

# Yoorrook Justice Commission

## WITNESS STATEMENT OF THE HON. LILY D'AMBROSIO

I, Lily D'Ambrosio, Minister for Energy and Resources, Minister for Climate Action and Minister for the State Electricity Commission, of 1 Treasury Place, East Melbourne, Victoria, affirm and say as follows:

1. I make this statement in my capacity as the Minister for Energy and Resources, Minister for Climate Action and Minister for State Electricity Commission.
2. I am the Coordinating Minister for the Department of Energy, Environment and Climate Action (**DEECA** or **the Department**),<sup>1</sup> which combines Victoria's climate action, energy, environment, water, agriculture and resources into a single department (with approximately 5,000 diverse staff)<sup>2</sup> to maximise connections between the environment, community, industry and economy.<sup>3</sup> The Department supports the following ministers and portfolios:
  - a. myself, as the Minister for Energy and Resources, the Minister for Climate Action and the Minister for the State Electricity Commission;
  - b. the Hon. Steve Dimopoulos MP, Minister for Environment (**Minister Dimopoulos**);
  - c. the Hon. Harriet Shing MLC, Minister for Water (**Minister Shing**); and
  - d. the Hon. Ros Spence MP, Minister for Agriculture (**Minister Spence**).
3. The Secretary of the Department is John Bradley. I give further information about the Department in **Part 2** of my statement.
4. The Department came into existence as DEECA following a Machinery-of-Government change in December 2022, with effect from 1 January 2023. Immediately before this change, the Department was primarily known as the Department of Environment, Land, Water and Planning (**DELWP**). Where the context requires it in my statement below, I also refer to DELWP.
5. In preparing this statement, I consulted with subject matter experts within DEECA as I outline below (at [6] to [10]). I have also been assisted by my Department and lawyers engaged by the State of Victoria (**the State**) in the drafting of my statement.
6. I have read and had regard to the response to Requests for Information (**RFIs**) provided by the Department that are relevant to my portfolio responsibilities (namely, Energy and Resources and

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<sup>1</sup> Department of Energy, Environment and Climate Action, *Annual Report 2022-23*. October 2023, p 17.

<sup>2</sup> Department of Energy, Environment and Climate Action, 'Our Leaders', January 29, 2024, Accessed January 10, 2024. <https://www.deeca.vic.gov.au/our-department/our-leaders>.

<sup>3</sup> Department of Energy, Environment and Climate Action, *Annual Report 2022-23*. October 2023, p 11.

Climate Action), which was submitted to the Commission on 19 February 2024 (DEEC.0003.0001.0083).

7. I understand that the Department has also responded to RFIs relating to the portfolio responsibilities of both Minister Dimopoulos and Minister Shing. I acknowledge, as I know my ministerial colleagues also do, that land, water, skies and resources are intrinsically interrelated and together form **Country**. I am cognisant, as I know my ministerial colleagues are, of the importance of the Land Injustice inquiry across each of the climate action, energy, environment, water and resources portfolios.
8. I have read and had regard to the background papers that DEECA has produced to the Commission and to the background paper that the Department of Premier and Cabinet produced to the Commission titled: "Historical Timeline – State laws, policies and practices that drive dispossession in Victoria" (DPC.0009.0012.0021).
9. In **Annexure B** to my statement, I have included a **Table of Acronyms** for assistance with terms commonly referred to in my statement. In my statement, I generally use the term **First Peoples** with the same meaning as is set out in the Commission's Letters Patent,<sup>4</sup> unless the context requires otherwise, for example, if another document refers to the term **Aboriginal** or **Indigenous Australian**. I also use **Traditional Owners** to mean an Aboriginal person who has traditional connections to an identified geographical area of Country. I recognise that Traditional Owners may have different meanings depending on the context, for example, in technical definitions that might be used in formal recognition processes under the *Native Title Act 1993* (Cth) (**Native Title Act**) or the *Traditional Owner Settlement Act 2010* (Vic) (**TOS Act**).
10. Any opinions I express in my statement are informed by the documents I have reviewed or the consultations I have engaged in as I outline above at paragraphs 5 to 8 and from my own professional experience as a Minister and Parliamentarian. I will supplement the evidence I give in my statement orally at the Commission's Land Injustice Inquiry hearing.
11. Subject to what I have said above at paragraphs 5 to 8, I make this statement based on my own knowledge unless otherwise stated. I confirm the content of this statement is true and correct to the best of my knowledge.

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<sup>4</sup> **First Peoples** includes: (a) all traditional owners of a place in the State of Victoria (including family and clan groups) and their ancestors; and (b) Aboriginal and/or Torres Strait Islander persons who are living or who in the time before the start of **Colonisation** lived, in Victoria.

