Emissions Reduction Pledge* (May 2021), 1.

14. Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 39–40.

15. Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 38 [31]–[36].

16. Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 38 [38]–[41].

17. Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 39 [29].

18. Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 39 [32].

19. State Government of Victoria (Department of Environment, Land, Water and Planning), *Victoria's Climate Change Strategy* (May 2021), 9.

20. State Government of Victoria (Department of Environment, Land, Water and Planning), *Victoria's Climate Change Strategy* (May 2021), 9.

21. State Government of Victoria (Department of Environment, Land, Water and Planning), *Victoria's Climate Change Strategy* (May 2021), 9.

22. Witness Statement of Uncle Colin Walker, 27 May 2022, 14 [105]–[106], [109]–[110]; Transcript of Uncle Brendan Kennedy, 24 April 2024 (Part 1), 35 [23]–[36]; Djirra, Submission 348 (Land, Sky, Waters), 10.

23. Some watercourses pass through the Country of multiple nations and groups that have different terms for them. The river now known as the Murray River is the largest river in Australia and passes through New South Wales, Victoria and South Australia. The river has been known by many names among various First Peoples groups. In Victoria, commonly known names for the river include Dhungala / Dunghala / Tongala and Millewa / Milawa / Mirri / Mile. Due to the variation in names, and the lack of documentation of other names, in this chapter Yoorrook refers to the river simply as 'Murray'.

24. Witness Statement of Uncle Colin Walker, 27 May 2022, 14 [105]–[106], 14 [109]–[110].

25. Transcript of Uncle Brendan Kennedy, 24 April 2024 (Part 1), 35 [23]–[36].

26. Transcript of Uncle Robbie Thorpe (Djuran Bunjilinee), 27 March 2024, 64 [19]–[22]; Djirra, Submission 348 (Land, Sky, Waters), 10.

27. Transcript of roundtable with Gunaikurnai Land and Waters Aboriginal Corporation, 30 November 2023 (Part 2), 12, served on the State of Victoria on 12 April 2024.

28. Djirra, Submission 348 (Land, Sky, Waters), 10.

29. Transcript of Uncle Robbie Thorpe (Djuran Bunjilinee), 27 March 2024, 64 [19]–[22].

30. Lowitja Institute, Submission 331 (Land, Sky, Waters), 12–3.

31. Lowitja Institute, Submission 331 (Land, Sky, Waters), 12–3.

32. Lowitja Institute, Submission 331 (Land, Sky, Waters), 5.

33. Lowitja Institute, Submission 331 (Land, Sky, Waters), 13. See also Royal Australian College of General Practitioners, Submission 439, 6, which notes that climate change exacerbates health inequities and acknowledges the leadership that First Peoples are bringing to climate change mitigation and adaptation strategies.

34. Lowitja Institute, Submission 331 (Land, Sky, Waters), 6.

35. Lowitja Institute, Submission 331 (Land, Sky, Waters), 6.

36. Transcript of Karrina Nolan, 22 April 2024, 80; Lowitja Institute, Submission 331 (Land, Sky, Waters), 6–8.

37. Victorian Aboriginal Community Controlled Health Organisation, Submission 340 (Land, Sky, Waters), 12.

38. Victorian Aboriginal Community Controlled Health Organisation, Submission 340 (Land, Sky, Waters), 12.

39. Bhiamie Williamson, '*Caring for Country Means Tackling the Climate Crisis with Indigenous Leadership: 3 Things the New Government Must Do*', *The Conversation* (Webpage, 1 June 2022).

40. Human Rights Committee, *Views Adopted by the Committee under Article 5(4) of the Optional Protocol, Concerning Communication No 3624/2019*, 135th sess, UN Doc CCPR/C/135/D/3624/2019 (22 September 2022); United Nations Human Rights Office of the High Commissioner, '*Australia Violated Torres Strait Islanders' Rights to Enjoy Culture and Family Life, UN Committee Finds*' (Press Release, 23 September 2022); Victorian Aboriginal Legal Service, Submission 339 (Land, Sky, Waters), 25.

41. Victorian Aboriginal Legal Service, Submission 339 (Land, Sky, Waters), 25–6.

42. Witness Statement of Minister Lily D'Ambrosio MP, 8 March 2024, 3 [14].

43. Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 55 [25]–[30].

44. Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 46 [1]–[3].

45. Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 54 [40]–[45].

46. Dja Dja Wurrung Clans Aboriginal Corporation, *Turning 'Wrong Way' Climate, 'Right Way': Dja Dja Wurrung Climate Change Strategy 2023–2024* (2023), 28.

