

Witness Statement

Minister for Treaty and First Peoples

Yoorrook Justice Commission

Acknowledgement

With my deep personal respect, I acknowledge the Wurundjeri People of the Kulin Nation as the Traditional Owners of the Country on which I live and work. I pay my respects to Elders and Ancestors, leaders, and knowledge holders.

I also acknowledge and pay my respects to all Traditional Owners of Country across the lands and waters now known as the State of Victoria. I pay my respects to all Aboriginal and Torres Strait Islander peoples living in Victoria and those who have previously lived in Victoria. I pay my respects to their families, communities, Elders and Ancestors.

I acknowledge that First Peoples have never ceded their sovereignty, and that their connections to lands and waters are enduring. I acknowledge First Peoples' unbroken and unwavering connection to culture, lore and law.

For thousands of years, Traditional Owners have practised relationships with Country, where First Peoples have lived on and cared for through laws, customs and languages. Traditional Owners hold distinct rights, including the right to maintain their spiritual, material, and economic relationships with their traditional lands and waters. These rights are recognised in Australian law and international human rights instruments.¹

I acknowledge the ongoing strength of First Peoples, First Peoples' cultures, knowledge systems and traditions, and the immeasurable value added to Victoria's identity, culture and heritage by the oldest living cultures in the world. We cannot truly understand this State's history, or who we are as Victorians, without first understanding the deep, rich and complex cultural heritage of First Peoples.

Language and sources statement

The terms 'First Peoples' and 'Aboriginal people' are used throughout this submission to refer to both Traditional Owners of Country as well as all people of Aboriginal and/or Torres Strait Islander descent who are living, or have lived, in Victoria.

'Victorian Government' and 'the Government' refer to the current Victorian Government, unless indicated otherwise by the date or context.

Unless otherwise specified, all legislation referred to is Victorian legislation.

'Racism' describes beliefs, behaviours, systems and structures in a society that cause unfair and unequal distribution in power, resources and opportunities between racial or ethnic groups.

¹ See section 19(2), *Charter of Human Rights and Responsibilities Act 2006* (Vic), <https://content.legislation.vic.gov.au/sites/default/files/2022-06/06-43aa015%20authorised.pdf>; *United Nations Declaration on the Rights of Indigenous Peoples*, adopted by the General Assembly on 13 September 2007, A/RES/61/295. https://social.desa.un.org/sites/default/files/migrated/19/2018/11/UNDRIP_E_web.pdf

'Institutional racism' and 'structural racism' respectively describe racism that occurs in organisations and in institutions, and racism that is entrenched in a society, between institutions and individuals.

I acknowledge that historical sources in this paper contain language and terms that are out of date and offensive. This includes racist language. Racist language is kept in quotes to accurately represent the attitudes and decision making of the authorities at the relevant time in Victoria's history.

The document contains information and details about acts of violence against First Peoples and communities.

Basis of Provision of Statement

1. I provide this statement in response to a request to appear from the Yoorrook Justice Commission (Commission).
2. My statement responds to themes and concepts arising from a Request for Information (RFI) provided to the State on 4 November 2023 by the Commission and other Treaty and First Peoples portfolio matters relevant to the Commission's Land Injustice line of inquiry.
3. The statement should be read alongside RFI responses provided to the Commission in February 2024 by the Department of Premier and Cabinet (DPC.0013.0001.0001); DPC Executive Director, Community Relations and Heritage, Matthew Lloyd (DPC.0013.0001.0019); and DPC Executive Director, Land Traditional Owner Rights and Land Justice, Dean Cowie (DPC.0011.0001.0001).
4. Should the Commission require any further detail on any of the matters in this statement or otherwise, I would be happy to provide this as part of my oral evidence and/or a supplementary statement.
5. My statement is informed by my own personal and professional experience, my observations as Minister for Treaty and First Peoples and previously Minister for Aboriginal Affairs, and advice from subject matter experts within the Department of Premier and Cabinet.
6. I confirm the contents of this statement are true and correct to the best of my knowledge.

Part 1: Introduction

7. I make this Statement as the Minister for Treaty and First Peoples, a position that I have held since October 2023. I am also the Minister for Jobs and Industry, and the Minister for Women.
8. I was first elected to the Legislative Assembly in 2010 to represent the electorate of Keilor, on the Country of the Wurundjeri People of the Kulin Nation and have represented the electorate of Sydenham since 2014. From 2014 to 2018, I held the portfolios of Aboriginal Affairs, Industrial Relations, Local Government, Women and the Prevention of Family Violence. I have more recently held the portfolios of Education, Women, Corrections, Crime Prevention, Youth Justice and Victim Support.
9. I entered politics because of my deep-seated and personal commitment to addressing injustices across Victorian society. My experiences growing up in western Melbourne, and then as a union organiser, crystallised my determination to build equitable, fair and inclusive communities – a determination that I apply to my work in the Treaty and First Peoples portfolio.
10. Throughout my time in Parliament and Ministerial roles, I have had the privilege of working alongside First Peoples leaders, communities, and organisations to achieve important reforms to improve Government policy, laws and outcomes. I take this opportunity to extend my sincere and deep gratitude to First Peoples for their time, trust, effort, and unwavering dedication in sharing their stories and experiences with me. It has enabled many of the reforms outlined in this document. It has also deeply informed my understanding of past and present injustices enacted by the State against First Peoples, my perspectives on these matters and my responsibilities as a public office holder to support communities as we progress self-determination.
11. As Minister for Treaty and First Peoples, I am responsible for the Government's work on progressing truth-telling, Treaty, self-determination, supporting the recognition of Traditional Owners and protection of cultural heritage. I administer several key statutory regimes including

the *Aboriginal Lands Act 1970*, *Aboriginal Lands Act 1991*, *Aboriginal Heritage Act 2006*, *Traditional Owner Settlement Act 2010*, and the *Advancing the Treaty Process with Aboriginal Victorians Act 2018* (Treaty Act), including agreements concluded with the First Peoples' Assembly of Victoria (First Peoples' Assembly) under the Treaty Act – the Treaty Negotiation Framework, Self-Determination Fund Agreement and Treaty Authority Agreement.²

12. I am also responsible for the Victorian Aboriginal Affairs Framework (VAAF), the Self-Determination Reform Framework (SDRF), and Victoria's obligations under the National Agreement on Closing the Gap.³
13. As the Minister for Jobs and Industry, I am responsible for the Yuma Yirramboi (Invest in Tomorrow) Strategy held jointly and delivered in partnership with the Minister for Employment, Vicki Ward MP.
14. I am honoured to return to the Treaty and First Peoples portfolio as Victoria continues its journey as the first jurisdiction to action all three elements of the Uluru Statement from the Heart: Voice, Treaty and Truth. When the First Peoples' Assembly and the Victorian Government established the Yoorrook Justice Commission (Commission) in 2021, we did so with a shared commitment to truth-telling as a critical element resetting the relationship between First Peoples, the State and all Victorians.⁴ I remain committed to a continued realisation of the aspirations of the Uluru Statement from the Heart.
15. I thank the Commission for its unprecedented work so far. The Commission's work is a critical step in supporting progress towards Treaty. I believe that the Commission's work presents an opportunity for all Victorians to understand a shared history of this State in a way that includes the perspectives of First Peoples – a history of dispossession and profound injustice, and of extraordinary courage, advocacy and cultural persistence. It is an opportunity to bring Victorians together – to deepen our collective understanding of the true history of Victoria, and in so doing helping to mend wounds that impact our lives in ways seen and unseen. There is value for us all in truth telling. It is my strong belief that only through listening, through learning, and through confronting hard truths that we have a chance to heal and create meaningful change including through Treaty.
16. I understand that multiple inquiries and reports – including the Royal Commission on the Aborigines (Victoria, 1877), the Royal Commission into Aboriginal Deaths in Custody (Commonwealth, 1991) and the *Bringing Them Home* report (1997) – have confirmed that generations of First Peoples have experienced the dispossession of their lands and waters and

² *Aboriginal Lands Act 1970* (Vic), <https://www.legislation.vic.gov.au/in-force/acts/aboriginal-lands-act-1970/034>; *Aboriginal Heritage Act 2006* (Vic), <https://www.legislation.vic.gov.au/in-force/acts/aboriginal-heritage-act-2006/027>; *Traditional Owner Settlement Act 2010* (Vic), <https://www.legislation.vic.gov.au/in-force/acts/traditional-owner-settlement-act-2010/025>; *Advancing the Treaty Process with Aboriginal Victorians Act 2018* (Vic), <https://www.legislation.vic.gov.au/in-force/acts/advancing-treaty-process-aboriginal-victorians-act-2018/001>; First Peoples' Assembly of Victoria and the State of Victoria, *Treaty Authority Agreement*, 10 June 2022, <https://content.vic.gov.au/sites/default/files/2022-10/Treaty-Authority-Agreement.pdf> (DPC.0009.0007.0141); First Peoples' Assembly of Victoria and the State of Victoria, *Treaty Negotiation Framework*, 20 October 2022, <https://content.vic.gov.au/sites/default/files/2022-10/Treaty-Negotiation-Framework.pdf> (DPC.0009.0007.0073); First Peoples' Assembly of Victoria and the State of Victoria, *Self-Determination Fund Agreement*, 20 October 2022, <https://content.vic.gov.au/sites/default/files/2022-10/Self-Determination-Fund-Agreement-Signed-20-October-2022.pdf> (DPC.0009.0007.0053).

³ State of Victoria, *Victorian Aboriginal Affairs Framework 2018-2023*, 2018; https://content.vic.gov.au/sites/default/files/2019-09/Victorian-Aboriginal-Affairs-Framework_1.pdf (DPC.0009.0009.0226); State of Victoria, *Self-Determination Reform Framework*, 2019, <https://content.vic.gov.au/sites/default/files/2019-09/Self-Determination-Reform-Framework-August-2019.PDF> (DPC.0009.0009.0202); Australian Government, National Agreement on Closing the Gap, 2020, <https://www.closingthegap.gov.au/national-agreement/national-agreement-closing-the-gap>

⁴ First Peoples' Assembly of Victoria Co-Chairs Geraldine Atkinson and Marcus Stewart, Acting Premier James Merlino and Minister for Aboriginal Affairs, Gabrielle Williams, "Joint Statement on Victoria's Truth and Justice Process", 9 March 2021, <https://www.premier.vic.gov.au/joint-statement-victorias-truth-and-justice-process>

the suppression of cultural practices by State and non-State actors who killed, oppressed, and denied First Peoples' basic rights.⁵ We cannot change this history. But we can accept its truth and seek to understand its enduring impacts. I acknowledge this is part of my responsibility as the Minister for Treaty and First Peoples. I am deeply grateful for the opportunity to contribute to this historic truth-telling process.

17. As Minister for Treaty and First Peoples it is my responsibility to lead change within the Victorian Government to better enable First Peoples to determine their own lives and futures. My aim in this role is to work towards a future where all Traditional Owner groups have access to Country that fulfills their rightful cultural, social and economic aspirations, and First Peoples' relationship with Country is given due respect by the State. I recognise that it is incumbent upon the Victorian Government to bring all Victorians along with us on this journey. The practical steps that I am responsible for, to this end, are outlined at a high level in parts four to seven below.

Part 2: Dispossession of lands and waters

2.1 The taking of Aboriginal lands and waters

18. From the time I first held the Treaty and First Peoples' portfolio, then titled Aboriginal Affairs, in 2014, until today, I have come to understand more about the dispossession of First Peoples' lands and waters. Commonwealth and Victorian State inquiries document how the State dispossessed First Peoples of their lands and waters. As early as 1877, a Victorian Royal Commission acknowledged that First Peoples 'have been dispossessed of their inheritance by colonisation.'⁶ The Royal Commission into Aboriginal Deaths in Custody found that following the dispossession of First Peoples' land and waters, 'various colonial and later State, Commonwealth and Territory Governments introduced policies which led to intrusions into most aspects of their everyday lives.'⁷
19. In its Mabo judgment in 1992, the High Court found that the British Crown justified the taking of Aboriginal lands based on a false view that the Australian continent was sparsely populated, and 'a discriminatory denigration of indigenous inhabitants, their social organization and customs.'⁸ I recognise that the fallacy of *terra nullius*, that the land 'belonged to no one', enabled the British Crown to take the lands and waters without first engaging with First Peoples. Previous Governments' claims of *terra nullius* enabled the State to avoid the question of just compensation for First Peoples for many years.⁹

⁵ 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), https://aiatsis.gov.au/sites/default/files/docs/digitised_collections/remove/92914.pdf; Royal Commission into Aboriginal Deaths in Custody, *National Report: Volume 2* (Canberra: Australian Government Publishing Service, 1991), ch. 10,

<https://www.austlii.edu.au/au/other/cth/AURoyalC/1991/2.pdf><http://www.austlii.edu.au/au/other/IndigLRes/rciadic/national/vol2/>; Human Rights and Equal Opportunity Commission, *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*, 1997, pt. 2,

https://humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf
⁶ 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), xvi,

https://aiatsis.gov.au/sites/default/files/docs/digitised_collections/remove/92914.pdf;
⁷ Royal Commission into Aboriginal Deaths in Custody, *National Report: Volume 2* (Canberra: Australian Government Publishing Service, 1991), 10.1.1, <https://www.austlii.edu.au/au/other/cth/AURoyalC/1991/2.pdf>

⁸ *Mabo v Queensland (No 2)* [1992] HCA ("Mabo case") [39] (Brennan J). <https://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/1992/23.html>

⁹ *Mabo case* [28] (Brennan J). <https://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/1992/23.html>; *Cooper v Stuart* [1889] UKPC 1, 11. https://www.bailii.org/uk/cases/UKPC/1889/1889_16.html