**Colonisation** means colonisation of the lands which are currently known as the State of Victoria since 1788.

## **Part 1 – Acknowledgment**

12. I acknowledge and pay my respects to the Traditional Owners and custodians of the Country on which I live and work on, the lands of the Wurundjeri Woi Wurrung people of the Kulin nation. I acknowledge that sovereignty has never been ceded. I pay my deep respect to the Elders of those communities, both past and present and to the critical role of the knowledge holders and leaders who have advocated tirelessly across the generations for better outcomes for First Peoples, and particularly for land justice.
13. I acknowledge the diversity of First Peoples communities across Victoria, which are as rich and unique as the lands for which they are responsible as custodians and to which they are deeply connected through their law, lore, spirituality and custom. Through these systems and practices First Peoples have maintained their strong spiritual connections to land, to waters, to the skies and to all the living things and natural riches, or what we know as resources, but which all are collectively known to Traditional Owners and custodians as **Country**.
14. 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. I have reflected on the significant responsibility I carry to listen to the voices of First Peoples which have echoed across the generations in speaking about what Country means to them, both in the past, now and for their future. Throughout my years as Minister, I have witnessed how institutional western culture embedded systems of government have stood as barriers to self-determination, barriers which have existed for more than 200 years. I have immense respect for how resilient First Peoples are, and have had to be, in their continuing advocacy for their rights, recognition and for change.
15. As I explain below in **Part 2**, I have been the Minister responsible for the energy portfolio for nearly a decade and I have previously held other ministerial portfolios. As a minister, I have seen first-hand the long, hard and still unfolding journey of First Peoples in regard to Country, including through the processes for formal recognition under the Commonwealth Native Title Act, the Victorian TOS Act, and the *Aboriginal Heritage Act 2006 (Vic)* (**Aboriginal Heritage Act**). I have witnessed the successes and positive outcomes of these processes, but also the disappointments and frustrations, including those related to the complexities and time-consuming nature of those processes.
16. I am deeply committed to listening to the truths that are now being told through the important work of the Commission, and to embracing the opportunity that truth-telling presents for the State to truly reckon with Victoria's past. I have both the opportunity and the responsibility to effect change. I am committed to supporting First Peoples' self-determination and Treaty negotiations, to transfer power and resources to Traditional Owners. I know this can be done through prioritising and building on examples of "good practice" that have the principles of self-determination at their core, examples of which I have outlined below in my statement in **Part 4**. First Peoples in Victoria should

expect the State to actively listen and act through clear pathways to enabling self-determination – that is both our test and obligation.

17. For me, **self-determination** and Country are interwoven; you cannot give real meaning to the human rights and community rights that First Peoples have in their deep connection to Country without understanding and appreciating what self-determination means for First Peoples. In 2019, the Department (when it was known as DELWP) published *Pupangarli Marnmarnepu – “Owning our Future” Aboriginal Self-Determination Reform Strategy 2020-2025 (Pupangarli Marnmarnepu)*. I discuss *Pupangarli Marnmarnepu* in more detail below in **Part 3**. In *Pupangarli Marnmarnepu*, there is a definition of **self-determination** in the following terms:<sup>5</sup>

- *Self-determination is all about choice.*
- *It must be defined by Traditional Owners and Aboriginal Victorians, not government.*
- *Traditional Owners have the right to make choices that best reflect them on their journey to self-determination and self-governance.*

18. I support First Peoples’ right to self-determination, as reflected in the *United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP)* as key to First Peoples’ opportunity to empower and enable themselves to achieve what they aspire towards for their Country. 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.

19. For my portfolios (energy, resources and climate action), this means broadening and strengthening the meaningful partnerships with Traditional Owners across the State. As Victoria undergoes its transition to renewable energy technologies, these relationships will be critical in creating an equitable and sustainable future. I have seen that when we work together on First Peoples’ community priorities, better outcomes are achieved for those communities and in turn, for the broader community. I am particularly proud of the First Peoples Adoption of Renewable Energy program (**FPARE program**) enabling First Peoples to build their knowledge of renewable energy to benefit their local communities and the community benefit reforms under the Victorian Transmission Investment Framework (**VTIF**) being delivered via VicGrid. In coming years, I expect that there will be greater partnership between private investors and First Peoples in the Offshore Wind sector that carries through the lifespan of a project and greater partnership and benefit sharing for our resources sector.

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<sup>5</sup> [DEEC.9001.0001.1389]; *Pupangarli Marnmarnepu – “Owning our Future” Aboriginal Self-Determination Reform Strategy 2020-2025 (p 11)*.

20. As set out in more detail below in **Part 3**, I see *Pupangarli Marnmarnepu* as an expression of commitment, and the Department's commitment, to working with First Peoples' communities and organisations in meaningful ways. *Pupangarli Marnmarnepu* also shows that we can and should always hold ourselves accountable for achieving meaningful outcomes together with First Peoples now and into the future, so that First Peoples are in control of their own future.<sup>6</sup> One of the Department's "organisational pillars" is First Peoples' self-determination,<sup>7</sup> which is part of its commitment to cultural safety and working in partnership with Traditional Owners and Aboriginal Victorians.<sup>8</sup>
21. My commitment to First Peoples' self-determination also reflects my personal and heartfelt acknowledgement of the devastating intergenerational consequences of the **dispossession** of First Peoples of and from their Country. This dispossession has had destructive effects on culture, including cultural practices, language, and the important responsibility to connect with and care for Country. It has also upset the important balances between First Peoples and their traditional Country. I acknowledge that these consequences are a direct result of Colonisation,<sup>9</sup> the establishment of the State of Victoria and its successive laws, policies, and practices.
22. The reality of horrific violence and State-sanctioned systematic dispossession of Country and destruction of culture are truths which must be told, and these truths should continue to be told through the work of the Commission and beyond. This history, and the systems that caused it, continue to harm First Peoples today. As a Minister of the State, I am responsible to effect the systemic changes necessary to address these effects.
23. I also respectfully acknowledge the extraordinary strength and resilience of First Peoples in the face of historical and ongoing injustices, and the survival of their living cultures, knowledge, and traditions. I have heard their voices and will continue to listen, learn and act as we move forward together.
24. I know it is essential that I and the Department, continue to promote the importance of working together with First Peoples to enable the realisation of their aspirations and rightly held expectations around the honouring of their cultural rights and their right to self-determination.
25. It is with humility that I make this statement to the Commission as Victoria's Minister for Energy and Resources, Minister for Climate Action, the Minister for the State Electricity Commission and

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<sup>6</sup> [DEEC.9001.0001.1389]; *Pupangarli Marnmarnepu – "Owning our Future" Aboriginal Self-Determination Reform Strategy 2020-2025*.