47. Department of Energy, Environment and Climate Action, Response to NTP-003-031 — '*Yoorrook Justice Commission Land Injustice Inquiry Request for Information: Energy, Resources and Climate Action portfolios response*', 8, produced by the State of Victoria in response to the Commission's Request for Information dated 20 February 2024.

48. Gunaikurnai Land and Waters Aboriginal Corporation, '*Energy Transition*', *Our Economy* (Webpage).

49. Gunditj Mirring Traditional Owners Aboriginal Corporation, Submission 669, 19.

50. Gunditj Mirring Traditional Owners Aboriginal Corporation, Submission 669, 19.

51. Department of Energy, Environment and Climate Action, Response to NTP-003-031 — '*Yoorrook Justice Commission Land Injustice Inquiry Request for Information: Energy, Resources and Climate Action portfolios response*', 7–8, produced by the State of Victoria in response to the Commission's Request for Information dated 20 February 2024.

52. Department of Energy, Environment and Climate Action, Response to NTP-003-031 — '*Yoorrook Justice Commission Land Injustice Inquiry Request for Information: Energy, Resources and Climate Action portfolios response*', 7, produced by the State of Victoria in response to the Commission's Request for Information dated 20 February 2024.

53. First Nations Clean Energy Network, '*Who we are*', *Our Story* (Webpage).

54. Department of Energy, Environment and Climate Action, '*Traditional Owner Renewable Energy Program*' (Webpage, 17 May 2024).

55. Correspondence from the Victorian Government Solicitors Office to King & Wood Mallesons (Solicitors Assisting) dated 13 December 2024; Department of Energy, Environment and Climate Action, Response to NTP-003-031 — '*Yoorrook Justice Commission Land Injustice Request for Information: Energy, Resources and Climate Action portfolios response*', 4, produced by the State of Victoria in response to the Commission's Request for Information dated 20 February 2024.

The nine recipients of funding were: Barengi Gadjin Land Council Aboriginal Corporation; Dja Dja Wurrung Clans Aboriginal Corporation; First People of the Millewa–Mallee Aboriginal Corporation; Gunaikurnai Land and Waters Aboriginal Corporation; Gunditj Mirring Traditional Owners Aboriginal Corporation; Taungurung Land and Waters Council Aboriginal Corporation; Wadawurrung Traditional Owners Aboriginal Corporation; Wurundjeri Woi-Wurrung Cultural Heritage Aboriginal Corporation; Yorta Yorta Nation Aboriginal Corporation: See Department of Energy, Environment and Climate Action, '*Traditional Owner Renewable Energy Program*' (Webpage, 17 May 2023).

DEECA also noted that: 'The remaining balance of \$200,000 was utilised in staffing costs to enable the program end date to be extended, providing more time for the RAP projects to be completed'. Department of Energy, Environment and Climate Action, Response to NTP-003-029 — '*Yoorrook Justice Commission Land Justice Inquiry Minister for Climate Action and Energy and Resources additional information*', 2, produced by the State of Victoria in response to the Commission's Notice to Produce dated 19 February 2024.

56. Department of Energy, Environment and Climate Action, '*First Peoples' Adoption of Renewable Energy Program*', *Grants* (Webpage, 25 July 2023).

57. Department of Energy, Environment and Climate Action, Response to NTP-003-031 — '*Yoorrook Justice Commission Land Injustice Request for Information: Energy, Resources and Climate Action portfolios response*', 5, produced by the State of Victoria in response to the Commission's Request for Information dated 20 February 2024; Correspondence from the Victorian Government Solicitors Office to King & Wood Mallesons (Solicitors Assisting) dated 13 December 2024.

58. Department of Energy, Environment and Climate Action, Response to NTP-003-031 — '*Yoorrook Justice Commission Land Injustice Request for Information: Energy, Resources and Climate Action portfolios response*', Annexure A – Program Expenditure, produced by the State of Victoria in response to the Commission's Request for Information dated 20 February 2024; Department of Energy, Environment and Climate Action, Response to questions taken on notice by Minister Lily D'Ambrosio, Minister for Climate Action and Energy and Resources on 22 May 2024, 2 [4].

59. Correspondence from the Victorian Government Solicitors Office to King & Wood Mallesons (Solicitors Assisting) dated 13 December 2024. Department of Energy, Environment and Climate Action, Response to NTP-003-031 — '*Yoorrook Justice Commission Land Injustice Request for Information: Energy, Resources and Climate Action portfolios response*', Annexure A – Program Expenditure, produced by the State of Victoria in response to the Commission's Request for Information dated 2 February 2024.