20. I understand that it was not until the High Court's Mabo decision overturned *terra nullius* that there was an opportunity for greater recognition of First Peoples rights to Country.¹⁰ The Commission's Land Injustice inquiry has the ability to reflect upon *terra nullius*, and educate the broader Victorian public on its application and consequences in Victoria and the ongoing injustices First Peoples experience due to the dispossession of lands and waters.
21. I recognise that First Peoples in Victoria were not dispossessed of their lands and waters by the idea of *terra nullius* alone. Private settlers and colonial authorities used violence to establish control over the First Peoples' lands and waters, forcibly removing First Peoples to make way for Europeans. As the Royal Commission into Aboriginal Deaths in Custody observed, 'in most parts of Australia during its various frontier eras, force or its threat became the key means of establishing British Law and order.'¹¹
22. The fallacy of *terra nullius* has been recognised by Australia's highest court, and by Victorian law and policy. The *Traditional Owner Settlement Act 2010* states that, 'Aboriginal peoples have lived for more than a thousand generations in this State... They enjoyed a close spiritual connection with their country and developed sustainable economic practices for their lands, waters and natural resources. Land formed the basis of their existence and identity and was owned and managed according to traditional laws and customs. They had a special relationship with their lands, which held great meaning to them.' The Act goes on to state that, '[t]he arrival of Europeans in this State ruptured the spiritual, political and economic order of the Aboriginal peoples. They faced the loss of their ancestral land and grave threats to their culture, but the Aboriginal peoples have survived.'¹² The recognition of First Peoples' relationship with Country should be accompanied by an acknowledgement of recognition of the violence which threatened such important relationships.
23. The earliest recorded occurrence of frontier violence in Victoria, to the knowledge of the State, is the 'Convincing Ground' site on the coast near Portland on Gunditjmara land where Kilcarer gundidj (Dhauwurd wurrung speakers) people were killed by European whalers.¹³ The Chief Protector of Aborigines in Victoria in the 1840s, George Augustus Robinson, talked to people with knowledge of the event and visited the site 6 to 7 years after it occurred. He reported the incident to Superintendent La Trobe: 'the cause of this fight, if such an unequal contest can be so designated, firearms [are] certain death against spears, was occasioned by the whalers going to get the whalebone from the fish which the natives considered theirs and which it had been so for 1000 of years previous, they of course resisted the aggression on the part of the white men. It was the first year of the fishery, and the whalers having used their guns beat them off and hence called the spot the Convincing Ground. That was because they [the whalers] convinced them [the natives] of their mistake and which, but for their firearms, they perhaps could not have done'.¹⁴
24. The Convincing Ground massacre illustrates the reprehensible violence and dispossession experienced by First Peoples and their extraordinary impacts on communities. The Department of Premier and Cabinet's response to the Commission's Land Injustice Request contains

¹⁰ *Mabo case* [23], [31], [33], [36], [39] (Brennan J). <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/1992/23.html>

¹¹ Royal Commission into Aboriginal Deaths in Custody, *National Report: Volume 2* (Canberra: Australian Government Publishing Service, 1991), ch. 10, <https://www.austlii.edu.au/au/other/cth/AURoyalC/1991/2.pdf>

¹² *Traditional Owner Settlement Act 2010* (Vic), preamble, <https://content.legislation.vic.gov.au/sites/default/files/2020-12/10-62aa025%20authorised.pdf>

¹³ University of Newcastle, "Colonial Frontier Massacres in Australia 1788–1930," accessed 30 August 2023, <https://c21ch.newcastle.edu.au/colonialmassacres/detail.php?r=503>

¹⁴ *Ibid.*

information on the challenges and opportunities in memorialising sites of massacres and other injustices (Question 46).

25. I understand that dispossession was enabled by State laws and policies. Early colonial proclamations ordered police to remove Aboriginal people from Melbourne, and authorised Europeans to occupy First Peoples lands.¹⁵
26. The Superintendent of Port Phillip District, the highest official in the colony, ordered the police to ensure that: 'no Aboriginal Blacks of this District are to visit the Township of Melbourne under any pretext whatever'¹⁶ and that the police arrest and march approximately four hundred, 'men, women and children through Melbourne to lodge them at the prison barracks.'¹⁷
27. When gold was discovered in Victoria in 1851, it made the newly established Colony of Victoria rich. However, I recognise that it was the State and Europeans, not First Peoples, who benefited and further displaced First Peoples.¹⁸ In 1858, a Victorian Parliamentary Committee 'to inquire into the best means of improving the present condition of the Aborigines' reported that 'Victoria is now entirely occupied by a superior race there is scarcely a spot, excepting in the remote mountain ranges or dense scrubs on which the Aborigine can rest his weary feet.'¹⁹ Reading words like this today brings home how entrenched institutional and systemic racism was in the State's actions towards First Peoples, including its policy and law-making. The State fostered and condoned beliefs that First Peoples were inferior to Europeans, failing to recognise the role the State played in dispossessing First Peoples of their Country and excluding First Peoples from colonial economic and political systems.
28. I know that through a succession of Land Acts, the State sold First Peoples' lands and waters to Europeans.²⁰ 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.²¹
29. The forcible removal of First Peoples from their lands and waters, which the reserve system facilitated, as well as the progressive selling off, by the Crown, of First Peoples' lands disrupted First Peoples' stewardship of their lands, which they had managed sustainably through 3000 generations.²² Excluded from pastoral, mining and other sources of wealth,²³ First Peoples were

¹⁵ George Augustus Robinson to William Thomas, 12 September 1840, Public Record Office Victoria, enclosure to VPRS 10, Unit 2, 1840/931.

¹⁶ Ibid.

¹⁷ Major General 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," *Journal of Colonialism & Colonial History*, 13(1) (2012), 210-211, <https://doi.org/10.1353/cch.2012.0007>

¹⁸ Department of Transport and Planning, "Victoria's Historic Population Growth: European Settlement to Present 1836–2011," accessed 5 December 2023, https://www.planning.vic.gov.au/_data/assets/word_doc/0027/29295/accessible-version-of-Victorias-historic-population-growth.docx

¹⁹ Parliament of Victoria, *Report of the Select Committee of the Legislative Council on the Aborigines: together with the proceedings of the Committee, minutes of evidence and appendices*, 1858-59, iv, <http://nla.gov.au/nla.obj-55275936>

²⁰ *Sale of Crown Lands Act 1860* (Vic), https://classic.austlii.edu.au/au/legis/vic/hist_act/aaftrtsoclafop603/; *Land Act 1862* (Vic), https://classic.austlii.edu.au/au/legis/vic/hist_act/tla186278/; *Land Act 1869* (Vic), https://classic.austlii.edu.au/au/legis/vic/hist_act/tla186978/

²¹ *Land Act 1884* (Vic), https://classic.austlii.edu.au/au/legis/vic/hist_act/tla188478/; *Aboriginal Protection Act 1869* (Vic), http://classic.austlii.edu.au/au/legis/vic/hist_act/aatpftpamotanov757/

²² State of Victoria, *Yuma Yirramboi (Invest in Tomorrow), Victorian Aboriginal Employment and Economic Strategy* (Melbourne: State of Victoria, 2022), 14-16. https://djsir.vic.gov.au/_data/assets/pdf_file/0008/2068496/Yuma-Yirramboi-Invest-in-Tomorrow-Strategy-2022.pdf (DJSI.9001.0001.2098).

²³ *Aboriginal Protection Act 1869* (Vic), http://classic.austlii.edu.au/au/legis/vic/hist_act/aatpftpamotanov757/; Victoria Government Gazette 20, "Regulations and Orders," 8 March 1876, https://gazette.slv.vic.gov.au/view.cgi?year=1876&class=general&page_num=461&state=V&classNum=G20; *Aborigines Protection Act 1886* (Vic), http://classic.austlii.edu.au/au/legis/vic/hist_act/tapa1886265/; *Aborigines Act 1910* (Vic),

unable to access their lands through the State regime of leases, licenses and sales. Laws gave ownership of natural resources to the Crown, impacting First Peoples' ability to care for and access Country and denying them the opportunity to participate in this new, extractive economy.²⁴ First Peoples were often forced to work in unpaid farm and domestic labour on reserves and settlers' properties in exchange for food, clothing and shelter.²⁵

30. From reading parts of the McLean Report into the 'Operation of the Aborigines Act 1928', I understand that First Peoples became landless and homeless, taking shelter on reserves or in fringe camps or in the early twentieth century in Melbourne's slums.²⁶ The McLean Report found that in the 1950s, aside from the Lake Tyers and Framlingham reserves, the largest group of Aboriginal people in the state was in the Mooroopna-Shepparton area and that, 'there are two main settlements, one on the shire rubbish tip...and the other closer to the river bank. The latter is subject to flooding, sometimes suddenly, from the river.'²⁷
31. I recognise that actions in dispossessing First Peoples of their lands and excluding them from the new, colonial economy effectively denied First Peoples the same ability as landowners to derive and accumulate wealth from lands and waters. The impacts of this continue to be felt today.²⁸
32. Further, I understand that this economic exclusion was reinforced with political exclusion. In Victoria, First Peoples were not legally barred from voting, as they were by default included as British subjects – men from 1857 and women from 1908. However, I understand that First Peoples were not informed of or encouraged to exercise these rights.²⁹ At Federation, very few First Peoples were enrolled to vote.³⁰ Without access to political participation and representation, the State proceeded to make policy about First Peoples' land and lives.
33. 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

https://classic.austlii.edu.au/au/legis/vic/hist_act/aa1910110/; *Aborigines Act 1915* (Vic),

https://classic.austlii.edu.au/au/legis/vic/hist_act/aa1915110/;

²⁴ For example: *Water Act 1905* (Vic), http://classic.austlii.edu.au/au/legis/vic/hist_act/wa190583/; *Forests Act 1907* (Vic), http://classic.austlii.edu.au/au/legis/vic/hist_act/fa1907116.pdf; *Mines Act 1890* (Vic), http://www.austlii.edu.au/au/legis/vic/hist_act/ma189076.pdf

²⁵ Domestic service and conditions of work contracts: Board for the Protection of Aborigines, *Twenty-Sixth Report*, (Melbourne: Government Printer, 1890), 4, 22,

https://aiatsis.gov.au/sites/default/files/docs/digitised_collections/remove/24985.pdf; lack of wages on reserves: Board for the Protection of Aborigines, *Nineteenth Annual Report*, 1884, 14.

https://aiatsis.gov.au/sites/default/files/docs/digitised_collections/remove/24850.pdf; State of Victoria, *Report of the Board appointed to enquire into, and report upon, the present condition and management of the Coranderrk Aboriginal Station, together with the minutes of evidence*, (Melbourne: State of Victoria, 1882),

http://www.minutesofevidence.com.au/static/media/uploads/coranderrk_moe_digitized.pdf

²⁶ Charles McLean, *Report Upon the Operation of The Aborigines Act 1928 and the Regulations and Orders Made Thereunder*, (Melbourne: Government Printer, 1956-57), 6, <http://nla.gov.au/nla.obj-55291491>

²⁷ *Ibid.*

²⁸ Royal Commission into Aboriginal Deaths in Custody, *National Report: Volume 2* (Canberra: Australian Government Publishing Service, 1991), 428-32, <https://www.austlii.edu.au/au/other/cth/AURoyalC/1991/2.pdf>; *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*, 1997, pt. 2, ch. 4, https://humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf;

Australian Institute of Health and Welfare, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2015*, (Canberra: Australian Institute of Health and Welfare, 2015), 41,

<https://www.aihw.gov.au/getmedia/584073f7-041e-4818-9419-39f5a060b1aa/18175.pdf><https://www.aihw.gov.au/getmedia/584073f7-041e-4818-9419-39f5a060b1aa/18175.pdf?v=20230605181240&inline=true>

²⁹ *Adult Suffrage Act 1908* (Vic), https://www.austlii.edu.au/au/legis/vic/hist_act/asa1908149.pdf; National Museum of Australia, "Indigenous Australians' right to vote", accessed 21 November 2023, <https://www.nma.gov.au/defining-moments/resources/indigenous-australians-right-to-vote>; Board for the Protection of Aborigines in the Colony of Victoria, *Annual Reports 1869–1925*, "To Remove and Protect," AIATSIS, accessed 16 January 2024, <https://aiatsis.gov.au/collection/featured-collections/remove-and-protect>

³⁰ Brian Galligan and John Chesterman, *Citizens without Rights: Aborigines and Australian Citizenship* (Melbourne: Cambridge University Press, 1997), 14 -15.

dispossession has led to the disruption of speaking of languages, singing of songs, teaching of traditional knowledges, and practice of art, dance, and culture.

34. I recognise that these actions disrupted First Peoples' identity and belonging. I acknowledge that many Aboriginal people living in Victoria and Australia more widely, have become disconnected from their Traditional Country, or still do not know their kin and family connections because of acts of dispossession.
35. 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.³¹ 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.³² 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. Actions that exploited the coasts, waterways and seas interrupted Traditional relationships with water.³³
36. 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.
37. It is clear to me that incredible pain and anguish has been caused by the disturbance and dislocation of land, places, people and objects linked to First Peoples' culture and history, including the desecration of sacred sites. I acknowledge the profound distress these actions have caused First Peoples and the ongoing injustices that persist.

2.2 First Peoples' exclusion from Soldier Settlement Schemes

38. I understand that a primary example of a Government land use scheme that discriminated against First Peoples is the Soldier Settlement Schemes after the First and Second World Wars. I have been assisted in understanding how these Schemes operated through the Department of Premier and Cabinet and the Department of Families, Fairness and Housing responses to the Commission's Request for Information on this topic. I understand these responses have been separately provided to the Commission, but I would also like to reflect on this issue of great importance.
39. Under the conditions of the Settlement Scheme for World War One, Crown land was granted to returned soldiers under long-term lease arrangements. Lease payments were not required for the first three years.³⁴
40. Only two Aboriginal men – Private Percy Pepper and Private George Winter McDonald, who both served in World War One – are known to have received soldier settler land in Victoria.³⁵

³¹ Amanda Kearney, "Order and disorder: Indigenous Australian cultural heritages and the case of settler-colonial ambivalence" in *Critical Perspectives on Cultural Memory and Heritage: Construction, Transformation and Destruction*, ed. Veysel Apaydin (London: UCL Press, 2020), 190-191. <https://doi.org/10.2307/j.ctv13xpsfp.17>.

³² Anne McConnell, Terri Janke, Ian Cresswell and Zena Cumpston, "Heritage: Industry", in *Australia State of the Environment 2021*, (Australian Government Department of Agriculture, Water and the Environment, 2021), <https://soe.dceew.gov.au/heritage/pressures/industry>, DOI: 10.26194/7w85-3w50.