<sup>7</sup> Department of Energy, Environment and Climate Action, *Annual Report 2022-23*. October 2023, p 11.

<sup>8</sup> Department of Energy, Environment and Climate Action, 'Aboriginal Self-Determination'. Accessed January 10, 2024. <https://www.deeca.vic.gov.au/aboriginalselfdetermination/home>.

<sup>9</sup> See above footnote #4.

the Coordinating Minister for DEECA. I sincerely thank the Commission for the opportunity to provide this statement.

## **Part 2 – My Background and Qualifications**

26. I was first elected to the Legislative Assembly in 2002 for the Mill Park electorate and was appointed to Cabinet in 2014 as Minister for Industry and Minister for Energy and Resources. In 2016, I was appointed Minister for Energy, Environment and Climate Change and Minister for Suburban Development. In December 2018, I was appointed Minister for Energy, Environment and Climate Change and Minister for Solar Homes. In June 2022, while serving as the Minister for Energy, Minister for Environment and Climate Action and Minister for Solar Homes, I was also given the added responsibility as Coordinating Minister for the Department of Environment, Land, Water and Planning. In November 2022, I was appointed Minister for Energy and Resources, Minister for Climate Action and Minister for the State Electricity Commission and appointed as Coordinating Minister for DEECA.
27. With respect to the Commission's Land Injustice Inquiry, my portfolio includes the administration and management of the State's renewable energy and energy efficiency programs. As Minister for Energy and Resources and the Minister for Climate Action, I also oversee the facilitation of access to Victoria's natural resources, including minerals, sand and stone, petroleum and gas.
28. Under the General Order issued by the Premier of Victoria on 2 October 2023 for the administrative arrangements for responsibility of Victorian legislation, I and my Department have responsibility for several different and varied Acts which may be directly or indirectly connected to the Commission's Land Injustice inquiry. Without being exhaustive, some of this specific legislation includes:
- a. For the Energy and Resources portfolio, the *Gas Industry Act 2001 (Vic)*, the *Greenhouse Gas Geological Sequestration Act 2008*, the *Mineral Resources (Sustainable Development) Act 1990 (Vic)*, the *Mines (Aluminium Agreement) Act 1961 (Vic)*, the *Offshore Petroleum and Greenhouse Gas Storage Act 2010 (Vic)*, the *Petroleum Act 1998 (Vic)*, the *Pipelines Act 1998 (Vic)* and the *Underseas Mineral Resources Act 1963 (Vic)*.
  - b. For the Climate Action portfolio, the *Climate Change Act 2017 (Vic)*.
29. I do not have any specific responsibility for the administration of the TOS Act or the *Aboriginal Heritage Act*, which under the General Order fall under the portfolio responsibility of the Minister for Treaty and First Peoples (Minister Hutchins). Similarly, I do not have portfolio responsibility for the *Aboriginal Lands Act 1970 (Vic)* or the *Aboriginal Lands Act 1991 (Vic)*, which are the responsibility of the Minister for Treaty and First Peoples (Minister Hutchins). However, as the Coordinating Minister for DEECA, with a department that has significant responsibilities in

implementing these acts and enabling self-determination, I am committed to ensuring my Department is meeting our ongoing responsibilities to work in partnership with First Peoples to advance self-determination.

30. In discharging my responsibilities as a Minister, my Department and I do consider the human rights that are expressed in the Charter,<sup>10</sup> and do generally act and make decisions compatibly with the rights expressed in the Charter. I am aware that s 19 of the Charter refers to “cultural rights”, and that the Charter recognises that “Aboriginal persons hold distinct cultural rights” which must not be denied individually or as a community.<sup>11</sup> I understand the Charter specifically recognises that cultural rights for First People includes “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”.<sup>12</sup>

## **The Department of Energy, Environment and Climate Action (DEECA)**

31. As I outline above at [2] to [4], on 1 January 2023 DELWP became DEECA. Other agencies, like Resources Victoria, Agriculture Victoria and Solar Victoria also now come within the portfolio responsibilities for the Department. Since 16 August 2017, the Department has been led by John Bradley as Secretary.
32. The department is separated into several groups led by Deputy Secretaries, with the following Groups responsible for supporting me deliver my portfolio responsibilities:
- a. **the Regions, Environment, Climate Action and First Peoples Group.** This Group is led by Carolyn Jackson, Deputy Secretary. This Group is responsible for climate action programs, environmental protection and managing assets on public land.
  - b. **the Energy Group.** This Group is led by Elizabeth Molyneux, Deputy Secretary. This Group supports current and future energy projects, programs, and reforms.
  - c. the **State Electricity Commission** is led by interim Chief Executive Officer Chris Miller and is responsible for energy transition programs with a focus on renewable energy, reducing emissions and the cost of electricity and creating employment opportunities.
  - d. **VicGrid**, headed by Chief Executive Officer Alistair Parker, coordinates the development of Victoria’s Renewable Energy Zones.
  - e. **Resources Victoria**, led by Chief Executive Officer Matthew Vincent. Resources Victoria undertakes regulation and investment, and management of access to Victoria’s earth

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<sup>10</sup> *Charter of Human Rights and Responsibilities Act 2006 (Vic)* or **the Charter**.

<sup>11</sup> Charter s 19(2).

<sup>12</sup> Charter s 19(2)(d).

resources, which include minerals, extractive industries, petroleum, and geothermal and carbon storage activities.