60. Department of Energy, Environment and Climate Action, *Partnering with Traditional Owners throughout transmission planning and development* (Fact Sheet), 5–6.

61. Department of Energy, Environment and Climate Action, Response to NTP-003-031 — '*Yoorrook Justice Commission Land Injustice Request for Information: Energy, Resources and Climate Action portfolios response*', Annexure A – Program Expenditure, produced by the State of Victoria in response to the Commission's Request for Information dated 2 February 2024.

62. Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 45 [41].

63. Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 46 [8]–[18].

64. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 26.

65. Transcript of Karrina Nolan, 22 April 2024, 93 [36]–[44].

66. Transcript of roundtable with Bunurong Land Council, 2 November 2023, 43–5, served on the State of Victoria on 1 April 2024. See also Clean Energy Council and KPMY, [Leading Practice Principles: First Nations and Renewable Energy Projects](#) (Practice Guide, 2024), 21; First Nations Clean Energy Network, Heidi Norma, Therese Apolonio, Chris Brigg and Fergus Nelson, [Victoria Policy Overview – First Peoples and Clean Energy](#) (Fact Sheet), 12.

67. See Transcript of Jason Bilney, Jonathan Kneebone and Rebecca Halliday, 22 April 2024, 87 [22]–[29], 90 [12]–[18], 92 [8]–[13]. See also Clean Energy Council and KPMY, [Leading Practice Principles: First Nations and Renewable Energy Projects](#) (Practice Guide, 2024), 21.

68. Transcript of roundtable with Bunurong Land Council, 2 November 2023, 43–4, served on the State of Victoria on 1 April 2024.

69. Transcript of roundtable with Bunurong Land Council, 2 November 2023, 44–5, served on the State of Victoria on 1 April 2024.

70. Transcript of Jason Bilney, 22 April 2024, 92 [8]–[13].

71. Transcript of Jason Bilney, Sonja Dare and Nick Llewellyn-Jones, 22 April 2024, 68–98; *Presentation to Yoorrook Justice Commission: Barngarla Determination Aboriginal Corporation* (22 April 2024).

For more information on place names see Petter Næssan and Ghil'ad Zuckermann, [‘Barngarla place names and regions in South Australia’](#) (2022) 42(1) *Australian Journal of Linguistics*, 24–56; Mobile Language Team, [‘Mirning’](#); [‘Nauo/Nhawu’](#); [‘Barngarla’](#); [‘Wirangu’](#); [‘Kokatha’](#) (Webpages).

72. Transcript of Jason Bilney, 22 April 2024, 72–74; *Presentation to Yoorrook Justice Commission: Barngarla Determination Aboriginal Corporation* (22 April 2024).

73. Transcript of Jason Bilney, 22 April 2024, 92 [8]–[13].

74. Witness Statement of Minister Lily D'Ambrosio MP, 8 March 2024, 4 [18].

75. Witness Statement of Minister Lily D'Ambrosio MP, 8 March 2024, 4 [18].

76. Transcript of Damein Bell, 25 March 2024, 18 [41]–[45].

77. Offshore Wind Energy Victoria, *Implementation Statement 3* (December 2023), 37; First Nations Clean Energy Network, *Summary of key legislation applying to offshore renewable development areas* (Fact sheet, August 2023). See also Chapter 4: Rights, Chapter 9: How we got here — overview of recognition systems, Chapter 10: Native title, Chapter 11: Traditional Owner settlements and Chapter 12: Cultural heritage.

Under the *Charter of Human Rights and Responsibilities Act 2006* (Vic) public authorities are required to act and make decisions which are compatible with human rights (see s 38, and s 7(2) which permits limitations in certain circumstances). A relevant human right in the case of Aboriginal people is the right to maintain their spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs (s 19(2)).

78. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 27; Transcript of Rebecca Halliday, 22 April 2024, 91 [11]–[17].

79. Transcript of roundtable with Gunditj Mirring Traditional Owners Aboriginal Corporation, 19 January 2024, 7, served on the State of Victoria on 12 April 2024.

80. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 27.

81. *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007) art 28(1).

82. Federation of Victorian Traditional Owner Corporations, Submission 566 (Economic Prosperity), 32.

83. Transcript of Rebecca Halliday, 22 April 2024, 91 [11]–[17].

84. *Land Acquisition and Compensation Act 1986* (Vic) pt 3 c30.

85. *Land Acquisition and Compensation Act 1986* (Vic).

86. *Traditional Owner Settlement Act 2010* (Vic).

87. *Native Title Act 1993* (Cth) pt2 div 3.