³³ Ibid.

³⁴ *Discharged Soldiers Settlement Act 1917* (Vic), section 14b, https://www5.austlii.edu.au/au/legis/vic/hist_act/dssa1917305/

³⁵ Old Treasury Building, "On the Land: The Soldier Settlement Scheme", accessed 15 January 2024, <https://www.oldtreasurybuilding.org.au/lost-jobs/on-the-land/soldier-settlement-scheme/> (DFFH.0015.0003.0001).

This is out of an estimated 90 Aboriginal men from Victoria who also served in this war.³⁶ A total of 12,000 Victorian soldiers from World War One received land under the Scheme.³⁷ Private Pepper was granted 56 acres.³⁸ It is not known how many acres were granted to Private McDonald. A State commemorative project found that by 1930 the Victorian Government had acquired 2.5 million acres (just over 1 million hectares) through the *Discharged Soldier Settlement Act 1917*.³⁹

41. I acknowledge that many First Peoples served their country overseas but returned home to unjust discrimination and a lack of opportunity.
42. The delivery of the Schemes was split between the Commonwealth and State Governments. State legislation, such as the *Land Act 1915* and *Closer Settlement Act 1915*, determined the conditions for the receipt of soldier settlement land after World War One.⁴⁰ After World War Two, the State of Victoria passed the *Soldier Settlement Act 1945* to ratify 'an Agreement between the said State and the Commonwealth of Australia in relation to Soldier Settlement.'⁴¹
43. I am aware that the discrimination faced by First Peoples in accessing these Schemes was compounded from 1948 when the State distributed Aboriginal reserve land at Coranderrk and Lake Condah, occupied by families for several generations, to non-Aboriginal returned soldiers,⁴² with only some land (including the cemetery at Coranderrk) being retained as State reserved land. When I reflect on this, I think about what a 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-

³⁶ Between 86 and 90 Aboriginal men from Victoria are known to have enlisted to fight in the First Australian Imperial Force. National Archives of Australia, "Victorian Aboriginal Service in WW1," Discovering Anzacs, accessed 21 December 2023, <https://web.archive.org/web/20170112184924/https://discoveringanzacs.naa.gov.au/browse/groupstories/7396>; Personal communication, Australian War Memorial.

³⁷ Old Treasury Building, "On the Land: The Soldier Settlement Scheme", accessed 15 January 2024, <https://www.oldtreasurybuilding.org.au/lost-jobs/on-the-land/soldier-settlement-scheme/> (DFFH.0015.0003.0001).

³⁸ Simon Flagg and Sebastian Gurciullo, *Footprints: The Journey of Lucy and Percy Pepper*, (National Archives of Australia, Melbourne, 2008), 111.

³⁹ Old Treasury Building, "On the Land: The Soldier Settlement Scheme," accessed 8 January 2024 <https://www.oldtreasurybuilding.org.au/lost-jobs/on-the-land/soldier-settlement-scheme/> (DFFH.0015.0003.0001); according to the Australia Bureau of Statistics, 2,290,489 acres of Victorian land had been allotted to Soldier Settlement by 30 June 1924, Australian Bureau of Statistics, "Settlement of Returned Soldiers and Sailors," Year Book Australia, 1925, <https://www.abs.gov.au/AUSSTATS/abs@.nsf/featurearticlesbyCatalogue/72BB159FA215052FCA2569DE0020331D>

⁴⁰ *Closer Settlement Act 1915* (Vic), https://www.austlii.edu.au/au/legis/vic/hist_act/csa1915210.pdf; *Land Act 1915* (Vic), https://classic.austlii.edu.au/au/legis/vic/hist_act/la191548/; Regarding regulations: "The Governor may also set apart any area of Crown land for disposal under those Acts to discharged soldiers only, or subdivide the same into blocks, which may be granted to them on special terms. The Closer Settlement Board is empowered to improve land (a) prior to its disposal in allotments; or (b) at any time within the first 3 years after it has been disposed of under conditional purchase lease; or (c) at any time prior to its being resold after forfeiture to the Crown. The cost of the improvements is, in the case of (b) to be repaid in 40 half yearly instalments, and in the cases of (a) and (c) it may be added to the value of the allotments, or treated as an advance." Australian Bureau of Statistics, "Settlement of Returned Soldiers and Sailors," Year Book Australia, 1925, <https://www.abs.gov.au/AUSSTATS/abs@.nsf/featurearticlesbyCatalogue/72BB159FA215052FCA2569DE0020331D>. After World War One, the Closer Settlement Board administered the grants of land in dry areas and the State Rivers and Water Supply Commission administered grants in irrigation settlements. Department of Repatriation, Repatriation Bulletin, August 1919, accessed 14 September 2023, <http://nla.gov.au/nla.obj-7277697>

⁴¹ *Soldier Settlement Act 1945* (Vic), http://classic.austlii.edu.au/au/legis/vic/hist_act/ssa1945219/

⁴² *Land Act 1915* (Vic), https://classic.austlii.edu.au/au/legis/vic/hist_act/la191548/; *Discharged Soldiers Settlement Act 1917* (Vic), https://www5.austlii.edu.au/au/legis/vic/hist_act/dssa1917305/; *Coranderrk Lands Act 1948* (Vic), https://www.austlii.edu.au/cgi-bin/viewdb/au/legis/vic/hist_act/cla1948163/; *Closer Settlement Act 1915* (Vic), https://classic.austlii.edu.au/au/legis/vic/hist_act/csa1915210.pdf; *Australian Soldiers Repatriation Act 1917* (Cth), <https://www.legislation.gov.au/C1917A00037/latest/text>

Aboriginal people while Aboriginal veterans were not given access to the same Scheme after fighting the same war is difficult to comprehend.⁴³

44. I understand that Elder Johnny Lovett, Gunditjmara/Boandik man, brought these issues to the attention of the State of Victoria in 2013 and the Commission's attention in 2022. Mr Lovett's complaint – that his father's application was unsuccessful – is the only claim made to the State regarding First Peoples' exclusion from the Soldier Settlement Schemes of which I am personally aware. I understand that in 2013, the Commonwealth Minister for Veterans Affairs, the Hon. Warren Snowdon, wrote to Mr Lovett stating that there was no basis to his claim, that the Department of Veterans Affairs was not responsible for the *War Service Land Settlement Agreements Act 1945* (Cth), and that responsibility lay with the Department of Post-War Reconstruction which disbanded in 1950. Minister Snowdon suggested that the question of Mr Lovett's father's eligibility for the Scheme be addressed to the Victorian Government.
45. In response to Mr Lovett's complaints to the State and his evidence to the Commission, the former Minister for Treaty and First Peoples, the Hon. Gabrielle Williams, committed to bring this injustice to an appropriate Commonwealth forum. I have followed up on this commitment by writing to the federal Ministers for Indigenous Australians, Defence and Veterans Affairs. I have raised this matter directly in-person with the Minister for Indigenous Affairs and Minister for Defence, including the need for a joint Commonwealth and State response. I have also written to the Victorian Minister for Veterans Affairs regarding this matter.
46. I am advised by the Department of Premier and Cabinet that research into this issue has been hampered by the lack of registration forms that have survived, and because many men chose not to identify as Aboriginal when enlisting, initially due to a prohibition on First Peoples enlisting and subsequently to avoid discrimination.⁴⁴ Another challenge is the lack of any legal framework to address the injustice and given the dual State - Commonwealth responsibility for the Scheme, it requires both the State and Commonwealth Governments to work together to first identify eligible Aboriginal soldiers and agree to a way forward to address their exclusion from the Settlement Schemes.⁴⁵
47. 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.

2.3 Increasing State control of First Peoples

48. It is well documented in many laws and Government reports that, beginning in the early periods of colonisation and continuing until the 1960s, the State imposed severe restrictions on First Peoples regarding where and how they could live, work, marry and raise their children.⁴⁶

⁴³ Coranderrk was a permanent reserve, requiring legislation to revoke the reservation. Lake Condah was a temporary reserve and legislation was not required to change its designated use.

⁴⁴ One challenge researchers have in identifying unsuccessful applicants is the fact that the forms have not survived. Marilyn Lake, *The Limits of Hope: Soldier Settlement in Victoria 1915-38* (Oxford University Press: Melbourne, 1987), 54. Lake also notes that discretion of local officials played a role in the successful application of returned soldiers, xvii.

⁴⁵ *Soldier Settlement Act 1958* (Vic), http://classic.austlii.edu.au/au/legis/vic/hist_act/ssa1958219.pdf

⁴⁶ *Aboriginal Protection Act 1869* (Vic), http://classic.austlii.edu.au/au/legis/vic/hist_act/aatpfpamotanov757/; Victoria Government Gazette 15, "Regulations and Orders," 21 February 1876; Victoria Government Gazette 20, "Regulations and Orders," 8 March 1876,

49. I understand that the State's intense regulation of First Peoples' lives began in response to an 1837 British parliamentary report that found, during British colonialisation, '[e]very law of humanity and injustice has been forgotten and disregarded' in the treatment of 'uncivilised fellow men' and made recommendations on 'the adoption of immediate measures for their protection and preservation' including in Australian colonies.⁴⁷
50. The Report noted that Aboriginal people's culture and way of life was seen as an obstacle to their 'protection': 'the want of fixed attention is the greatest obstacle we have to contend with, the impossibility of inducing them to settle in one place, or to attend to one subject', and to address this the idea of a Protectorate was introduced.⁴⁸ The British employed five Protectors to travel to Port Phillip and instructed them to 'attach himself as closely and constantly as possible to the Aboriginal tribes...attending them if practicable in their movement from one place to another, until they can be induced to assume more settled habits of life.'⁴⁹ Four Protectorate Stations were established, from which food and blankets were issued and attempts made to convince Aboriginal people to stay on the stations, to learn English and Christian teachings.⁵⁰
51. After the protectorate was deemed a failure in 'civilising' and Christianising First Peoples and its four stations were closed, a 1859 Victorian Parliamentary Committee recommended the Government, 'vigorously strive for some permanent provision for the poor oppressed and wandering natives, who have so long left in abject want and misery.'⁵¹ The Committee Report referred to the lack of Government action as 'injustice' and 'neglect' and recommended this be addressed by establishing reserves on which Aboriginal people could live.⁵² The Report claimed Aboriginal people were 'weak and ignorant, even for savages.'⁵³
52. In reading extracts of the Committee's report, it is clear to me that that the 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.⁵⁴ 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.⁵⁵

https://gazette.slv.vic.gov.au/view.cgi?year=1876&class=general&page_num=461&state=V&classNum=G20; *Aborigines Protection Act 1886* (Vic), https://classic.austlii.edu.au/au/legis/vic/hist_act/tapa1886265/; Victoria Government Gazette 101, 1 December 1899, 4343. <https://gazette.slv.vic.gov.au/images/1899/V/general/101.pdf>; *Aborigines Act 1910* (Vic). https://classic.austlii.edu.au/au/legis/vic/hist_act/aa1910110/; *Aborigines Act 1915* (Vic), https://classic.austlii.edu.au/au/legis/vic/hist_act/aa1915110/; Marriage was not legislated about but an 1888 Board meeting records, 'the Vice Chairman said the Board had no wish to be harsh or unduly interfere with family ties, but that the Act had to be carried out. The meeting was strongly of the opinion that intermarrying between blacks and half castes should be discouraged as much as possible.' Minutes of the Board for the Protection of Aborigines, B314, National Archives of Australia, 6 June 1888, 4.

⁴⁷ 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), v-xi.

<https://apo.org.au/sites/default/files/resource-files/1837-02/apo-nid61306.pdf>

⁴⁸ *Ibid.*, 166.

⁴⁹ Lord Glenelg to Sir George Gipps, 'Letter announcing the appointment of a Native Protector and four assistants and proposing the removal of Van Diemen's Land Aborigines from Flinders Island to Port Phillip,' 1 January 1838, Victorian Public Record Office, VPRS 4409, Unit 1, <https://prov.vic.gov.au/archive/A360719B-F7EC-11E9-AE98-F9D2D4142EEA>

⁵⁰ 'Chief Protector of Aborigines Records (1839-1851),' Public Records office of Victoria, <https://prov.vic.gov.au/explore-collection/explore-topic/aboriginal-victorians-1830s-1970s/chief-protector-aborigines>

⁵¹ Parliament of Victoria, *Report of the Select Committee of the Legislative Council on the Aborigines: together with the proceedings of the Committee, minutes of evidence and appendices*, 1858-59), iv, <http://nla.gov.au/nla.obj-55275936>

⁵² *Ibid.*

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ 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*

53. I understand that, in response to the Committee's recommendations, the Victorian Government centralised its control of a number of missions that Churches and missionaries had established across the colony⁵⁶ and introduced the *Aboriginal Protection Act 1869* (1869 Act). The 1869 Act established the Board for the Protection of Aborigines (1869–1957) and gave the Governor of Victoria the power to introduce regulations relating to First Peoples.⁵⁷ From reading extracts of the 1877 Royal Commission report, I understand that through the operation of these regulations the reserves became less concerned with Aboriginal peoples' welfare and became places where First Peoples were segregated, monitored, their labour exploited and made to conform to mission life.⁵⁸
54. The State used the regulations under the 1869 Act to exercise extraordinary control over First Peoples' lives. The Governor was given authority to make regulations about a huge range of aspects of Aboriginal peoples' lives including: the 'care, custody and education' of Aboriginal children, the definition of who was 'Aboriginal' and who was not, how Aboriginal peoples' earnings were distributed, of the terms of Aboriginal peoples' work contracts, and where individual Aboriginal people could or could not live.⁵⁹
55. I acknowledge that the 1869 Act marked the legislated beginning of the Stolen Generations, the terrible State practice of forcibly taking Aboriginal children from their families and placing them in institutions. Through undertaking my duties as a Minister, I have heard first-hand the heartbreaking stories of children's experience of being taken. I also acknowledge the evidence to this Commission by Elders such as the late Uncle Jack Charles and others on this subject.
56. I understand what followed the 1869 Act was an incredibly harmful law, the *Aborigines Protection Act 1886*, otherwise known by its offensive abbreviation, the 'Half-caste Act.' The law categorised Aboriginal people according to blood quantum with the aim of expelling those with white ancestry off reserves leaving only those considered 'full blood' on reserves.⁶⁰
57. When the then Chief Secretary, Alfred Deakin, introduced the 'Half-caste Act' to Parliament he stated, '[the bill] was introduced chiefly with the object of making the half-castes useful members of society, and gradually relieving the State of the cost of their maintenance.'⁶¹
58. In reflecting on this legislative purpose, I find it shameful that First Peoples were only considered valuable members of Victorian society once removed from their Aboriginal culture. It makes me quite sad to think that First Peoples were considered a financial burden for the State is rid itself of, during the very period when Victoria had become so wealthy from the natural resources of the lands First Peoples had cared for and lived on for thousands of years. It is shameful to think that the State's answer to providing for First Peoples who they had dispossessed of lands and waters, was to place them on small pieces of land with little supplies and to temporarily loan – not give – reserve residents blankets and clothing.⁶² It is equally

(Melbourne: Government Printer, 1877), vii-xv,

https://aiatsis.gov.au/sites/default/files/docs/digitised_collections/remove/92914.pdf

⁵⁶ Public Record Office Victoria, Board for the Protection of Aborigines, <https://prov.vic.gov.au/archive/VA515>

⁵⁷ Ibid.