33. Within the Regions, Environment, Climate Action and First Peoples Group is the First Peoples' Self-Determination Division, led by Executive Director Tom Bell. This Division is responsible for driving the self-determination reform agenda across DEECA, as underpinned by *Pupangarli Marnmarnepu* (as I outline in more detail below in **Part 3**). This Division also provides specialised guidance and support for DEECA's responsibilities under the Native Title Act and as a key land manager with responsibilities under the TOS Act agreements, including Recognition and Settlement Agreements (**RSA**), including specific responsibilities under Land Agreements, Land Use Activity Agreements (**LUAA**), Natural Resource Agreements (**NRA**) and Traditional Owner Land Management Agreements (**TOLMA**). This Division also provides expert guidance on engagement with First Peoples groups and organisations, together with leading the Department's response and engagement with the Commission and its Treaty-readiness program.
34. The First Peoples' Self-Determination Division also coordinates and provides funding for DEECA's Statewide Caring for Country Partnership Forum (**SCfCP Forum**) which meets twice yearly. The SCfCP Forum comprises Victoria's 11 formally recognised Traditional Owner Corporations (or **TOCs**) under the Native Title Act, TOS Act or the Aboriginal Heritage Act, the Secretary (John Bradley) and the Chief Executive Officer of Parks Victoria (Matthew Jackson), and other senior executives who come together to discuss state-wide matters including renewable energy and climate action.
35. The Traditional Owner Corporation Caucus (**the Caucus**) is an adjunct to the SCfCP Forum and comprises the Chief Executive Officers of the 11 formally recognised Traditional Owner Corporations and is responsible for guiding the direction of the business of the SCfCP Forum. DEECA provides funding for ongoing policy officer and secretariat support for the Caucus. The Caucus meets around 4 to 6 times a year. The Caucus discusses and prioritises community identified issues, including cultural heritage and recognition of rights issues and other key issues for further discussion with DEECA and Parks Victoria in the SCfCP Forum.
36. The Caucus is an important way in which DEECA facilitates self-determined avenues for the exploration of matters of significance to all its member communities. Together with the SCfCP Forum, it provides a way for those organisations to come together, and where appropriate, provide a voice to DEECA on matters as prioritised by them. The strategic priorities of the Caucus concern self-determining governance, Indigenous data sovereignty and intellectual property, climate action and biodiversity, cultural fire, water as life-giving, and energy.
37. Outcomes of the SCfCP Forum include: the reestablishment of the Cultural Fire Leadership Group, development of the Traditional Owner Climate Action Grant Program, a refresh of DEECA's Traditional Owner and Aboriginal Community Engagement Framework, SCfCP Forum adoption of the Caucus strategic priorities, current drafting of the SCfCP Forum implementation plan seeking to address the endorsed strategic priorities, Traditional Owner streamlined funding reform pilot,



Traditional Owner Corporation core funding budget bid, delivery of the Caucus governance and engagement policy papers and the initiation of a Traditional Owner Emergency Management project.

38. I also see great opportunity for reform through the newly established State Electricity Commission (SEC). The SEC is an independent entity with stated commitments to partner with First Nations People in the transition of Victoria's energy systems to embed Traditional Owner knowledge and priorities for Country in the work of the SEC and ensure that First Peoples can share in the benefits of Victoria's renewable energy transformation.

## **Part 3 – Land Injustice**

### **Dispossession of Country**

39. I do not purport to, and could not possibly attempt to, give any complete history of how Victoria's laws, policies and practices gave rise to the dispossession of First Peoples from their Country. I am mindful, however, of the historic significance of the Commission's truth-telling mandate. I have heard First Peoples speak of the continued silence of government, of the many decades during which First Peoples' views, insights and knowledge about Country were ignored and disregarded. I have heard, through the work of this Commission and beyond, of the pain and ongoing harm caused by that silence and by the State's failure to speak about these painful truths.
40. It is a matter of personal importance to me that, as a Minister, I do not continue this silence and that I acknowledge the true nature of colonial dispossession. I understand that it is important that I speak about how dispossession was affected and acknowledge that the foundations which were informed by now rejected and racist assumptions.
41. I acknowledge that the legal reality of British sovereignty was the State-sanctioned dispossession of First Peoples' land and waters on a devastating scale. The dispossession 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 and were treated as such in accordance with the imported English legal systems and processes.
42. In these ways, it is clear to me that 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.
43. I have reflected on the State's role in this dispossession and am mindful that these processes included a denial of First Peoples' rights. Those rights included those to manage and be sustained

by their Country, and its plentiful resources, and to practice their culture as First Peoples had done for thousands of years.

44. I also acknowledge that certain legislation retains legacies of legal frameworks from colonial times and is therefore informed by outdated and paternalistic assumptions about First Peoples' culture and rights that reflect English legal concepts. For example, while ownership of gold had been proclaimed to be the property of, and subject to control by, the Crown by Lieutenant Governor La Trobe on August 16 1851, legislation governing royalties, mines and minerals was put in place by the English parliament in 1855, and minerals other than gold were the subject of State control through legislation passed in 1860.<sup>13</sup> These remain our resource legal and policy frameworks to this day, for example, as is reflected in the *Mineral Resources (Sustainable Development) Act 1990 (Vic)*.
45. I understand that English legal concepts were not always simply imported into the colony and that adjustments were able to be made to adapt and reflect differing circumstances in the colony. For example in relation to the ownership of gold, the subject of early gold licences, and in relation to the Crown's right to metals and minerals, the colonies deviated from English common law by legislating to give the Crown enduring property in or right to any metal or mineral in or under the land,<sup>14</sup> irrespective of ownership of the land, increasing and strengthening the Victorian legislature's ownership and wealth derived from mineral resources.
46. I have reflected on this history and the legacy I carry and can see that for Victoria to move into a more just and equitable future we must address the ongoing nature of dispossession and the injustices that this continues to perpetuate.