88. State Government of Victoria, [‘Offshore Wind Energy’](#) (Webpage, 7 February 2025).

89. Department of Energy, Environment and Climate Action, Response to NTP-003-031 — ‘Yoorrook Justice Commission Land Injustice Inquiry Request for Information: Energy, Resources and Climate Action portfolios response’, 13, produced by the State of Victoria in response to the Commission’s Request for Information dated 20 February 2024.

90. Australian Department of Climate Change, Energy, the Environment and Water, [‘Gippsland, Victoria declared offshore wind area’](#) (Webpage); Australian Department of Climate Change, Energy, the Environment and Water, [‘Southern Ocean region off Victoria, declared offshore wind area’](#) (Webpage).

91. The need for better consultation and integration of government activities is discussed in Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 64 [1]–[10].

92. Parliament of Australia, Senate Standing Committees on Environment and Communications, Offshore wind industry consultation process, Submission 31 [Gunditj Mirring Traditional Owners Aboriginal Corporation submission to the Senate inquiry into the Offshore wind industry consultation process](#).

93. Rachel Baxendale, [‘Gunditjmara traditional owners slam Energy Minister Chris Bowen over offshore wind zone’](#), *The Australian* (Webpage, 2 April 2024), citing GMTOAC.

94. Rachel Baxendale, [‘Gunditjmara traditional owners slam Energy Minister Chris Bowen over offshore wind zone’](#), *The Australian* (Webpage, 2 April 2024), citing GMTOAC.

95. Rachel Baxendale, [‘Gunditjmara traditional owners slam Energy Minister Chris Bowen over offshore wind zone’](#), *The Australian* (Webpage, 2 April 2024).

96. Rachel Baxendale, [‘Gunditjmara traditional owners slam Energy Minister Chris Bowen over offshore wind zone’](#), *The Australian* (Webpage, 2 April 2024), quoting GMTOAC.

97. Rachel Baxendale, [‘Gunditjmara traditional owners slam Energy Minister Chris Bowen over offshore wind zone’](#), *The Australian* (Webpage, 2 April 2024).

98. Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 62.

99. Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 62.

100. Gunaikurnai Land and Waters Aboriginal Corporation, [Submission for Offshore Renewable Energy Infrastructure Area Proposal: Bass Strait off Gippsland](#) (7 October 2022).

101. Gunaikurnai Land and Waters Aboriginal Corporation, [Submission for Offshore Renewable Energy Infrastructure Area Proposal: Bass Strait off Gippsland](#) (7 October 2022), 3.

102. Gunaikurnai Land and Waters Aboriginal Corporation, [Submission for Offshore Renewable Energy Infrastructure Area Proposal: Bass Strait off Gippsland](#) (7 October 2022), 3.

103. Witness Statement of Minister Lily D'Ambrosio MP, 22 April 2024, 17 [85], referencing *Gunaikurnai and Offshore Energy: Aspirations for a better future* (not published); Department of Energy, Environment and Climate Action, Response to NTP-003-031 — ‘Yoorrook Justice Commission Land Injustice Request for Information: Energy, Resources and Climate Action Portfolios Response’, 8, produced by the State of Victoria in response to the Commission’s Request for Information dated 2 February 2024.

104. Gunaikurnai Land and Waters Aboriginal Corporation, [‘Energy Transition’](#) (Webpage).

105. Department of Energy, Environment and Climate Action, [‘Victorian Transmission Investment Framework’](#) (Webpage).

106. Department of Energy, Environment and Climate Action, [‘Victorian Transmission Investment Framework’](#) (Webpage).

107. Department of Energy, Environment and Climate Action, Response to NTP-003-031 — ‘Yoorrook Justice Commission Land Injustice Inquiry Request for Information: Energy, Resources and Climate Action portfolios response’, 12, produced by the State of Victoria in response to the Commission’s Request for Information dated 20 February 2024; Department of Energy, Environment and Climate Action, [Victorian Transmission Investment Framework: Final Design Paper](#) (2023).

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110. Transcript of Paul Paton, 22 April 2024, 86 [25]–[28]; Transcript of Jonathan Kneebone, 22 April 2024, 87 [22]–[29]; Transcript of Rebecca Halliday, 22 April 2024, 90 [12]–[18].

111. Transcript of Jonathan Kneebone, 22 April 2024, 87 [22]–[29].

112. Transcript of Paul Paton, 22 April 2024, 88 [15]–[17].

113. Transcript of Paul Paton, 22 April 2024, 86 [25]–[28].

114. Transcript of Paul Paton, 22 April 2024, 86 [20]–[28].

115. Transcript of Rebecca Halliday, 22 April 2024, 90 [12]–[18].

116. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 26.