⁵⁸ 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,

https://aiatsis.gov.au/sites/default/files/docs/digitised_collections/remove/92914.pdf

⁵⁹ Public Record Office Victoria, Board for the Protection of Aborigines, <https://prov.vic.gov.au/archive/VA515>

⁶⁰ *Aborigines Protection Act 1886* (Vic). http://classic.austlii.edu.au/au/legis/vic/hist_act/tapa1886265/; *Aborigines Protection Act 1890* (Vic). https://www8.austlii.edu.au/cgi-bin/viewdb/au/legis/vic/hist_act/aa1890110/. This Act added that the Governor was responsible for 'the care and custody and education of the children of aboriginals' which made it legal for the Board to place all Aboriginal children in state 'care.'

⁶¹ Victoria, *Parliamentary Debates*, Parliament House, 15 December 1886, 2912-13 (Alfred Deakin)

⁶² *Aboriginal Protection Act 1869* (Vic), section 5, http://classic.austlii.edu.au/au/legis/vic/hist_act/aatpftpamotanov757/

shameful that, after confining First Peoples on the reserves, the State then often expelled families and split parents from children from the reserves that First Peoples had come to call home.

59. 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.⁶³
60. With this new policy of 'merging' Aboriginal people of mixed descent into the general population the Board thought its responsibilities to Aboriginal people was drawing to an end.⁶⁴ The missionary at Lake Condah said: 'As the blacks are dying out, and the Board removes the half-caste boys and girls by handing them over to the Industrial Schools Department, finality is greatly facilitated, and will doubtless be attained in a few years.'⁶⁵ These are hard words for me to read and to recite in this statement, I can only imagine how hard it must be for First Peoples today to read them. It is the history of our State, and something we all need to deeply understand in order to heal and move forward together.
61. After just over 50 years of funding Aboriginal reserves, in 1917 the Board decided it would close three of the four remaining reserves (Coranderrk, Lake Condah and Framlingham) and forcibly relocate the residents to Lake Tyers in Gippsland.⁶⁶ 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.⁶⁷
62. By this time, residents at Framlingham, Coranderrk and Lake Tyers had already successfully resisted multiple State attempts to remove them from their land.⁶⁸ Such State acts included removing all stock and farming implements that were being used by residents, selling off and denying access to housing,⁶⁹ the sale of land despite its reservation as an Aboriginal reserve and the expulsion of Aboriginal residents of mixed descent.⁷⁰ Despite community efforts, however, Coranderrk was closed in 1924, and in 1948 former Coranderrk and Lake Condah

⁶³ Victoria Government Gazette 101, 1 December 1899, 4343, <https://gazette.slv.vic.gov.au/images/1899/V/general/101.pdf>

⁶⁴ Board for the Protection of the Aborigines in the Colony of Victoria, *Twenty-Third Report*, (Melbourne: Government Printer, 1887), https://aiatsis.gov.au/sites/default/files/docs/digitised_collections/remove/24915.pdf

⁶⁵ Charles McLean, *Report Upon the Operation of The Aborigines Act 1928 and the Regulations and Orders Made Thereunder*, (Melbourne: Government Printer, 1956-57), 5, <http://nla.gov.au/nla.obj-55291491>

⁶⁶ Ibid.

⁶⁷ Board for the Protection of the Aborigines in the Colony of Victoria, *Twenty-Sixth Report*, (Melbourne: Government Printer, 1890), https://aiatsis.gov.au/sites/default/files/docs/digitised_collections/remove/24985.pdf

⁶⁸ At Coranderrk, community petitions resulted in a public inquiry into conditions on the reserve. State of Victoria, *Report of the Board appointed to enquire into, and report upon, the present condition and management of the Coranderrk Aboriginal Station, together with the minutes of evidence*, (Melbourne: State of Victoria, 1882), http://www.minutesofevidence.com.au/static/media/uploads/coranderrk_moe_digitized.pdf; National Museum Australia, "Campaign to save Lake Tyers," accessed 12 December 2023, https://indigenoustrights.net.au/land_rights/lake_tyers_1962-70/campaign_to_save_lake_tyers

⁶⁸ *Aboriginal Lands Act 1970* (Vic), https://content.legislation.vic.gov.au/sites/default/files/7276b9e1-9f96-3c80-904b-9f7668fb8056_70-8044aa034%20authorised.pdf

⁶⁹ Board for the Protection of the Aborigines in the Colony of Victoria, *Twenty-Sixth Report*, (Melbourne: Government Printer, 1890), https://aiatsis.gov.au/sites/default/files/docs/digitised_collections/remove/24985.pdf

⁷⁰ Board for the Protection of Aborigines, *Fifty-First Report*, (Melbourne: Government Printer, 1925), 3, https://aiatsis.gov.au/sites/default/files/docs/digitised_collections/remove/25401.pdf; *Coranderrk Lands Act 1948* (Vic), https://www.austlii.edu.au/cgi-bin/viewdb/au/legis/vic/hist_act/c1948163/. For example, 2400 acres of the Coranderrk Reserve land was cancelled and transferred to the Lands Department under the Crown Lands Reserve Act 1893. It was later discovered that a further 670 acres of the Reserve had been sold off by the Central Board despite its permanent reserve status at the time.

land was redistributed to non-Aboriginal returned soldiers.⁷¹ While the Settlement Scheme was an important way in which the State honoured and supported veterans who sacrificed so much, in my view it was not necessary, or just, for the State to give up the Coranderrk and Lake Condah land as part of the scheme, given its importance to First Peoples.

63. When the Aborigines Welfare Board announced the closure of Lake Tyers Aboriginal Station in 1962, residents mobilised and, with the support of prominent Aboriginal and non-Aboriginal people, began a determined campaign to protect their home.⁷² This resulted in the eventual State transfer of the lands to some members of the Framlingham and Lake Tyers communities and the passage of the *Aboriginal Lands Act 1970*,⁷³ the second piece of legislation in Australia to return land to Aboriginal communities.⁷⁴ I acknowledge that it is due to the persistent activism of residents over many generations that former reserve sites at Framlingham and Lake Tyers are in Aboriginal ownership today.
64. The historical State actions towards First Peoples that I have detailed above, from the beginning of colonisation until the closure of the reserves, are grave injustices, and have significantly contributed to ongoing inequities faced by First Peoples today.
65. The State must reckon with its role in the dispossession of First Peoples' land and waters, and as Minister for Treaty and First Peoples, I commit to working across Government and in collaboration with First Peoples to address the consequences of past State actions and transforming our relationship. I understand that progressing land justice is key to this transformation. The Government is committed to this process.⁷⁵ I look forward to considering the Commission's findings and recommendations to inform this work in the future.

Part 3: The First Peoples' portfolio

3.1 From protection to partnership

66. In the process of truth-telling, it is important that I reflect upon the origins and development of the Treaty and First Peoples portfolio.
67. I recognise that this portfolio has its origins in institutions such as the Protectorate of Aborigines (1838–49), the Guardian of the Aborigines (1850–60), the Central Board (1860–69), the Board for the Protection of Aborigines (1869–1957), and the Aborigines Welfare Board (1957–67), which existed to administer laws that were grounded in racism and inflicted significant harm on First Peoples. As outlined above, these institutions enforced policies of segregation to isolate

⁷¹ Board for the Protection of Aborigines, *Fifty-First Report*, (Melbourne: Government Printer, 1925), 3, https://aiatsis.gov.au/sites/default/files/docs/digitised_collections/remove/25401.pdf; *Coranderrk Lands Act 1948* (Vic), https://www.austlii.edu.au/cgi-bin/viewdb/au/legis/vic/hist_act/cla1948163/

⁷² National Museum Australia, "Campaign to save Lake Tyers," accessed 12 December 2023, https://indigenoustrights.net.au/land_rights/lake_tyers_1962-70/campaign_to_save_lake_tyers

⁷³ *Aboriginal Lands Act 1970* (Vic), https://content.legislation.vic.gov.au/sites/default/files/7276b9e1-9f96-3c80-904b-9f7668fb8056_70-8044aa034%20authorised.pdf

⁷⁴ The first piece of legislation to place land under an Aboriginal trust was the *Aboriginal Lands Trust Act 1966* (SA), https://www.legislation.sa.gov.au/_legislation/lz/c/a/aboriginal%20lands%20trust%20act%201966/2014.06.30/1966.87.un.pdf.

⁷⁵ *Advancing the Treaty Process with Aboriginal Victorians Act 2018* (Vic), Preamble, <https://www.legislation.vic.gov.au/in-force/acts/advancing-treaty-process-aboriginal-victorians-act-2018/001>; State of Victoria, *Victorian Aboriginal Affairs Framework 2018-2023* (Melbourne: State of Victoria, 2018), 53 (Goal 18), https://content.vic.gov.au/sites/default/files/2019-09/Victorian-Aboriginal-Affairs-Framework_1.pdf (DPC.0009.0009.0226); Australian Government, National Agreement on Closing the Gap, 2020, 40 (Outcome 15), https://www.closingthegap.gov.au/sites/default/files/2022-09/ctg-national-agreement_apr-21-comm-infra-targets-updated-24-august-2022_0.pdf; State of Victoria, *Yuma Yirramboi (Invest in Tomorrow), Victorian Aboriginal Employment and Economic Strategy* (Melbourne: State of Victoria, 2022), 24, https://djsir.vic.gov.au/_data/assets/pdf_file/0008/2068496/Yuma-Yirramboi-Invest-in-Tomorrow-Strategy-2022.pdf (DJSI.9001.0001.2098).

Aboriginal people from Europeans and to restrict them to Reserves. The State administered policies with the aim of assimilating Aboriginal people into the general population, denying them their connections to community, culture and Country.⁷⁶

68. First Peoples obtained representation for the first time on the 1957 Welfare Board, with the appointment of two Aboriginal people as original members.⁷⁷ While the Victorian Government's view at the time was that 'one aboriginal [sic] member of the proposed Aborigines Welfare Board will be adequate,'⁷⁸ Opposition-led amendments of the *Aborigines Act 1957* increased Aboriginal representation to two on the eight person board. It is incredible today, to reflect on this – that for over one hundred years (1838 to 1957), the State's view was that First Peoples should have no say in State laws and practices that, at that time, governed and controlled First Peoples lives completely.
69. In 1967 Aboriginal representation in Government increased slightly when, following amendments to the Australian Constitution, the Board was replaced with the first Ministry of Aboriginal Affairs.⁷⁹ My predecessor, Mr. Edward Meagher, pointed out the urgent need for Ministerial accountability over Aboriginal Affairs policy.⁸⁰ A year later, \$1.079 million had been allocated to the Ministry to fund its capital expenditure – up from previous yearly totals of 'about \$30,000'.⁸¹
70. The new Ministry was advised by a 12 member Aboriginal Advisory Council that included three Aboriginal members nominated by the Minister. A year later, the number of Aboriginal representatives increased to five (with six provided for under legislation), with these representatives chosen by Aboriginal communities from six regions instead of the Minister.⁸² The Minister's appointment of Sir Pastor Doug Nichols and Margaret Tucker to the Council meant it functioned as a majority Aboriginal advisory body.⁸³
71. During this first Ministry's existence, the State of Victoria took important steps towards recognising First Peoples' rights through laws like the *Aboriginal Land Rights Act 1970* and the *Archaeological and Aboriginal Relics Preservation Act 1972* (Relics Act). When the *Aboriginal Lands Act 1970* was introduced, it was hailed by the Minister for Aboriginal Affairs, Mr. Meagher, as a departure from 'the mistaken belief that Aborigines needed protection'.⁸⁴ For him it represented the 'only reasonable solution', which was 'that the Aboriginal people should have ownership of the land on which they and their forebears have lived for generations'.⁸⁵

⁷⁶ *Aboriginal Protection Act 1869* (Vic). <https://www.austlii.edu.au/cgi-bin/viewdoc/au/other/IndigLRes/1869/1.html>; *Aborigines Protection Act 1886* (Vic). https://www.austlii.edu.au/au/legis/vic/hist_act/tapa1886265.pdf; Victoria, *Parliamentary Debates*, Legislative Assembly, 4 June 1957, 1268, 1255-1278 (Hon G. L. Chandler, Minister of Agriculture). <https://www.parliament.vic.gov.au/4afdae/globalassets/hansard-historical-documents/sessional/1957/19570530-19570605-hansard-combined2.pdf>

⁷⁷ *Aborigines Act 1957* (Vic), s 3(f). https://aiatsis.gov.au/sites/default/files/docs/digitised_collections/remove/53554.pdf; Victorian Government Gazette, No. 207, 24 July 1957, 2429. <https://gazette.slv.vic.gov.au/images/1957/V/general/207.pdf>.

⁷⁸ Victoria, *Parliamentary Debates*, Legislative Assembly, 28 May 1957, 1013 (Mr. Porter, Honorary Minister)

⁷⁹ *Aboriginal Affairs Act 1967* (Vic). http://classic.austlii.edu.au/au/legis/vic/hist_act/aaa1967152/

⁸⁰ Victoria, *Parliamentary Debates*, Legislative Assembly, 4 October 1967, (534-542) (Mr. Meagher, Minister for Housing).