### **Role of the State in Ongoing Dispossession**

47. The legacy of the colonial structures I outlined above, continue today. The State of Victoria continues to maintain ownership of Victoria's minerals and petroleum<sup>15</sup> 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<sup>16</sup> with royalties paid to the State on resources extracted.<sup>17</sup> There are also several statutory powers that I may be called upon to exercise as Minister with responsibilities

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<sup>13</sup> See An Act to enable Her Majesty to assent to a Bill, as amended, of the Legislature of Victoria, to establish a Constitution In and for the Colony of Victoria 1855 (Vic) and An Act for regulating the Sale of Crown Lands and for other purposes 1860 (Vic).

<sup>14</sup> See An Act to amend the Land Act 1890 (Vic).

<sup>15</sup> For example, the *Mineral Resources (Sustainable Development) Act 1990 (Vic)* s 9(1) and *Petroleum Act 1998 (Vic)* s 13.

<sup>16</sup> For example, see *Minerals Resources Sustainable Development Act 1990 (Vic)*, s 11.

<sup>17</sup> For example, see *Mineral Resources (Sustainable Development) Act 1990 (Vic)* s 12 and *Petroleum Act 1998 (Vic)* s 149.

under such legislation relating to the grant or the refusal to grant different types of licences, declarations or exemptions for mining exploration, development and retention.

48. 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.
49. I acknowledge that my portfolio has had, and continues to have, a role in the continuation of practices that dispossess First Peoples of their traditional lands, waters, and other natural resources. As a result of that dispossession, the State has upset important natural and spiritual balances in the relationship between First Peoples and Country. Through this dispossession, it has disturbed, and in many instances destroyed, culture, and has brought about ongoing harm to successive generations.
50. I recognise that while most might understand dispossession as something which historically happened to First Peoples, the reality for First Peoples is that dispossession continues to occur to this day and that it continues to cause harm to their communities. While progress has been made to recognise First Peoples' rights to land, water, and natural resources and to protect their cultural heritage, through the passing of the Native Title Act in 1993, and in Victoria, the Aboriginal Heritage Act in 2006 and the TOS Act in 2010, I understand and acknowledge that First Peoples still suffer the effects of not only historic but also ongoing dispossession.

### **The ongoing effects of dispossession in perpetuating land injustice against First Peoples**

51. I have reflected on the fact that although 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. The extent of those consequences is being brought to the forefront through the important work of the Commission, and I am respectful of the courage shown by those who have shared their experiences through this process.
52. I acknowledge that my portfolio's practices and policies are based upon and reflect the English legal system, which in turn is based not only on the legal sovereignty of the Crown but also upon assumptions about Crown relations with Indigenous peoples. We have an opportunity to truly reckon with land injustice through the Treaty process that has been outlined in the witness statement of the Hon. Gabrielle Williams MP, then Minister for Aboriginal Affairs dated 5 May 2022.

53. In the meantime, there is much work which can and must be done to address ongoing systemic injustice across my portfolio. I acknowledge that whenever public land is transferred or rights in it are granted to others, including the right to resources, it can be seen as the loss of an opportunity for First Peoples to obtain the meaningful economic benefits that can be obtained from those resources.
54. It is against this backdrop that I look to the examples of positive change across my portfolio and am buoyed by the opportunity for further reform which will make a difference in the lives of First Peoples in Victoria. This includes the FPARE Program that aims to support Traditional Owners to increase their clean energy capability and leadership and builds on the previous Traditional Owner Renewable Energy Program (**TORE Program**).
55. Understanding that Country is central to culture, and culture is central to spiritual and physical wellbeing, I am inspired by the work of First Peoples organisations and individuals who work tirelessly to advocate for land justice outcomes and who, despite setbacks and rejection, continue to fight for both the return of and their return to Country in Victoria.
56. I intend to work closely with the Department to ensure that this advocacy, and that of previous generations, is not in vain. I understand that better land justice outcomes for First Peoples mean better outcomes for all Victorians, and I acknowledge that more needs to be done to foster that understanding across my portfolio. This starts with listening to the voices of First Peoples and taking meaningful action to achieve lasting change.

## **Part 4 – The Human Right of Self-Determination in Land Justice**

57. I understand that for many First Peoples in Victoria, the outcomes they have hoped to achieve under the Commonwealth Native Title Act and the Victorian TOS Act may not have fully translated into either formal recognition or true self-determination, nor has it prevented ongoing systemic injustices.
58. As I acknowledged above in **Part 1**, the right to self-determination is a fundamental right of Indigenous peoples, recognised through UNDRIP. It is also reflected in the Advancing the Treaty Process with Aboriginal Victorians Act,<sup>18</sup> and the Victorian Aboriginal Affairs Framework (**VAAF**), which identifies the Self-Determination Framework core principle to guide public service action to enable self-determination in line with the Government's commitments in the VAAF.<sup>19</sup> Cultural rights are also expressly recognised by s 19 of the *Charter of Human Rights and Responsibilities Act 2006*. I recognise that the evidence-based position is that the best outcomes are achieved when

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<sup>18</sup> *Advancing the Treaty Process with Aboriginal Victorians Act 2018* (Vic).

<sup>19</sup> State of Victoria, *Victorian Aboriginal Affairs Framework 2018-2023*, p 5.

policies and programs are co-led in genuine partnership with and guided by First Peoples' knowledge and expertise.

59. I also recognise that the Government's commitment to self-determination is essential to the success of any future reform. While it has pursued self-determination as a principle for six years, through the VAAF and the Self-Determination Reform Framework, the Government must continue to develop and hone its approaches to understand and practically apply self-determination and achieve meaningful results. As described in Minister Williams' evidence, the "thinness of knowledge"<sup>20</sup> and lack of lived experience in the Government is compounded by the short-term institutional knowledge of the public service bureaucracy, election cycles and changes in government.
60. However, I see great promise in the work of the Department and related agencies, and in particular the progressive work being carried out across the portfolio to advance and embed the principles of First Peoples' self-determination. I acknowledge and value the importance of listening to First Peoples' voices and harnessing the value of meaningful working relationships on the ground.