117. Gunditj Mirring Traditional Owners Aboriginal Corporation, Submission 669, 18.

118. Transcript of roundtable with Nindi-Ngujarn Ngarigo Monero, 13 November 2023 (Part 2), 40, served on the State of Victoria on 12 April 2024.

119. Transcript of roundtable with Nindi-Ngujarn Ngarigo Monero, 13 November 2023 (Part 2), 40, served on the State of Victoria on 12 April 2024.

120. Transcript of roundtable with Gunditj Mirring Traditional Owners Aboriginal Corporation, 19 January 2024, 17, served on the State of Victoria on 12 April 2024.

121. Transcript of roundtable with Gunaikurnai Land and Waters Aboriginal Corporation, 30 November 2023 (Part 2), 2–3, served on the State of Victoria on 12 April 2024.

122. Transcript of roundtable with Wurundjeri Woiwurrung Cultural Heritage Aboriginal Corporation, 10 November 2023, 25, served on the State of Victoria on 1 April 2024.

123. Transcript of Damein Bell, 25 March 2024, 18 [29]–[36].

124. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 26.

125. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 26; Gunditj Mirring Traditional Owners Aboriginal Corporation, Submission 669, 2–14.

126. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 26; Gunditj Mirring Traditional Owners Aboriginal Corporation, Submission 669, 2–14.

127. Gunditj Mirring Traditional Owners Aboriginal Corporation, Submission 669, 2–14.

128. Gunditj Mirring Traditional Owners Aboriginal Corporation, Submission 669, 2–14.

129. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 27.

130. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 27.

131. Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 22 [21]–[23].

132. Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 26 [44]–[47].

133. Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 60 [16]–[18].

134. Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 60 [37]–[46].

135. Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 60 [42]–[44].

136. Correspondence from the Victorian Government Solicitors Office to King & Wood Mallesons (Solicitors Assisting) dated 13 December 2024.

137. Correspondence from the Victorian Government Solicitors Office to King & Wood Mallesons (Solicitors Assisting) dated 13 December 2024.

138. Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 24 [40]–[45].

139. Transcript of Minister Lily D'Ambrosio MP, 22 April 2024, 28 [12]–[31].

140. Representatives from the First Nations Clean Energy Network discussed examples in Canada and South Africa where First Peoples have shared in the benefits from renewable projects: Transcript of Karrina Nolan and Jonathan Kneebone, 22 April 2024, 82–3, 95.

141. Transcript of roundtable with Barengi Gadjin Land Council, 26 October 2023, 20, served on the State of Victoria on 1 April 2024.

142. Transcript of Sonja Dare, Jason Bilney and Nick Llewellyn-Jones, 22 April 2024, 96 [21]–[47]–97 [1]–[26]. See also the discussion of employment and business development opportunities in: Transcript of Jonathan Kneebone and Karrina Nolan, 22 April 2024, 87 [31]–[39], 95 [9]–[26]; and First Nations Clean Energy Network, *Aboriginal and Torres Strait Islander Best Practice Principles for Clean Energy Projects* (November 2022) 11.

143. Rebecca Halliday of GIRA Consultancy gave the example of the Aboriginal Procurement Policy in New South Wales, which has penalties for developers who do not meet the targets or commitments they agree to: Transcript of Rebecca Halliday, 22 April 2024, 90 [24]–[28].

144. Transcript of Rebecca Halliday, 22 April 2024, 90 [28]–[34].

145. Transcript of roundtable with Barengi Gadjin Land Council, 26 October 2023, 19, served on the State of Victoria on 1 April 2024.

146. Transcript of Paul Paton, 22 April 2024, 96 [9]–[16].

It was also suggested Traditional Owners could operate community energy hubs from renewable energy sold back into the grid from household solar panels: Transcript of roundtable with Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation, 10 November 2023, 25, served on the State of Victoria on 1 April 2024.

147. Transcript of Karrina Nolan, and Rebecca Halliday, 22 April 2024, 82–4. See also: First Nations Clean Energy Network, *Aboriginal and Torres Strait Islander Best Practice Principles for Clean Energy Projects* (November 2022), 11. See also, discussion of rental arrangements in: Transcript of Nick Llewellyn-Jones, 22 April 2024, 79 [10]–[45].

148. Transcript of Paul Paton, 22 April 2024, 86 [42]–[46].

149. First Nations Clean Energy Network, *Aboriginal and Torres Strait Islander Best Practice Principles for Clean Energy Projects* (November 2022), 12.