⁸¹ Victoria, *Parliamentary Debates*, Legislative Council, 29 October 1968, 1253-4 (Hon. L.H.S. Thompson, Minister for Education).

⁸² *Aboriginal Affairs Amendment Act 1968* (Vic). http://classic.austlii.edu.au/au/legis/vic/hist_act/aaa1968232/; No Aboriginal representative for the region of West Gippsland was elected.

⁸³ Victoria Gazette, Appointments to Aboriginal Affairs Advisory Council, 11 July 1969 (No. 63, 16 July 1969), 2229. https://gazette.slv.vic.gov.au/view.cgi?year=1969&class=general&page_num=2213&state=V&classNum=G63&id=; Victoria Gazette, Appointments to Aboriginal Affairs Advisory Council, 4 May 1972 (No. 51, 21 June 1972), 2198. https://gazette.slv.vic.gov.au/view.cgi?year=1972&class=general&page_num=2193&state=V&classNum=G51&id=

⁸⁴ Victoria, *Parliamentary Debates*, Legislative Assembly, 28 October 1970, 1419 (Mr. Meagher, Minister for Aboriginal Affairs), <https://www.parliament.vic.gov.au/492eae/globalassets/hansard-historical-documents/sessional/1970/19701028-19701111-hansard-combined.pdf>

⁸⁵ Ibid.

72. Although progressive at the time, looking back at these laws today, I recognise that they reflect a lack of understanding by the State regarding First Peoples' continuing culture and connection to Country. In introducing the Relics Act, the Minister of Public Works, the Hon Murray Byrne spoke to its purpose as being, 'to ascertain and preserve for posterity knowledge of the traditions of the indigenous peoples', as though Traditional Owners' culture was a thing of the past. I will address the failings of this early cultural heritage and land rights legislation later in the statement.
73. This first Ministry and its Advisory Council were short lived, with the *Aborigines Affairs Act 1967* being repealed and Ministry dissolved after responsibility for Aboriginal policy and programs was transferred to the Commonwealth in 1974.⁸⁶ At this point, the Premier took on responsibility for coordinating Aboriginal Affairs policy⁸⁷ and in 1975, a dedicated policy unit, the Aboriginal Affairs Unit, was established in the Department of Premier and Cabinet.⁸⁸ In 1985 the unit was transferred to the Ministry of Planning and Environment, which supported the unit's work on Aboriginal cultural heritage and archaeology functions under the *Archaeological and Aboriginal Relics Preservation Act 1972* (Relics Act) and subsequently a new Victoria-specific Part IIA of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth).⁸⁹
74. It was not until 1990 that Victoria again had a dedicated Minister for Aboriginal Affairs, and in 1991 Aboriginal Affairs Victoria was established.⁹⁰ In 1993, Aboriginal archaeology was split from post-European settlement archaeological functions and Aboriginal Affairs Victoria assumed responsibility for Aboriginal archaeology.⁹¹ Between 1992 and 2013, Aboriginal Affairs Victoria was hosted by three different departments until it moved to the Department of Premier and Cabinet in 2013, where it remains today.⁹² I understand how this kind of persistent change made it harder to maintain trusting relationships between the State and First Peoples, and impacted on policy development and long-term strategy within Aboriginal Affairs. I can see how this approach was not conducive to addressing the complex history of the State's regulation of First Peoples lives, or to developing lasting change for Aboriginal communities.
75. I recognise the instrumental role that Aboriginal Community-Controlled Organisations (ACCOs) have had in shaping the First Peoples' portfolio. Building on the work of organisations such as the Victorian Aboriginal Advancement League (the League),⁹³ in the 1970s, a number of key Aboriginal organisations were established which today play a major role in delivering services to First Peoples in Victoria and influencing policy development. These include the Victorian Aboriginal Legal Service (VALS),⁹⁴ the Victorian Aboriginal Health Service (VAHS)⁹⁵ and the

⁸⁶ *Aboriginal Affairs (Transfer of Functions) Act 1974* (Vic).

⁸⁷ "Aboriginal Affairs," Public Record Office Victoria, accessed 21 November 2023, <https://prov.vic.gov.au/archive/VF175/about>

⁸⁸ Ibid.

⁸⁹ Ibid; *Aboriginal and Torres Strait Islander Heritage Protection Amendment Act 1987* (Cth).

http://classic.austlii.edu.au/au/legis/cth/num_act/aatsihpaa1987629/; *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth). section 7, <https://www.legislation.gov.au/Details/C2016C00937> – the Victorian Government acts as a consultant under the Act which empowers the Commonwealth to protect significant Aboriginal areas and objects where existing State laws do not provide effective protection.

⁹⁰ "Aboriginal Affairs, Victoria," Public Record Office Victoria, accessed 21 November 2023, <https://prov.vic.gov.au/archive/VA3101>

⁹¹ "Archaeological survey (Aboriginal)," Public Record Office Victoria, accessed 21 November 2023, <https://prov.vic.gov.au/archive/VF326>

⁹² "Aboriginal Affairs, Victoria," Public Record Office Victoria, accessed 21 November 2023, <https://prov.vic.gov.au/archive/VA3101>

⁹³ "About AAL," Aboriginal Advancement League, accessed 15 December 2023, <https://aal.org.au/>

⁹⁴ "About VALS," Victorian Aboriginal Legal Service, accessed 15 December 2023, <https://www.vals.org.au/about-vals/>

⁹⁵ "About VAHS," Victorian Aboriginal Health Service, accessed 21 November 2023, <https://www.vahs.org.au/about/>

Victorian Aboriginal Child Care Agency (VACCA)⁹⁶, followed by Aboriginal Housing Victoria (AHV),⁹⁷ the Victorian Aboriginal Community Controlled Health Organisation (VACCHO),⁹⁸ and many others throughout Victoria. I acknowledge the Aboriginal leaders who established these organisations: Uncle Jim Berg, Aunty Alma Thorpe, Uncle Bruce McGuinness, Aunty Mollie Dyer, Aunty Liz Hoffman, Aunty Merle Jackomos and so many others. I also acknowledge the roles the organisations mentioned above and ACCOs across Victoria continue to play in ongoing policy reform and service delivery, and sincerely thank them for their time, dedication and work with me and across Government to achieve real change for First Peoples and communities.

76. These early, community-based organisations, once operating on minimal funding and without government support, are now delivering services state-wide and have inspired the establishment of more Aboriginal organisations across Victoria. As I spend time with ACCOs across the State, it is evident to me that today, these organisations make invaluable contributions to the wellbeing of Aboriginal communities, and contribute immensely to broader Victorian communities. ACCOs have worked tirelessly to deliver quality and culturally safe services to First Peoples. The expert policy and reform advice ACCOs provide to the Victorian Government, informed by their on-the-ground, community-based practice and engagement, remains central to delivering better outcomes for First Peoples, families and communities. ACCOs' advocacy and leadership has also shaped the Government's commitment to and implementation of self-determination.
77. Through the partnership forums that bring ACCOs and government representatives together on a regular basis, ACCOs are contributing to the development and implementation of Government policy and holding Government to account. Stronger partnerships with ACCOs through forums like the Aboriginal Justice Forum, the Aboriginal Children's Forum and the Aboriginal Health and Wellbeing Partnership Forum, have improved Government's service delivery, policy and legislative responses. These partnerships are invaluable and as Minister I will always work to strengthen partnerships between Government, Aboriginal community and Traditional Owner organisations.

3.2 From partnership to self-determination

78. As the Minister for Treaty and First Peoples, I understand that the State's partnership and engagement with First Peoples – while important - is not the same as enacting Traditional Owners calls for self-determination.⁹⁹ In 2015, while I was Minister for Aboriginal Affairs, the Victorian Government committed to self-determination as the guiding principle of the Aboriginal Affairs portfolio and the Government's relationship with First Peoples.¹⁰⁰ In the lead up to this

⁹⁶ "VACCA History," Victorian Aboriginal Child Care Agency, accessed 6 December 2023,

<https://www.vacca.org/page/about/our-history>

⁹⁷ "About AHV", Aboriginal Housing Victoria, accessed 5 March 2024, <https://ahvic.org.au/about/about-ahv>

⁹⁸ "Our History", Victorian Aboriginal Community Controlled Health Organisation, accessed 5 March 2024,

[https://www.vaccho.org.au/about/our-](https://www.vaccho.org.au/about/our-history/#:~:text=When%20VACCHO%20was%20established%20in,the%20Community%2Dcontrolled%20health%20sector)

[history/#:~:text=When%20VACCHO%20was%20established%20in,the%20Community%2Dcontrolled%20health%20sector](https://www.vaccho.org.au/about/our-history/#:~:text=When%20VACCHO%20was%20established%20in,the%20Community%2Dcontrolled%20health%20sector)

⁹⁹ The Victorian government's Self-Determination Reform Framework contains a continuum along which the government assesses its progress towards self-determination. Partnership, whereby the government works collaboratively with First Peoples but retains ultimate decision-making power, comes before co-design and, at the end of the continuum, the transfer of decision-making and resources control. State of Victoria, *Self-Determination Reform Framework* (Melbourne: State of Victoria, 2019), 15, <https://content.vic.gov.au/sites/default/files/2019-09/Self-Determination-Reform-Framework-August-2019.PDF> (DPC.0009.0009.0202).

¹⁰⁰ State of Victoria, *Aboriginal Affairs Report 2014/2015* (Melbourne: State of Victoria, 2015), 9 – 20.

https://content.vic.gov.au/sites/default/files/2019-12/Victorian_Government_Aboriginal_Affairs_Report_2014-2015.pdf

commitment, I initiated a review into the then Office of Aboriginal Affairs Victoria to determine how the portfolio would need to change to advance Aboriginal self-determination.¹⁰¹

79. Around this time, I also led changes to Parliamentary protocol to raise the recognition of First Peoples' relationship with Country, including raising the Aboriginal flag permanently over Parliament and distributing Acknowledgment of Country protocols to all Members of Parliament.¹⁰²
80. In response to the review, the Office was renamed Aboriginal Victoria and its policy capacity was expanded to reflect a renewed focus on empowering Aboriginal perspectives in policy development.¹⁰³ The Victorian Aboriginal Heritage Council's functions were extended and its independence from the State was also strengthened through the *Aboriginal Heritage Amendment Act 2016*.¹⁰⁴ Meanwhile, the Aboriginal Treaty Working Group and the Victorian Treaty Advancement Commission were designing Victoria's Treaty process and the Department of Premier and Cabinet began work on Victoria's first whole of government self-determination reform framework, the Victorian Aboriginal Affairs Framework (VAAF), which I launched in 2018.¹⁰⁵
81. In the five years that have passed since I first held this portfolio significant progress has been made by working closely with Aboriginal partnership forums, Traditional Owner Groups, ACCOs and the First Peoples' Assembly.
82. The VAAF creates a shared responsibility across all portfolios and all parts of Government to progress self-determination. Progressing self-determination requires Government to engage with the Aboriginal community – with people on the ground, with ACCOs and representative bodies such as the First Peoples' Assembly.
83. While holding other portfolios across Government, the VAAF and the principle of self-determination has driven reform with Aboriginal communities. In 2020, when I was appointed Minister for Youth Justice, I worked with the Aboriginal Justice Caucus to develop the first Victorian Aboriginal Youth Justice Strategy, *Wirkara Kulpa*, which aims to move towards an Aboriginal-led youth justice system.¹⁰⁶ In 2021, as the Minister for Corrections, I announced a Cultural Review of Victorian Prisons, ensuring that the review heard from Aboriginal people on how to meet the cultural safety needs of Aboriginal prisoners, among other rights issues.¹⁰⁷ While holding the Education portfolio, I worked with the Victorian Aboriginal Education Association to update the Government's School Naming Policy so all new schools are named in Aboriginal language names, including 14 new schools and four kindergartens whilst I was Minister – so children can grow up proud of First Peoples' languages and cultures.¹⁰⁸

¹⁰¹ "Review To Ensure Aboriginal Victorians Get A Real Chance And A Real Say," Hon Natalie Hutchins MP, 5 June 2015, <https://www.premier.vic.gov.au/review-ensure-aboriginal-victorians-get-real-chance-and-real-say>

¹⁰² "Aboriginal Flag to Fly at Victorian Parliament", Hon Daniel Andrews MP and Hon Natalie Hutchins MP, 15 September 2015, <https://www.premier.vic.gov.au/aboriginal-flag-fly-victorian-parliament>

¹⁰³ "Aboriginal Victoria to Advance Self-Determination", Hon Natalie Hutchins MP, 1 December 2015, <https://www.premier.vic.gov.au/aboriginal-victoria-advance-self-determination>

¹⁰⁴ *Aboriginal Heritage Amendment Act 2016* (Vic), <https://www.legislation.vic.gov.au/as-made/acts/aboriginal-heritage-amendment-act-2016>; See also AIATSIS, "Aboriginal Heritage Amendment Act 2016 (Vic)", <https://aiatsis.gov.au/ntpd-resource/566>.

¹⁰⁵ "Victoria Launches A New Framework For Closing The Gap," Hon Natalie Hutchins MP, 9 October 2018, <https://www.premier.vic.gov.au/site-4/victoria-launches-new-framework-closing-gap>.

¹⁰⁶ Aboriginal Justice Caucus, *Wirkara Kulpa – Aboriginal Youth Justice Strategy 2022-23* (Melbourne: State of Victoria, 2022). https://files.aboriginaljustice.vic.gov.au/2022-02/Wirkara_Kulpa_AYJS.pdf (DJCS.0001.0001.9242).