### ***DEECA's unique "on-Country" relationships with Victoria's Traditional Owners***

61. DEECA is one of the State's key public land managers, managing approximately 8 million hectares of public land,<sup>21</sup> and is the department responsible for the administration of public land, waters, natural resources. It has an extensive footprint across Victoria's landscapes, forests, coasts and waterways and carries significant energy and resource management responsibilities. As such, all its work can be seen as affecting Country and in turn culture, law, lore and custom for First Peoples.
62. In recognition of the rights and responsibilities of First Peoples, DEECA has nurtured relationships and enduring partnerships with Traditional Owners and First Peoples. This reflects its recognition of and respect for, First Peoples' deep connections to Country, to their continuing cultural practices and the critical importance of caring for Country.
63. Through these relationships, Traditional Owners have continued to share compelling stories about the need and responsibility for them to be "on Country", to "heal Country" for future generations and have tirelessly called on DEECA to take steps, whether big or small, to address dispossession in all its forms through its work.

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<sup>20</sup> [WUR.0001.0007.0001] Yoorrook Justice Commission, 'Transcript of Day 7 – Wurrrek Tyerrang', p. 316, May 6, 2023. Accessed March 7, 2024.

<sup>21</sup> Department of Energy, Environment and Climate Action, 'Managing Crown Land', January 31, 2023. Accessed March 7, 2024. <https://www.forestsandreserves.vic.gov.au/land-management/managing-crown-land>

64. In 2016, the importance of these relationships “on-Country” was formally captured in *Munganin Gadhaba* (DELWP’s Aboriginal Inclusion Plan 2016-2020) based on the “inclusion” model of the VAAF 2013-2018. This plan enabled the formalisation of a body of work between DEECA and its Traditional Owner partners and grew to include a State-wide cultural heritage strategy, reintroduction of First Peoples’ languages in DEECA processes, a First Peoples’ water program and the development of cultural fire programs.

### ***Pupangarli Marnmarnepu Strategy “Owning our Future” Aboriginal Self-Determination Reform Strategy 2020-2025***

65. As I outlined above in **Part 1**, the Department published *Pupangarli Marnmarnepu* “Owning our Future” Aboriginal Self-Determination Reform Strategy 2020-2025 in 2019. *Pupangarli Marnmarnepu* replaced the *Munganin Gadhaba* inclusion plan, reflecting a stronger focus on transformational reform to meaningfully enable self-determination. *Pupangarli Marnmarnepu* has been produced to the Commission ([DEEC.9001.0001.1389]).

66. *Pupangarli Marnmarnepu* is a five-year strategy founded on cultural authority which sets the strategic direction, outcomes and priorities for DEECA (then DELWP) to respond to First Peoples’ self-determination. It connects with the VAAF in that it uses the domains of People, Systems, Accountability and it adds another domain, Country. The context for developing *Pupangarli Marnmarnepu* was feedback obtained from Traditional Owners that they wanted more of a voice in removing the barriers to their self-determination and a genuine partnership between the Department and Traditional Owners in terms of power and accountability structures.

67. For each of the domains, *Pupangarli Marnmarnepu* has the following broad purposes:

- a. For **People**, ensuring the Department is culturally capable and safe, and recognises, supports, values, and embraces First Peoples’ decision-making. This domain is embodied in DEECA’s Aboriginal Cultural Capability Framework, which has been delivered to uplift DEECA’s cultural capability, competency, and capacity, and ensure a safe, respectful workplace in which First Peoples employees and visitors feel safe, valued, and able to fully participate within their human and cultural rights.
- b. For **Systems**, the Department has transformational systems that respect First Peoples’ decision-making, leadership, and self-governance. Self-determination principles have been a key driver in the consideration of reforms to Victoria’s public land legislation. The reforms are intended to better recognise the Traditional Owners of Victoria’s public land, facilitate Traditional Owners’ rights to manage land and to better support cultural authority and practices.
- c. For **Accountability**, the Department is accountable and transparent in its efforts to transfer relevant decision-making powers and resources to First Peoples. As part of this domain, the Statewide Caring for Country Partnership Forum monitors DEECA’s progress against the Strategy and oversees the systemic changes that are necessary to enable meaningful

self-determination. The forum is a key First Peoples-led mechanism that evaluates DEECA's performance and holds the Department to account.

- d. For **Country**, the Department supports Traditional Owners' rights on Country so that their aspirations for land, water and culture are realised. For example, the Cultural Landscapes Strategy, authored by Traditional Owners, sets out a framework for Traditional Owners to lead the planning and management of Country in line with their cultural obligations to care for Country. The Strategy serves a vitally important role in providing direction to the Victorian Government about how it can enable and empower Traditional Owner self-determination in land management.

68. In launching *Pupangarli Marnmarnepu* in his Foreword,<sup>22</sup> the Secretary, John Bradley, acknowledged that "to unlock our shared future, we need to come to terms with the dispossession of Traditional Owners that occurred with colonisation-and make right what can be made right..." He also addressed the ongoing effects of dispossession as follows: "We must also recognise where the legacy of past policy continues to influence current practice".

69. To address the ongoing nature of injustice experienced by First Peoples, and in particular in relation to land, water and other natural resources, the Department has acknowledged that "reconciliation begins with self-determination working in partnership with Traditional Owners as they take control of their own destiny".<sup>23</sup> *Pupangarli Marnmarnepu* is therefore the Department's "chance [for DEECA] to help the State of Victoria undertake significant reform and make peace with its colonial history – to build a better future for all".<sup>24</sup>

70. Critically, *Pupangarli Marnmarnepu* gives effect and listens to Traditional Owners' voices, the voices which have for generations called for self-determination, for reform and for the genuine transfer of power and resources. And most importantly the Strategy holds DEECA accountable through its practically embedded "implementation action plans."