150. First Nations Clean Energy Network, *Aboriginal and Torres Strait Islander Best Practice Principles for Clean Energy Projects* (November 2022), 12.

151. Transcript of Karrina Nolan, 22 April 2024, 95 [18]–[22].

152. Transcript of roundtable with First People of Millewa Mallee Aboriginal Corporation, 5 December 2023, 47–8, served on the State of Victoria on 12 April 2024.

153. Transcript of Karrina Nolan, 22 April 2024, 83 [7]–[14].

154. The IPCC concluded human activities had caused global warming and highlighted the continued increase in greenhouse gas emissions between 2010–2019, ‘with unequal historical and ongoing contributions arising from unsustainable energy use, land use and land-use change, lifestyles and patterns of consumption and production across regions, between and within countries, and between individuals’: Intergovernmental Panel on Climate Change, *Climate Change 2023: Synthesis Report* (Report, 2023), 42 [2.1]. See also Chapter 6: Country, and Chapter 13: Joint management.

155. Victorian Aboriginal Legal Service, Submission 339 (Land, Sky, Waters), 25.

156. Victorian Aboriginal Community Controlled Health Organisation, Submission 340 (Land, Sky, Waters), 12.

157. Lowitja Institute, Submission 331 (Land, Sky, Waters), 13; Victorian Aboriginal Legal Service, Submission 339 (Land, Sky, Waters), 26; Associate Professor Nikki Moodie, Submission 526, 3.

158. Lowitja Institute, Submission 331 (Land, Sky, Waters), 13. See also Janine Mohamed, Pat Anderson and Veronica Matthews, ‘[Indigenous Peoples across the Globe Are Uniquely Equipped to Deal with the Climate Crisis: So Why Are We Being Left out of These Conversations?](#)’, *The Conversation* (Webpage, 29 March 2022).

159. Victorian Aboriginal Legal Service, Submission 339 (Land, Sky, Waters), 26.

160. Associate Professor Nikki Moodie, Submission 526, 3; Witness Outline of Dr Aunty Vicki Couzens, 28 March 2024, 35; Transcript of Ngarra Murray, Co-Chair of First Peoples’ Assembly of Victoria, 17 April 2024, 12 [25]–[33].

161. Associate Professor Nikki Moodie, Submission 526, 3.

162. Witness Outline of Dr Aunty Vicki Couzens, 28 March 2024, 35.

163. Transcript of Ngarra Murray, Co-Chair of First Peoples’ Assembly of Victoria, 17 April 2024, 12 [25]–[33]. See also Ngarra Murray’s discussion of First Peoples as leaders in responding to climate change, noting various Traditional Owner-led strategies: Witness Outline of Ngarra Murray, Co-Chair of First Peoples’ Assembly of Victoria, 11 April 2024, 21–2; See also Uncle Brendan Kennedy’s discussion of climate change work including predictive modelling: Witness Outline of Uncle Brendan Kennedy, 23 April 2024, 16 [163].

164. Victorian Aboriginal Community Controlled Health Organisation, Submission 340 (Land, Sky, Waters), 14.

165. Transcript of Minister Steve Dimopoulos MP, 16 April 2024, 48 [30].

166. Transcript of Minister Steve Dimopoulos MP, 16 April 2024, 48 [24]–[27].

167. Transcript of roundtable with Barengi Gadjin Land Council, 26 October 2023, 36, served on the State of Victoria on 12 April 2024.

168. Transcript of Paul Paton, 17 April 2024, 66–67; Dja Dja Wurrung Clans Aboriginal Corporation, Dhelkunya Dja Policy team, Submission 594 (Economic Prosperity), 7, 9. See also Terri Janke, [True Tracks: Indigenous Cultural and Intellectual Property Principles for putting Self-Determination into practice](#) (PhD Thesis, Australian National University, February 2019).

169. Dja Dja Wurrung Clans Aboriginal Corporation, Dhelkunya Dja Policy team, Submission 594 (Economic Prosperity), 9.

170. Aboriginal and Torres Strait Islander Commission, [Our Culture Our Future: Report on Australian Indigenous Cultural and Intellectual Property Rights](#) (Report, October 1999), xvii.

171. Federation of Victorian Traditional Owner Corporations, Submission 566 (Economic Prosperity), 32.

172. Department of Environment, Land, Water and Planning, [Victoria’s Climate Change Strategy](#) (May 2021), 9; Victorian Aboriginal Community Controlled Health Organisation, Submission 340 (Land, Sky, Waters), 12.