¹⁰⁷ Hon Natalie Hutchins MP, "Cultural Review of Victorian Prisons Begins", 9 December 2021, <https://www.premier.vic.gov.au/cultural-review-victorian-prisons-begins>

¹⁰⁸ Hon Natalie Hutchins MP, "First Nations Names Selected for New Victorian Schools", 31 July 2023. https://www.premier.vic.gov.au/sites/default/files/2023-07/230731-First-Nations-Names-Selected-For-New-Victorian-Schools.pdf?utm_source=miragenews&utm_medium=miragenews&utm_campaign=news

84. The Commission is in the third year of its historic truth-telling mandate and the State and the First Peoples' Assembly have agreed the Treaty institutions and are preparing to commence negotiations.¹⁰⁹ We have established the Victorian Closing the Gap Partnership Forum and continue to work closely with *Ngaweeyan Maar-oo* – the Forum's Aboriginal community representative body.¹¹⁰ I am deeply grateful to the Co-Chairs of *Ngaweeyan Maar-oo*, Lisa Briggs and Michael Graham, for the drive they are bringing to this forum, and I am dedicated to continuing to work to achieve the aims of the National Agreement on Closing the Gap.
85. In 2021, the Victorian Government created the First Peoples – State Relations group within the Department of Premier and Cabinet. This served to elevate and coordinate the policy and operational aspects of State engagement with First Peoples in preparation for Treaty. The portfolio was renamed from Aboriginal Affairs to Treaty and First Peoples, in recognition of the fact that First Peoples are best placed and have the right to manage their own affairs, with the State's role being one of facilitation and support.¹¹¹ I sincerely hope that within my lifetime, the portfolio is held by an Aboriginal or Torres Strait Islander person in the Victorian Parliament.
86. The Victorian Government recognises that self-determination is critical to addressing ongoing systemic injustice and securing better outcomes for First Peoples. The Government's understanding has come a long way since 1970, when the Victorian Parliament's first return of lands to Aboriginal people attached paternalistic prescriptions to how the lands could be used and governed - imposing a corporate structure that did not reflect the communities' way of governance and reporting requirements to a Minister. This initial hand-back was followed by some incremental but significant wins by Aboriginal activists towards land justice, resulting in *ad hoc* land handbacks, until the *Native Title Act 1993* (Cth) and the calls from the Yorta Yorta people and other Traditional Owners required the Victorian Government to consider a State-wide land justice framework.
87. While the Government once considered consultation with Aboriginal communities on policies and legislation regarding cultural heritage or land rights to be sufficient, we now know that this approach does not deliver systems and services that fulfill First Peoples' rights, needs and aspirations. When First Peoples are empowered to make decisions about the matters that affect their lives, families, Country and culture, using the knowledges, practices, languages and wisdom steeped in thousands of years of history, we know the outcome will always be better for Aboriginal communities, and ultimately, Victoria.
88. I find it deeply unsettling that Western legal institutions have not hesitated to make laws and regulations about First Peoples, but it took 123 years for an Aboriginal member of State Parliament to be elected – in 1979. The Victorian Parliament has had only four parliamentarians who identified as Aboriginal in its 167-year history.¹¹² The First Peoples' Assembly is a significant milestone in addressing First Peoples' political exclusion and ensuring First Peoples have a representative voice to strongly advocate what Aboriginal communities want self-determination to look like in Victoria. As I stated when I introduced the *Advancing the Treaty*

¹⁰⁹ State of Victoria, *Pathway to Treaty* (Melbourne: State of Victoria, 2018).

<https://www.firstpeoplesrelations.vic.gov.au/treaty-process>

¹¹⁰ State of Victoria, *A New Partnership Forum to Help Close The Gap* (Melbourne: State of Victoria, 2018).

<https://www.premier.vic.gov.au/new-partnership-forum-help-close-gap>

¹¹¹ UN General Assembly, United Nations Declaration on the Rights of Indigenous Peoples, (2007),

https://social.desa.un.org/sites/default/files/migrated/19/2018/11/UNDRIP_E_web.pdf. Resolution was adopted by the General Assembly, 13 September 2007, A/RES/61/295. See articles 3 & 4. Australia endorsed the UNDRIP in 2009.

¹¹² From 1856 to 2017, Victoria had only two Aboriginal Parliamentarians: Cyril Kennedy and David Kennedy. From 2017 to 2023, there were a further two First Peoples in the Parliament of Victoria: Lidia Thorpe and Sheena Watt. "Indigenous Parliamentarians, Federal and State: a Quick Guide," *Parliament of Australia*, 15 June 2021, accessed 29 November 2023, https://www.aph.gov.au/About_Parliament/Parliamentary_departments/Parliamentary_Library/pubs/rp/rp2021/Quick_Guides/IndigenousParliamentarians2021

Process with Aboriginal Victorians Bill 2018 to the Victorian Parliament, ‘the Aboriginal Representative Body will be the voice of Aboriginal Victorians in establishing the treaty process and will represent the diversity of the Victorian Aboriginal community.’¹¹³

89. The Government is working to support self-determination with the First Peoples’ Assembly and through treaty-making. We continue to support self-determination through formal partnerships with Aboriginal community representatives and organisations; recognising Traditional Owner interests in Victoria’s public land estate under the *Traditional Owner Settlement Act 2010*; and empowering bodies such as the Victorian Aboriginal Heritage Council.
90. It is important to recognise that achieving self-determination within Victoria’s complex legal and political institutions can be challenging to operationalise. The Government is committed to actively learning and working to change the way it works to transfer decision-making power and resources. However, I acknowledge that genuine transformation takes time. I look forward to the Commission’s further recommendations to support the Victorian Government to continue advancing this process alongside the Aboriginal community, including the First Peoples’ Assembly.

3.3 A commitment to land justice

91. I have learned from Traditional Owners that culture is inextricably linked to Country and I understand, through the important work of Aboriginal Community-Controlled Organisations here in Victoria, that being strong in one’s identity and culture fosters belonging and improves wellbeing. I understand that connection to Country, community and family – and the ability to rely on Country to fulfil First Peoples’ cultural, social and economic needs – is vital.
92. I acknowledge the significant costs borne by Aboriginal people in seeking land justice. I acknowledge the time, money and heartache that First Peoples have given – and continue to give – advocating, litigating and navigating State bureaucracies to have their rights recognised. Many 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.
93. Throughout Victoria’s history First Peoples have shown extraordinary strength, resistance and resilience. From diplomacy to legal challenges, from petitions to protests, First Peoples have resisted State actions to assert and protect their connections to Country, culture and community. The *Aboriginal Heritage Act 2006* and *Traditional Owner Settlement Act 2010* – Victoria’s State-based land and cultural rights legislation – exist in their current form in large part because of Traditional Owners’ persistent advocacy.¹¹⁴
94. I understand that the land rights movement in Victoria began as early as 1840, when Wurundjeri Ngurungaeta Billibellary led his people in negotiating with protectors to settle on a reserve at Narre Narre Warren. Later, in 1859, Billibellary’s son and Ngurungaeta, Uncle Simon Wonga, supported the Taungurung to successfully lobby colonial authorities to return a small part of Taungurung lands. Acheron Station was established with the promise that ‘government would

¹¹³ Victoria, *Parliamentary Debates*, Legislative Assembly, 28 March 2018, 870 (Hon Natalie Hutchins, Minister for Aboriginal Affairs). https://hansard.parliament.vic.gov.au/images/stories/daily-hansard/Assembly_2018/Assembly_Daily_Extract_Wednesday_28_March_2018_from_Book_4.pdf

¹¹⁴ A 2005 Statement from Traditional Owner representatives and subsequent work of the Land Justice Group, including as part of the Steering Committee on for the Development of a Victorian Native Title Settlement Framework, supported the development of the legislation. See: Statement. Victorian Traditional Owners Land Justice Group, 17 February 2005, <http://www.landjustice.com.au/document/Communique-Statewide-Meeting-17-18Feb05.pdf>; and the Report at https://www.landjustice.com.au/document/report_sc_vic_native_title_settlement_framework_13May09.pdf

most sacredly retain [it for the Taungurung]'.¹¹⁵ But Europeans pushed the Taungurung off the Station the following year, without consultation with the Central Board for the Protection of Aborigines (Central Board), forcing them to resettle at a new site at Mohican Station. The new site was unsuitable for farming and by 1861 the Central Board had decided to abandon it.¹¹⁶ By this point, however, European pastoralists had taken over Acheron. I recognise the significance of this dispossession and the ongoing importance of this story of resistance for the Taungurung people.

95. In 2022, as the Minister for Youth Justice, I was worked with Taungurung Traditional Owners and my colleague, the Assistant Treasurer, the Hon. Danny Pearson MP, to have a 103-hectare site at Acheron, or Nyagaroon as it is currently known, returned to the Taungurung Land and Waters Council. The Taungurung had been advocating for the return of Nyagaroon since their forced eviction in 1860 and the closure of a Department of Justice and Community Safety property on the site enabled this return of land by the State.
96. I also oversaw, as Minister for Aboriginal Affairs, the return of Camp Jungai to the Taungurung and the return of Galeena Beek to the Wurundjeri in 2018.¹¹⁷ Through these returns of culturally significant sites, I witnessed first-hand how meaningful the return of Country is for Traditional Owners. While these moments are incredibly important, they are also very hard fought for by Aboriginal communities and take time to align within the Government. In no way could they ever make up for the gravity of past injustice, but they are a way to promote healing, access to prosperity and a better future.
97. I believe that meaningful land justice must include the potential to generate collective wealth, to support community language, community and cultural programs, to enable Traditional Owners to truly participate in the social, political and economic life of this State. Government supported the growth of Aboriginal community organisations from the 1970s onwards with grant funding, but as a condition it also imposed first mortgages onto Aboriginal organisation owned properties. This impaired the property rights of Aboriginal organisations and limits their ability to develop and maintain infrastructure that is culturally safe and best serves communities.
98. In 2017, as Minister for Aboriginal Affairs, I initiated the First Mortgage and Community Infrastructure Program, which is about handing back control to Aboriginal organisations to effectively use their properties for the economic and social benefit of First Peoples. I am proud to continue this program, which has to date removed 38 first mortgages held by the Department of Premier and Cabinet from property titles owned by Aboriginal organisations. The Department of Premier and Cabinet's response to the Commission's Request for Information provides additional detail on the removal of first mortgages (Question 34) (DPC.0013.0001.0001).
99. The State of Victoria has taken important steps towards land justice, through legislation such as the *Aboriginal Lands Act 1970* and our statewide land rights and cultural heritage regimes. However, I am concerned that there remain some Traditional Owner groups without any formal recognition under existing laws. Delivering land justice for all Traditional Owner Groups has taken longer than anticipated and is something the Government has committed to achieving

¹¹⁵ Chief Protector William Thomas in Giordano Nanni and Andrea James, *Coranderrk: We Will Show the Country* (ACT: Aboriginal Studies Press, 2013), 7.

¹¹⁶ Central Board for the Protection of Aborigines", *First Report* (Melbourne: John Ferres, Government Printer, 1861), 4-5, https://aiatsis.gov.au/sites/default/files/docs/digitised_collections/remove/24372.pdf

¹¹⁷ "Wurundjeri Given Full Control Of Galeena Beek Properties," Hon Natalie Hutchins MP, 9 October 2018, <https://www.premier.vic.gov.au/wurundjeri-given-full-control-galeena-beek-properties>. "The Taungurung Lands and Waters Council (TLaWC) is excited to announce the formal transfer of the Nyagaroon property from the Victorian Government to the Taungurung people," Taungurung Land and Water Council, accessed 6 December 2023, <https://taungurung.com.au/nyagaroon/>

under existing State and national policy frameworks.¹¹⁸ I acknowledge that Victoria's laws and frameworks require improvement to better reflect First Peoples' cultural practices, law, lore and traditional governance structures.

100. I see benefits for all Victorians in more fully recognising Traditional Owners' connection to Country. Where Traditional Owners are supported and provided meaningful access to Country, lasting investments are created in Country and local businesses, benefiting regional economies. The Budj Bim Cultural Landscape is a prime example of this. I have seen recognition of Gunditjmara connections to Country and an ongoing partnership between Traditional Owners and the State lead to World Heritage recognition and establishment of the cultural landscape as a regional tourist attraction.¹¹⁹
101. Traditional Owners care for Country, as they have for thousands of years, improving land management practices to the benefit of all Victorians. For example, Traditional Owners and the State have been working together to conduct cultural burns on public lands, reducing the risk of bushfire and regenerating lands.¹²⁰
102. In addition to improving existing systems, such as those under the *Traditional Owner Settlement Act 2010* and the *Aboriginal Heritage Act 2006*, the Victorian Government has committed to Treaty – another path through which Traditional Owners' connection to Country can be recognised.

3.4 The path to Treaty

103. I was announced as Minister for Treaty and First Peoples by Premier Jacinta Allan on 2 October 2023.
104. I am returning to this portfolio at a profoundly important moment in time. The Commission is progressing a historic truth-telling inquiry and First Peoples across Victoria are preparing to negotiate Treaties with the State of Victoria.
105. As stated in the Treaty Negotiation Framework, the Victorian Government is pursuing Treaty because it is the right thing to do. The injustices of the past, which have been described in evidence before the Commission and in its findings to date, cannot be undone. Victoria's Treaty process is designed to re-set the relationship between the State and First Peoples. It presents an opportunity to provide far-reaching benefits for First Peoples, create positive impacts for our society and bring pride to all Victorians.
106. First Peoples have long called for Treaty. Within two months of first being appointed to the role of Minister for Aboriginal Affairs in 2014, I travelled across the State for six weeks as part of a listening tour, meeting with Aboriginal community members, Traditional Owners and organisations. I heard the call for Treaty and it became clear to me that Treaty was the way the State and First Peoples could address centuries of inequality with a shared understanding and pride in the ancient land and culture of where we all live.