71. *Pupangarli Marnmarnepu* was developed and shaped through the involvement of 15 Traditional Owner Groups (both formally and non-formally recognised) across Victoria through engagement about their rights, interests, and aspirations on their respective Countries. The development processes included the development by the Traditional Owner Groups of 11 self-determination guiding principles, to guide all DEECA's actions to promote and embed First Peoples' self-determination including human rights as set out in the Charter and UNDRIP, and also including First Peoples' expertise, equity, cultural safety and empowerment of First Peoples.

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<sup>22</sup> [DEEC.9001.0001.1389]; *Pupangarli Marnmarnepu – "Owning our Future" Aboriginal Self-Determination Reform Strategy 2020-2025* p 4.

<sup>23</sup> [DEEC.9001.0001.1389]; *Pupangarli Marnmarnepu – "Owning our Future" Aboriginal Self-Determination Reform Strategy 2020-2025* p 4.

<sup>24</sup> [DEEC.9001.0001.1389]; *Pupangarli Marnmarnepu – "Owning our Future" Aboriginal Self-Determination Reform Strategy 2020-2025* p 4.

72. I understand that *Pupangarli Marnmarnepu* is set to be refreshed by the Department in 2025 to reflect the ongoing commitments of the State through the planned updating of the VAAF.

### **Action on Climate Change**

73. As part of its commitment to action on climate change, the Government has provided \$1.1 million in grants to assist Traditional Owners initiate their own responses to climate change. The grants are for 11 TOCs to build their capacity to care for Country and to meet a variety of on-the-ground needs. The grants were responsive to identified key priorities from the SCfCP Forum. DEECA engaged with the Caucus on the design of this program in keeping with self-determination principles.

74. The program recognises the complexity and long-term skills and experience of Traditional Owners in managing Country through their unique systems and ensures that Traditional Owners are properly recognised as knowledge-holders with continuing cultural responsibilities for Country.

### **Victorian Transmission Investment Framework (VTIF) reforms**

75. In my Energy portfolio, the VTIF is currently being established to outline a long-term plan for the development of major electricity transmission infrastructure and Renewable Energy Zones to ensure that cheaper, more reliable renewable energy can be delivered across the State.

76. Through the VTIF reforms there is a significant opportunity for partnership with Traditional Owners to input into a Strategic Land Use Assessment (**SLUA**). The SLUA will help identify priority areas of land (or Renewable Energy Zones) most suitable for development of new renewable energy generation, storage and transmission infrastructure that minimises impacts on communities, landscapes, cultural heritage and biodiversity.

77. The SLUA, which is currently being implemented for the first time for renewable energy, will involve a state-wide assessment using multi-criteria analysis that assesses a range of geo-spatial data inputs relevant to selecting suitable locations for renewable energy infrastructure.

78. As part of this process, areas of cultural heritage sensitivity or significance will be a key input, and where possible the assessment will identify exclusion areas where infrastructure should be avoided all together, or where adverse impacts to cultural heritage must be actively minimised from the outset of the planning process.

79. Partnerships with Traditional Owners will be integral to ensuring cultural heritage data is appropriately accessed and used in the SLUA assessment. As such, VicGrid has already held initial meetings with six Registered Aboriginal Parties to understand if and how Traditional Owners



would like to engage with the broader Victorian Transmission Investment Framework reforms, including the SLUA.

80. Another important part of the VTIF is introducing a new approach to community benefits, so that Traditional Owners and First Peoples that are impacted also benefit from renewable energy development.
81. The framework will enable dedicated benefits for Traditional Owners and will apply to new transmission projects, such as the Western Renewables Link and VNI West as well as transmission associated with offshore wind.
82. VicGrid is committed to partnering with Traditional Owners on this benefit sharing approach, so that these benefits are established and shared in a self-determined way. This may include financial payments from proponents of new major transmission projects, as well as co-ownership, procurement, employment and training opportunities.

### ***Development of the Offshore Wind Sector***

83. Through the work of Offshore Wind Energy Victoria, the Energy portfolio has been working to develop strong and meaningful partnerships with TOCs impacted by offshore wind developments in Victoria. Grant funding was made available to impacted TOCs to progress self-determination through the development of this new sector, strengthen resources to enable them to effectively engage with both industry and government, and guide knowledge and understanding of the development of this sector and its impact on Country and Sea Country, so that TOCs can meaningfully shape the government's offshore wind program.
84. Gunaikurnai Land and Waters Aboriginal Corporation (**GLaWAC**) has become an active participant in the development of the offshore wind sector, developing a clear position and aspirations for offshore wind projects, as well as participating in early engagement with proponents.
85. In September 2023, GLaWAC released *Gunaikurnai and Offshore Energy: Aspirations for a Better Future* to government and developers, which sets the expectation of negotiating agreements with offshore wind generators. GLaWAC has also provided input into offshore wind policy documents such as Offshore Wind Energy Implementation Statement 3 and regulatory amendments. In this statement, my government is committed to supporting GLaWAC's aspirations for mutually beneficial agreements with feasibility licence holders, in line with international best practice.
86. There will be an offshore wind auction process commencing in late 2024. The details for the contractual arrangements are yet to be finalised, but it is anticipated that those who wish to compete will have to address both price and non-price factors as part of their proposals. In practice, there is likely to be a weighting applied to non-price factors, such as supply chain

development, training and ensuring that there are mutual benefits proposed for Traditional Owners. I intend for those involved in this process to invest and partner with Traditional Owners, to ensure future generational support for land and sea Country over the lifespan of offshore wind farms.