173. Djirra, Submission 348 (Land, Sky, Waters), 10.

174. Lowitja Institute, Submission 331 (Land, Sky, Waters), 13; Victorian Aboriginal Legal Service, Submission 339 (Land, Sky, Waters), 25; Djirra, Submission 348 (Land, Sky, Waters), 10.

175. Transcript of roundtable with Nindi-Ngujarn Ngarigo Monero, 13 November 2023 (Part 1), 25, served on the State of Victoria on 12 April 2024.

176. Transcript of roundtable with Nindi-Ngujarn Ngarigo Monero, 13 November 2023 (Part 1), 25, served on the State of Victoria on 12 April 2024.

177. Transcript of roundtable with Nindi-Ngujarn Ngarigo Monero, 13 November 2023 (Part 1), 25, served on the State of Victoria on 12 April 2024.

178. See Chapter 13: Joint management for a discussion of the [Cultural Landscapes Strategy: Victorian Traditional Owner Cultural Landscapes Strategy](#) (2021), 13.

179. The Victorian Traditional Owner Cultural Fire Knowledge Group, [The Victorian Traditional Owner Cultural Fire Strategy](#) (2020). See also Forest Fire Management Victoria, ‘[The Victorian Traditional Owner Cultural Fire Strategy](#)’ (Webpage, 23 December 2020).

180. The Victorian Traditional Owner Cultural Fire Knowledge Group, [The Victorian Traditional Owner Cultural Fire Strategy](#) (2020), 4.

181. The Victorian Traditional Owner Cultural Fire Knowledge Group, [The Victorian Traditional Owner Cultural Fire Strategy](#) (2020), 5.

182. Also referred to as fire-stick farming, traditional burning, mosaic burning: Transcript of Matthew Shanks and John Clarke, 26 April 2024, 60 [9]–[15], 61 [6]–[14].

183. Transcript of John Clarke, 26 April 2024, 64 [48]–[46], 79 [39]–[45]; Fred Cahir et al, ‘Aboriginal fire-management practices in colonial Victoria’ (2021) *Aboriginal History*, 110–115.

184. Transcript of Matthew Shanks and Mick Bourke, 26 April 2024, 60 [9]–[15], 78 [17]–[20].

185. Transcript of Katherine Mullet and Mick Bourke, 26 April 2024, 61 [25]–[36], 62 [38]–[41], 67 [9]–[46].

186. Transcript of Matthew Shanks and Mick Bourke, 26 April 2024, 60 [9]–[15], 78 [17]–[20]; Andrea Rawluk et al, ‘Tomorrow’s Country: Practice-oriented principles for Indigenous cultural fire research in south-east Australia’ (2022) 61(3) *Geographical Research*, 340.

187. Transcript of Katherine Mullet and Mick Bourke, 26 April 2024, 61 [25]–[36], 62 [15]–[18].

188. Timothy Neale, Rodney Carter, Trent Nelson, Mick Bourke, ‘Walking together: a decolonising experiment in bushfire management on Dja Dja Wurrung country’ (2019) 26(3) *cultural geographies*, 343.

189. Transcript of Mick Bourke, 26 April 2024, 67 [43]–[46].

190. Transcript of John Clarke, 26 April 2024, 64 [11]–[12], [31]–[36].

191. Transcript of Mick Bourke and John Clarke, 26 April 2024, 79 [39]–[45], 62 [20]–[36].

192. Victorian Aboriginal Community Controlled Health Organisation, Submission 340 (Land, Sky, Waters), 12; Bhiamie Williamson, ‘[Cultural burning isn’t just important to Indigenous culture – it’s essential to Australia’s disaster management](#)’ (Webpage, 20 October 2024).

193. Australian Government, Department of Climate Change, Energy, the Environment and Water, ‘[Estimating greenhouse gas emissions from bushfires in Australia’s temperate forests: focus on 2019–20](#)’ (Webpage); Elliot Williams, ‘[Extreme bushfires pose serious threat to global climate](#)’, *UNSW* (Webpage, 14 August 2023).

194. See for e.g., Victorian Traditional Owner Cultural Fire Knowledge Group, [The Victorian Traditional Owner Cultural Fire Strategy](#) (2020); Timothy Neale et al, ‘Walking together: a decolonising experiment in bushfire management on Dja Dja Wurrung country’ (2019) 26(3) *cultural geographies*, 343; Michael O’Kane et al, ‘Re-Invigorating Cultural Burning Practices in Victoria’ (2019) 43 *Journal Of The Anthropological Society Of South Australia*, 86.