¹¹⁸ Goal 18 in, State of Victoria, *Victorian Aboriginal Affairs Framework 2018-2023* (Melbourne: State of Victoria, 2018), 70, https://content.vic.gov.au/sites/default/files/2019-09/Victorian-Aboriginal-Affairs-Framework_1.pdf (DPC.0009.0009.0226); Outcome 15 of the National Agreement on "Closing the Gap Targets and Outcomes," Closing the Gap, accessed 6 December 2023, <https://www.closingthegap.gov.au/national-agreement/targets>

¹¹⁹ "Budj Bim Cultural Landscape: Growing tourism at the world heritage site in our own backyard," Department of Jobs, Skills, Industry and Regions, accessed 14 December 2022, <https://djsir.vic.gov.au/about-us/news/budj-bim-cultural-landscape-growing-tourism-at-the-world-heritage-site-in-our-own-backyard#:~:text=Budj%20Bim%20Cultural%20Landscape%20is,Victorian%20Government%20support%20in%202019>

¹²⁰ "Traditional Owner-led burning gains momentum," Forest Fire Victoria, accessed 7 December 2023, <https://www.ffm.vic.gov.au/media-releases/traditional-owner-led-burning-gains-momentum>

107. The Victorian Government's journey to Treaty then continued in 2016 after a forum at which Aboriginal community members re-iterated that Treaty was the only way to achieve true self-determination. In response, the Victorian Government formally committed to further exploring the prospect of Treaty.¹²¹
108. I want to express my deep gratitude to the members of the Aboriginal Treaty Working Group and the Victorian Treaty Advancement Commission, who consulted with Aboriginal communities and advised the government on the necessary architecture for Victoria's Treaty process, enabling the drafting of Australia's first Treaty legislation.¹²²
109. In June 2018, as Minister for Aboriginal Affairs, I was proud to introduce this legislation to parliament – the *Advancing the Treaty Process with Aboriginal Victorians Act 2018* (Treaty Act).¹²³ The Treaty Act represented a key step on the path to Treaty and a shared future. The legislation's guiding principles aptly describe what Treaty is about: self-determination and empowerment, fairness and equality, partnership and good faith, mutual benefit and sustainability, and transparency and accountability.¹²⁴
110. The Treaty Act sets out a roadmap towards Treaty negotiations, including the establishment of an Aboriginal Representative Body to negotiate the three key elements required for Treaty: a Treaty Authority to oversee negotiations, a Treaty Negotiation Framework outlining the rules under which treaties will be negotiated, and a Self-Determination Fund to support Aboriginal negotiating parties to have equal standing with the State.¹²⁵
111. Following the passing of the Treaty Act, the Victorian Treaty Advancement Commissioner, Jill Gallagher AO, talked to more than 1500 community members from across Victoria to design the Aboriginal Representative Body which we know today as the First Peoples' Assembly.¹²⁶ The First Peoples' Assembly, established in December 2019, is the first time Aboriginal Victorians have had an opportunity to elect First Peoples to represent them in a Victorian democratic body.¹²⁷
112. I would like to extend my gratitude to the First Peoples' Assembly and acknowledge the inaugural Co-Chairs Aunty Geraldine Atkinson and Marcus Stewart. Under their leadership, the First Peoples' Assembly called on the State to commit to a truth and justice process as a necessary prerequisite to Treaty, resulting in the establishment of the Commission.¹²⁸ The leadership of all Assembly members and the co-Chairs shows the importance of Aboriginal

¹²¹ "Pathway to Treaty", First Peoples – State Relations, accessed 15 January 2024.

<https://www.firstpeoplesrelations.vic.gov.au/treaty-process>

¹²² Aboriginal Treaty Working Group, *Statewide Gathering and Feedback Report* (2018),

<http://victreatyadvancement.archive.vic.gov.au/sites/default/files/inline->

<files/VTAC%20Statewide%20gathering%20feedback.pdf>; Aboriginal Treaty Working Group, *Final Report on the Design of the Aboriginal Representative Body* (2018), https://www.firstpeoplesvic.org/wp-content/uploads/2019/12/Aboriginal_Victoria_Report_Online_V6.pdf

¹²³ Victoria, *Parliamentary Debates*, Legislative Assembly, 28 March 2018, 870 (Hon. Natalie Hutchins, Minister for Aboriginal Affairs), https://hansard.parliament.vic.gov.au/images/stories/daily-hansard/Assembly_2018/Assembly_Daily_Extract_Wednesday_28_March_2018_from_Book_4.pdf

¹²⁴ *Advancing the Treaty Process with Aboriginal Victorians Act 2018* (Vic), sections 22-26.

<https://www.legislation.vic.gov.au/in-force/acts/advancing-treaty-process-aboriginal-victorians-act-2018/001>

¹²⁵ *Ibid*, Parts 1-6.

¹²⁶ State of Victoria, "Pathway to Treaty", accessed 10 December 2023, <https://www.firstpeoplesrelations.vic.gov.au/treaty-process>

¹²⁷ Parliamentary Library and Information Service, "2023 Briefing e-Book", 74,

https://new.parliament.vic.gov.au/499319/globalassets/images/news/library-papers/apo_parliamentarylibrary_briefingbook.pdf

¹²⁸ "Truth and Justice in Victoria," First Peoples - State Relations, accessed 17 January 2024,

<https://www.firstpeoplesrelations.vic.gov.au/truth-and-justice>

political leadership in driving action to right the wrongs of the past and bringing communities together, as we work towards a better future.

113. The First Peoples' Assembly and the State have negotiated and agreed on the three treaty elements, setting the stage for the commencement of Treaty negotiations in 2024.¹²⁹ The Victorian Parliament, with bipartisan support, passed the *Treaty Authority and Other Treaty Elements Act 2022*.¹³⁰ This enabled the Treaty Authority to be established as an independent institution. The five inaugural Treaty Authority Members commenced work in December 2023.¹³¹ The Self-Determination Fund is now operational and will support Traditional Owners to have equal standing with the State in Treaty negotiations. It is these kinds of creative approaches and structural changes that are required to advance self-determination through Treaty.
114. I wish to congratulate members elected for the second term of the First Peoples' Assembly and acknowledge the new Co-Chairs Ngarra Murray and Rueben Berg, who have worked tirelessly to bring together Assembly members and their communities. I thank them for this work, which has been – and continues to be – instrumental to the success of the Treaty process.
115. Our government has been committed to the Treaty process – both in words and actions – for almost eight years. We seek to uphold the principles of the Treaty Act, and the intent evident in its Preamble, every step of the way. In doing so we have heard from First Peoples on the floor of Parliament, attended important events on Country to acknowledge the past and agree to a new future, and remained committed to ensuring First Peoples' self-determination is realised through the Treaty process. As the Minister for Treaty and First Peoples I look forward to formally entering Treaty negotiations with First Peoples.

Part 4: Self-determination frameworks and reporting

4.1 Overview

116. I will now turn to the Victorian Government's overarching policy frameworks for advancing First Peoples' self-determination: the Victorian Aboriginal Affairs Framework 2018–2025 (VAAF) and the Self-Determination Reform Framework (SDRF). I will also talk about the National Agreement on Closing the Gap (National Agreement), to which the Victorian Government is a signatory, and the Victorian Closing the Gap Implementation Plan 2021-2025 (Implementation Plan). These are all matters that I have primary Ministerial responsibility for in terms of Whole of Victorian Government implementation.
117. Across the Victorian Government, there are a number of strategies that embed the principle of self-determination and strengthen the relationship between Aboriginal communities, Aboriginal organisations, mainstream organisations and government. The specific objectives vary. Some strategies include objectives that are cross-sectoral or department-wide, while other strategies include objectives that are sector-specific, place-based or locally driven. Key examples of strategies and agreements include:

¹²⁹ "Outcomes: establishing the treaty elements," First Peoples – State Relations, accessed 17 January 2024.

<https://www.firstpeoplesrelations.vic.gov.au/advancing-victorian-treaty-process-annual-report-2020-21/outcomes-establishing-treaty-elements>

¹³⁰ *Treaty Authority and Other Treaty Elements Act 2022* (Vic). <https://www.legislation.vic.gov.au/as-made/acts/treaty-authority-and-other-treaty-elements-act-2022>

¹³¹ First Peoples' Assembly of Victoria and the State of Victoria, *Treaty Authority Agreement*, 28 October 2022.

<https://content.vic.gov.au/sites/default/files/2022-10/Treaty-Authority-Agreement.pdf> (DPC.0009.0007.0141); "Joint Statement On Treaty Authority Appointment", First Peoples' Assembly of Victoria Co-Chairs Ngarra Murray and Rueben Berg and Minister for Treaty and First Peoples, Natalie Hutchins, 6 December 2023. <https://www.premier.vic.gov.au/joint-statement-treaty-authority-appointment>

- a. Wungurilwil Gaggapduir: Aboriginal Children and Families Agreement
 - b. Burra Lotjpa Dunguludja: Victorian Aboriginal Justice Agreement
 - c. Korin Korin Balit-Djak: Aboriginal Health, Wellbeing and Safety Strategic Plan 2017-2027
 - d. Dhelk Dja: Safe Our Way - Strong Culture, Strong Peoples, Strong Families
 - e. Marrung: Aboriginal Education Plan 2016-2026
 - f. Pupangarli Marmarnepu: 'Owning Our Future' Aboriginal Self-Determination Strategy 2020-2025
 - g. Yuma Yirramboi: Invest in Tomorrow - Aboriginal Employment and Economic Strategy
 - h. Victorian Aboriginal Health and Wellbeing Partnership Agreement
 - i. Mana-na Woorn-Tyeen Maar-Takoort: Every Aboriginal Person has a Home - Victorian Aboriginal Housing and Homelessness Framework.
118. The VAAF was developed based on the knowledge and expertise of First Peoples. As Minister for Aboriginal Affairs at the time, I led engagement across regional and metropolitan Victoria with over 600 members of the Aboriginal community from across Victoria who shared their wisdom and expertise on what the VAAF should look like. The ambitious goals within the VAAF are shaped by this engagement process as well as linking to the objectives of existing portfolio-specific strategies relevant to First Peoples affairs.
119. The VAAF aims to provide an overarching, whole-of-government framework and guiding vision to link these various strategies together and complement their individual objectives and outcomes. Individual strategies retain a focus on their specific areas of accountability with more detailed goals and specific targets, while the VAAF addresses the government's responsibility for improved outcomes for First Peoples through broad aspirational goals, objectives, and measures.
120. The VAAF is underpinned by a commitment to First Peoples self-determination, which the VAAF affirms as a human right with reference to the *United Nations Declaration on the Rights of Indigenous Peoples 2007* (UNDRIP).¹³² While the actions in the VAAF are guided by and consistent with UNDRIP, the VAAF states that First Peoples should not feel constrained by UNDRIP in defining what self-determination means for First Peoples in Victoria.¹³³
121. I note that the VAAF is also consistent with the rights recognised in the Victorian Charter of Human Rights and Responsibilities (Charter), including First Peoples' cultural rights.¹³⁴ The Department of Premier and Cabinet's response to the Commission's Request for Information provides further detail on the alignment of the VAAF to UNDRIP and the Charter (Questions 49, 50 and 53) (DPC.0013.0001.0001).
122. The SDRF provides guidance for the Victorian Public Service on how to implement government's commitments in the VAAF to enable First Peoples' self-determination. The SDRF

¹³² UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples*, (2007), https://social.desa.un.org/sites/default/files/migrated/19/2018/11/UNDRIP_E_web.pdf

¹³³ State of Victoria, *Victorian Aboriginal Affairs Framework 2018-2023* (Melbourne: State of Victoria, 2018), 22, https://content.vic.gov.au/sites/default/files/2019-09/Victorian-Aboriginal-Affairs-Framework_1.pdf (DPC.0009.0009.0226).

¹³⁴ The *Charter of Human Rights and Responsibilities Act 2006* (Vic) protects First Peoples' cultural rights specifically at s 19(2), which states that: 'Aboriginal persons hold distinct cultural rights and must not be denied the rights, with other members of their community' to culture, kinship, identity and language. The Preamble to the Charter also recognises that 'human 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', <https://content.legislation.vic.gov.au/sites/default/files/2022-06/06-43aa015%20authorised.pdf>

also provides a consistent framework for the Victorian Public Service to report on the actions they are taking towards delivering on the VAAF.

123. The SDRF was developed through a reference group of the Secretaries' Leadership Group on Aboriginal Affairs (comprising representation from all government departments), led by the Department of Premier and Cabinet. It is underpinned by the First Peoples-identified priorities of the VAAF. The SDRF focuses primarily on government departments, but is applicable to any public sector entity. All government departments, Victoria Police and the Victorian Public Sector Commission report annually on SDRF implementation. These annual reports are tabled with the Victorian Secretaries' Board. Examples of relevant public entities that do not individually report on SDRF implementation include Parks Victoria, Victorian water corporations, cemetery trusts, crown land committees of management and other land management bodies.
124. The VAAF and the SDRF were launched by the Victorian Government in 2018 and 2019, before Victoria signed the National Agreement in 2020 alongside all Australian Governments, the Australian Local Government Association and the Coalition of Aboriginal and Torres Strait Islander Peak Organisations (the Coalition of Peaks).
125. The National Agreement was developed in partnership between Australian governments and the Coalition of Peaks, informed by the expertise and experience of the Coalition of Peaks and its membership, as well as extensive engagements with First Peoples across Australia. The National Agreement, which is an ongoing agreement until replaced by a future agreement, has 19 national socio-economic targets across 17 socio-economic outcome areas that have an impact on life outcomes for First Peoples. Most targets are set to 2031, however some have earlier target dates.¹³⁵ Central to the National Agreement are four Priority Reforms that focus on changing the way governments work with First Peoples.
126. The National Agreement provides a framework to improve outcomes for First Peoples at all stages of life. It also supports action across the community sector and Government to ensure Aboriginal women have access to the services and opportunities they deserve. As the Minister for Women, I recognise that Aboriginal women routinely hold leadership roles and responsibilities in families, communities, ACCOs and Government – advocating for change and reform for First Peoples but have also experienced significant injustice because of colonisation. The Government's 'Our Equal State: Gender Equality Strategy and Action Plan 2023-2027' sets out a path to achieve gender equality by removing barriers that prevent the full participation of women in the economy and community.¹³⁶ It is important we remain mindful of the particular impacts experienced by Aboriginal women in our understanding of Victoria's history, and future actions to address injustice.
127. Under the National Agreement, all jurisdictions must have in place a whole of Government implementation plan which outlines actions to deliver Government's commitments and outlines an approach to annual reporting. Victoria's current Implementation Plan is the first in a series running to 2031 and includes actions which the Victorian Government is required to undertake and actions that all Governments and the Coalition of Peaks must work on collectively and implement nationally.