## ***Reforming the Resources Sector***

87. I acknowledge that the relationship between Australia's resources industry and Traditional Owners has at times been strained. The reality is there is much room for improvement by both Government and resource proponents to achieve better balance between achieving commercial outcomes while respecting and Traditional Owner cultural rights. In other parts of Australia, we have seen the long-lasting and irrevocable damage that can be done when there is little to no regard for involving Traditional Owners in major energy and resources projects.
88. In Victoria, we are on the verge of the creation of a new critical minerals industry. This will bring new mining projects to our State. This gives us a significant opportunity to make sure that this new mineral industry gets off on the right foot and works in close partnership with Traditional Owners to ensure that their aspirations are genuinely considered and realised in these projects.
89. But there is more to be done. I want to drive ongoing partnerships with Traditional Owners, underpinned by the principle of self-determination, focussed on the realisation of land, water and cultural rights in their connection to Country. This means early, ongoing and meaningful engagement from government and industry throughout the resources development lifecycle, from before exploration begins to beyond mine closure. The government needs to identify how it can best support Traditional Owners – and proponents – about engagement and decision-making in the most effective way.
90. I want to see a consistent and meaningful approach to benefit sharing for Traditional Owners. Of course, there are naturally benefits that come from resources projects such as long-term employment and skill development opportunities as well as investment in services such as health, education and community sport. For any benefits to be best realised, meaningful and long-lasting, Traditional Owners, communities, landholders and other stakeholders need to be involved in a partnership with proponents so that their vision and aspirations are incorporated into decisions about benefit sharing.
91. These are examples of how my portfolio is working to reflect the rights and interests of First Peoples in ways that provide an insight into how government can and should continue to reform its legal and policy frameworks now and into the future.

## **Conclusion**

92. I am grateful for the opportunity to make this statement and for the ground-breaking work of the Commission. First Peoples have my deepest respect, and the Commissioners, my sincere appreciation. The work the Commission is undertaking is historic and its value cannot be

overestimated. I look forward to both its report and its creation of the critically important public record of the effects of colonisation on First Peoples, together with the much-needed acknowledgement of their enduring connections to Country and culture.

93. The Commission's work will no doubt lead to a profound reckoning with the true nature of Victoria's colonial past and a realisation of the extent of ongoing injustices experienced by First Peoples. By acknowledging injustices and speaking the truth it is my sincere hope that together the State and First Peoples can move forward into a new relationship and a shared and just future.

94. I understand the Commission will make recommendations for healing, system reform and practical changes to laws, policy and education, as well as to matters to be included in future treaties. I acknowledge my role and the role of my department in working in partnership with Traditional Owners and First Nation communities to continue to progress better outcomes.

Signed:



*Print name: The Hon Lily D'Ambrosio MP*

*Date : 8 March 2024*

*Witness: Emily Garnett*

Signature:



*Date : 8 March 2024*

## ANNEXURE A – TABLE OF ACRONYMS

<b>Acronym</b>	<b>Definition or use in this Witness Statement (including Annexure A)</b>
<b>Aboriginal Heritage Act</b>	<i>Aboriginal Heritage Act 2006 (Vic)</i>
<b>BGLC</b>	Barengi Gadjin Land Council Aboriginal Corporation
<b>Charter</b>	<i>Charter of Human Rights and Responsibilities Act 2006 (Vic)</i>
<b>CHMP</b>	Cultural Heritage Management Plan
<b>DJAARA</b>	Dja Dja Wurrung Clans Aboriginal Corporation
<b>DELWP</b>	Department of Environment, Land, Water and Planning
<b>DPC</b>	Department of Premier and Cabinet
<b>ERR</b>	Earth Resources Regulator
<b>FPARE</b>	First Peoples Adoption of Renewable Energy Program
<b>FTE</b>	Full-time Equivalent
<b>GLaWAC</b>	Gunaikurnai Land and Waters Aboriginal Corporation
<b>ILUA</b>	Indigenous Land Use Agreement
<b>LUA</b>	Land Use Activity Agreement
<b>Native Title Act</b>	Native Title Act 1993 (Cth)
<b>NRA</b>	Natural Resource Agreement
<b>OWEV</b>	Offshore Wind Energy Victoria
<b>RAP</b>	Registered Aboriginal Party
<b>REZ</b>	Renewable Energy Zone
<b>RSA</b>	Recognition and Settlement Agreement
<b>SCfCP Forum</b>	Statewide Caring for Country Partnership Forum
<b>SDRF</b>	Self-Determination Reform Framework
<b>SLUA</b>	Strategic Land Use Assessment
<b>TCV</b>	Treasury Corporation of Victoria
<b>TLaWAC</b>	Taungurung Land and Water Aboriginal Corporation
<b>TOC</b>	Traditional Owner Corporation
<b>TOC Caucus or the Caucus</b>	Traditional Owner Corporation Caucus
<b>TOLMA</b>	Traditional Owner Land Management Agreement
<b>TORE Program</b>	Traditional Owner Renewable Energy Program
<b>TOS Act</b>	Traditional Owner Settlement Act 2010 (Vic)
<b>TRP</b>	Timber Release Plan
<b>UNDRIP</b>	United Nations Declaration on the Rights of Indigenous Peoples
<b>VAAF</b>	Victorian Aboriginal Affairs Framework 2018-2023
<b>VCAT</b>	Victorian Civil and Administrative Tribunal
<b>VGAAR</b>	Victorian Government Aboriginal Affairs Report
<b>VGSO</b>	Victorian Government Solicitor's Office
<b>VNI West</b>	Victoria to NSW Interconnector West
<b>VTIF</b>	Victorian Transmission Investment Framework