195. Transcript of Mick Bourke and Katherine Mullet, 26 April 2024, 77 [22]–[43], 78 [17]–[20], 80 [12]–[21], 81 [1]–[7]; Sally Gardener, Danielle Couch, Mick Bourke, Amos Atkinson and Paul Komesaroff, ‘Changing Fire Imaginaries: Walking together to reap the ethical and practical benefits of cultural burning’ (2022) 12 *Arena*.

196. The Nature Conservancy Australia, ‘[Fighting fire with fire: Indigenous-led fire management is fighting climate change](#)’ (Webpage, 28 February 2023).

197. Transcript of John Clarke, 26 April 2024, 79 [27]–[36].

198. Transcript of Katherine Mullet, 26 April 2024, 80 [12]–[21].

199. Transcript of Matthew Shanks, 26 April 2024, 69 [31]–[34].

200. The Victorian Traditional Owner Cultural Knowledge Group, [The Victorian Traditional Owner Cultural Fire Strategy](#) (2020).

201. Forest Fire Management Victoria, ‘[Fuel Management Report 2018–019: The Victorian Traditional Owner Cultural Fire Strategy](#)’ (Webpage, 2020).

202. Transcript of Mick Bourke, 26 April 2024, 68 [45]–[48], 69 [1]–[3].

203. The Code of Practice for Bushfire Management on Public Land was amended June 2022. See Department Environment, Land, Water and Planning, *Code of Practice for Bushfire Management for Public Land (2012) (amended 2022)*.

204. Transcript of Mick Bourke, 26 April 2024, 72 [38]–[42].

205. Transcript of roundtable with Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation, 10 November 2023, 25, served on the State of Victoria on 1 April 2024.

206. Transcript of roundtable with Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation, 10 November 2023, 25, served on the State of Victoria on 1 April 2024. See also Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation, ‘[Natural Resources](#)’; ‘[Narrap Team](#)’ (Webpage).

207. Transcript of Paul Paton, 17 April 2024, 65 [41]–[44].

For detailed discussion of the Victorian Traditional Owner Cultural Fire Strategy and funding, see Chapter 13: Joint management.

208. Transcript of roundtable with Gunaikurnai Land and Water Aboriginal Corporation, 30 November 2023 (Part 2), 16–17, served on the State of Victoria on 12 April 2024.

209. Transcript of roundtable with Gunaikurnai Land and Water Aboriginal Corporation, 30 November 2023 (Part 2), 16–17, served on the State of Victoria on 12 April 2024.

210. Transcript of roundtable with Nindi-Ngujarn Ngarigo Monero, 13 November 2023 (Part 1), 25, served on the State of Victoria on 12 April 2024.

211. Lowitja Institute, Submission 331 (Land, Sky, Waters), 13.

212. Victorian Aboriginal Legal Service, Submission 339 (Land, Sky, Waters), 25; Djirra, Submission 348 (Land, Sky, Waters), 10.

213. Victorian Aboriginal Legal Service, Submission 339 (Land, Sky, Waters), 25.

214. Djirra recommended ‘increased and ongoing funding from the Victorian Government for specialist [Aboriginal Controlled Community Organisations] to better prepare and respond to the immediate and ongoing impact of disaster events through culturally safe, legal and non-legal support’: Djirra, Submission 348 (Land, Sky, Waters), 10.

215. Victorian Aboriginal Legal Service, Submission 339 (Land, Sky, Waters), 26.

216. May Pearce, Submission 267, 4–5; Victorian Aboriginal Legal Service, Submission 339 (Land, Sky, Waters), 26.

217. May Pearce, Submission 267, 4–5.

218. Victorian Aboriginal Legal Service, Submission 339 (Land, Sky, Waters), 26, citing Phoebe Quinn, Bhiamie Williamson, Lisa Gibbs, ‘Indigenous-informed disaster recovery: Addressing collective trauma using a healing framework’ (2022) 16 *Progress in Disaster Science* 1, 1.

219. Victorian Aboriginal Community Controlled Health Organisation, Submission 340 (Land, Sky, Waters), 12.

220. Transcript of Karrina Nolan, 22 April 2024, 80 [43]–[47]; Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 27; Transcript of Paul Paton, 22 April 2024, 84 [38]–85 [14].

221. Federation of Victorian Traditional Owner Corporations, Submission 376 (Land, Sky, Waters), 27.

222. Transcript of Paul Paton, 22 April 2024, 84 [40]–[47]–85 [1]–[4].

223. Transcript of Paul Paton, 22 April 2024, 84 [40]–[47]–85 [1]–[4].

224. Transcript of Karrina Nolan, 22 April 2024, 80 [43]–[47].

225. Transcript of Karrina Nolan, 22 April 2024, 81 [35]–[47]–82 [1]–[17].



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