¹³⁵ Target 3, which relates to early childhood education is set to 2025; Target 14, which relates to suicide rates, has no set target date; Targets 15A and 15B, which relate to land and sea rights, are set to 2030; and Target 17, which relates to digital inclusion, is set to 2026. See "Closing the Gap Targets and Outcomes," Closing the Gap, accessed 14 December 2023 <https://www.closingthegap.gov.au/national-agreement/targets>

¹³⁶ State of Victoria, *Safe and Strong: A Victorian Gender Equality Strategy* (Melbourne: State of Victoria, 2016). https://content.vic.gov.au/sites/default/files/2018-05/Safe-and-Strong-Victorian_Gender_Equality_Strategy.pdf

128. Victoria's Implementation Plan is informed by and includes commitments from existing State Government policy, including the VAAF. The Implementation Plan aligns these existing commitments, with the Priority Reforms, targets and outcomes under the National Agreement.
129. Each year, the Victorian Government reports on progress against the VAAF, the SDRF and the Implementation Plan in the Victorian Government Aboriginal Affairs Report (VGAAR). The VGAAR is an outcomes measurement and accountability tool that provides information about progress and challenges that still need to be addressed.
130. Through the Partnership Forum on Closing the Gap (Partnership Forum), the Secretaries of all Victorian Government departments work in close partnership with Ngaweeyan Maar-oo (the Koorie Caucus of the Partnership Forum) to deliver Victoria's commitments under the National Agreement and Implementation Plan. The Partnership Forum model reflects our commitment to shared decision making, as set out in the National Agreement. I want to take this opportunity to acknowledge the important work of Ngaweeyan Maar-oo in ensuring that progress on Closing the Gap is driven in a collaborative and self-determined way.
131. Again, I wish to acknowledge the vital role of ACCOs as Aboriginal-led organisations delivering services and support to First Peoples. ACCOs have stood and continue to stand at the forefront to improve the lives of First Peoples, providing holistic and culturally safe care at a local level. I have visited ACCOs across the State, recently the Ballarat and District Aboriginal Co-operative, and it is clear to me that these organisations make critical contributions to First Peoples' communities. Despite this, much of their work is not substantially funded, particularly Gathering Places which provide a space for community members to come together and connect with family and culture. I acknowledge the calls from Aboriginal organisations for long-term and sustainable investments by the State so they can continue to service their communities.

4.2 Land and water-related targets

132. While there is general alignment between the outcome areas in the VAAF and the National Agreement, the VAAF is tailored to the Victorian context. The VAAF was deliberately drafted to shift away from setting specific time-bound targets. Instead, based on community feedback, the VAAF takes the approach of open and transparent reporting on trends to enable community to hold Government accountable. By contrast, outcomes measurement against the Implementation Plan reflects progress against the precisely defined, time-bound national targets agreed between governments and the Coalition of Peaks in the National Agreement.
133. I acknowledge that there are benefits and challenges with different approaches to outcome measurement. On the one hand, ambitious, long-term goals with broad measures of success rightly commit Governments to realising the full extent of First Peoples aspirations, and developing specific, quantitative measures for success and clear accountability. On the other hand, while specific targets provide a clear benchmark for success, agreeing on these targets, particularly between multiple parties with different interests, can result in the whittling down of aspirational targets.
134. For example, Goal 18 in the VAAF, that First Peoples land, water and cultural rights are realised, is directly aligned with Outcome 15 in the National Agreement, that First Peoples maintain a distinctive cultural, spiritual, physical and economic relationship with their land and waters. It is measured against 2 targets that require, by 2030, there be a 15 per cent increase in Australia's land mass (15a) and seas (15b) subject to First Peoples' legal rights or interests. A further target, Target 15c, which measures progress towards securing First Peoples' legal rights

and interests in inland water bodies under state and territory water rights regimes, is yet to be agreed.

135. I acknowledge that lands and waters connect First Peoples to Ancestors, culture, and identity, and the health of and access to lands and waters is intrinsically linked and essential to the health and wellbeing outcomes of First Peoples.
136. The 2022 VGAAR tabled in the Victorian Parliament on 22 June 2023 states that most measures under Goal 18 of the VAAF have continued to improve.¹³⁷ I note in particular that in 2021-22, native title was recognised across 14,899 square kilometres of land and 50,672 square kilometres of land was recognised under the *Traditional Owner Settlement Act 2010* (TOS Act) agreements.¹³⁸ I am pleased that the 2023 VGAAR, which I will table in Parliament in June 2024, will report that this amount has increased further with the Eastern Maar native title determinations in 2023.¹³⁹
137. The benefits of realising First Peoples' land, water and cultural rights have been demonstrated through the work undertaken by the Barengi Gadjin Land Council at the Ranch and Billabong in Dimboola. I heard directly from Traditional Owners in January 2024 how the Ranch and Billabong have been home to many generations of Wotjobaluk Peoples, long before European settlement, and was a primary source of cultural significance after Ebenezer closed in 1904 and the main fringe camp during the 1920s – 1950s. Since the Ranch and Billabong were returned to the Wotjobaluk Peoples in the native title agreement of 2005, water quality has improved, pest plants and animals have been reduced and Indigenous plants and animals restored, and a new trail has granted easier access for gathering and events. These achievements demonstrate both the cultural and environmental benefits of Traditional Owners caring for Country. I look forward to seeing similar outcomes across Victoria.
138. Victoria is supporting national agreement on an inland waters target, parties to the National Agreement agreed to develop within 12 months of signing the National Agreement on 27 July 2020.
139. In August 2022, the Joint Council on Closing the Gap (Joint Council) agreed to recommend the new inland waters Target 15c to First Ministers, the Australian Local Government Association, and the Coalition of Peaks for agreement. Victoria fully endorsed Target 15c, 'that by 2023, the volume of water access entitlements under state and territory water rights regimes to Aboriginal and Torres Strait Islander corporations is 3 per cent of the total volume of water access entitlements', with no caveats.¹⁴⁰
140. The Victorian Government's letter to the Coalition of Peaks in November 2022 advised that Victoria would contribute to the achievement of Target 15c through *Water is Life: Traditional Owner Access to Water Roadmap*, a framework designed to create and maintain a careful and considered balance between First Peoples' self-determination in water access and management, and the rights and entitlements of a range of stakeholders.¹⁴¹ The Victorian

¹³⁷ State of Victoria, *Victorian Government Aboriginal Affairs Report 2022*, (Melbourne: State of Victoria, 2023)

<https://www.firstpeoplesrelations.vic.gov.au/victorian-government-aboriginal-affairs-report-2022> (DPC.0009.0009.0654).

¹³⁸ "Culture and Country – Victorian Government Aboriginal Affairs Report 2022," First Peoples State Relations, accessed 6 December 2023, <https://www.firstpeoplesrelations.vic.gov.au/victorian-government-aboriginal-affairs-report-2022/culture-and-country>

¹³⁹ Federal Court of Australia, *Austin on behalf of the Eastern Maar People v State of Victoria* [2023] FCA 237, <https://jade.io/article/971395>

¹⁴⁰ Joint Council on Closing the Gap, "Item 4: New Targets for Closing the Gap - Community Infrastructure and Inland Waters" (unpublished meeting paper for virtual meeting of 6 August 2021).

¹⁴¹ State of Victoria, "Water is Life: Traditional Owner Access to Water Roadmap," accessed 14 December 2023, <https://www.water.vic.gov.au/our-programs/aboriginal-water-program/water-is-life-roadmap>

Government's advice further articulated that returning water allocations to Victorian Traditional Owners will be an important step towards the Treaty and Truth-telling processes underway.

141. The agreed Inland Waters Target Framework includes a national baseline measure of water access entitlements held by First Peoples of 2.32 per cent.¹⁴² At Joint Council in December 2022, the Coalition of Peaks expressed concerns about how this baseline was calculated and advised that it would complete an independent peer review of the inland waters baseline data.
142. The University of Melbourne was commissioned to undertake the independent peer review, and delivered its final report in May 2023, which was shared with the Victorian Government in August 2023. In its final report, the University of Melbourne concluded that the existing baseline measure of water access entitlements held by First Peoples organisations is not robust or effective, noting 'multiple and intersecting' sources of uncertainty, and made recommendations on how to improve the baseline.¹⁴³
143. The Commonwealth Government and the Coalition of Peaks, together with representatives from all jurisdictions including Victoria, have since agreed to re-establish a working group to develop a new pathway for the inland waters target to be agreed.
144. I was pleased that at Joint Council in November 2023, which took place here in Melbourne, developing a clear plan towards agreeing the inland waters target was agreed as a time-critical commitment to be progressed in 2024.¹⁴⁴
145. Targets relating to securing First Peoples' legal rights and interests over lands, sea waters and inland waters recognise the importance of Country to First Peoples' culture, spirituality, health, wellbeing and economic prosperity. Moreover, rights and interests for First Peoples over lands, seas and waters is critical to achieving strong self-determined outcomes for the benefit of First Peoples and all Victorians.
146. My colleague the Minister of Water will provide more detail regarding the progress made to increase First Peoples' entitlements to water resources in Victoria.

4.3 Yuma Yirramboi Strategy (Invest in Tomorrow)

147. The 2022 Yuma Yirramboi Strategy is Victoria's Aboriginal Employment and Economic Strategy. It articulates the Victorian Government and Victorian Aboriginal communities' shared vision for economic parity between First Peoples and non-Aboriginal Victorians within a generation. Yuma Yirramboi, meaning 'Invest in Tomorrow' in Woiwurrung, aims to address systemic injustices such as the disproportionate rate of unemployment amongst First Peoples and lower household incomes.¹⁴⁵

¹⁴² PwC's Indigenous Consulting, *Inland Waters Statistical Baseline Exercise* (PwC's Indigenous Consulting, 2022), 19, 23, <https://www.dcceew.gov.au/sites/default/files/documents/28144.pdf>. The same methodology to arrive at a national baseline identified that 0.11 per cent of water access entitlements in Victoria are held by First Peoples.

¹⁴³ The same methodology to arrive at a national baseline identified that 0.11 per cent of water access entitlements in Victoria are held by First Peoples. PwC's Indigenous Consulting, *Inland Waters Statistical Baseline Exercise* (PwC's Indigenous Consulting, 2022), 19, 23, <https://www.dcceew.gov.au/sites/default/files/documents/28144.pdf>

¹⁴⁴ "Eleventh Meeting of the Joint Council on Closing the Gap," Australian Government: Department of the Prime Minister and Cabinet, accessed 14 December 2023, <https://ministers.pmc.gov.au/burney/2023/eleventh-meeting-joint-council-closing-gap-communicue>.

¹⁴⁵ In 2021, 9.6 per cent of First Peoples in Victoria are experiencing unemployment, more than double the rate of non-Aboriginal Victorians. Australian Bureau of Statistics, 2021 Census Aboriginal and/or Torres Strait Islander people, <https://www.abs.gov.au/census/find-census-data/quickstats/2021/IQS2>. First Peoples' households in 2021 earned a median income of \$81,603, \$10,272 less than non-Aboriginal households. State of Victoria, *Victorian Government Aboriginal Affairs Report 2022*, (Melbourne: State of Victoria, 2023), 77, https://content.vic.gov.au/sites/default/files/2023-07/FINAL_Victorian-Government-Aboriginal-Affairs-Report-2022.pdf (DPC.0009.0009.0654).

148. The Koori Caucus of the Victorian Aboriginal Employment and Economic Council (now the Yuma Yirramboi Council) developed Yuma Yirramboi in consultation with First Peoples across Victoria.¹⁴⁶ The Victorian Aboriginal Employment and Economic Council was established in 2020 and was replaced by the Yuma Yirramboi Council in 2022. The Council provides expert advice to the Victorian Government on ways to improve Aboriginal economic outcomes. The Koori Caucus comprises six Aboriginal Executive representatives from the standing Aboriginal community entities and 14 Aboriginal community members with individual experience in employment, economic development and commerce. The Council meets quarterly and is co-chaired by the Koori Caucus Chair and the Secretary of the Department of Jobs, Skills Industry and Regions (DJSIR). I take this opportunity to acknowledge the work of the Koori Caucus of the Victorian Aboriginal Employment and Economic Council (now the Yuma Yirramboi Council) in developing and implementing Yuma Yirramboi in consultation with First Peoples across Victoria.
149. While DJSIR is responsible for strategy implementation, as Minister for Jobs and Industry, I hold joint responsibility for its success alongside the Minister for Employment, Vicki Ward MP.
150. Yuma Yirramboi aims to boost Traditional Owners' commercial capabilities to take full advantage of their lands and waters, generate wealth and achieve better economic outcomes. The Victorian Government has provided \$11.82 million over two years to support the implementation of Traditional Owner Country Plans. This funding has supported the establishment of economic hubs on Dja Dja Wurrung, Wadawurrung and Gunaikurnai Country; the recruitment of Economic Development Coordinators for 11 Traditional Owner groups and funding for employment and commercial ventures. Proposals from other Victorian Traditional Owner Corporations to support economic hubs are currently under consideration.¹⁴⁷
151. In November 2023, an independent evaluation of Yuma Yirramboi's implementation found that funded activities are supporting economic development but require more time to deliver a full impact.¹⁴⁸ The evaluation noted that the Koori Caucus' knowledge and expertise could be better leveraged in strategy implementation. Government is considering the recommendations of the evaluation and is committed to strengthening the role of the Koori Caucus. I note this information was also provided by the Department of Premier and Cabinet in response to the Commission's Request for Information (Question 48) (DPC.0013.0001.0001).
152. I look forward to continuing working with the Caucus on the implementation of Yuma Yirramboi, and I recognise its ongoing importance to the Government's commitment to Aboriginal self-determination.

4.4 A reflection on the frameworks and outcomes

153. The Victorian Government has had mixed success in delivering improved outcomes through its key First Peoples' self-determination frameworks. Broadly, the VAAF, the SDRF, the National Agreement and Implementation Plan have resulted in some improved outcomes for First Peoples and created whole of government accountability for enabling First Peoples' self-

¹⁴⁶ State of Victoria, *Yuma Yirramboi: Victorian Aboriginal Employment and Economic Strategy* (2022), 10, https://djsir.vic.gov.au/_data/assets/pdf_file/0008/2068496/Yuma-Yirramboi-Invest-in-Tomorrow-Strategy-2022.pdf (DJSI.9001.0001.2098). Participants in the consultation process included (1) The Victorian Aboriginal Employment and Economic Council (now Yuma Yirramboi Council) (2) Aboriginal businesses and peak bodies (3) Traditional Owners (4) Aboriginal Community-Controlled Organisations (5) Aboriginal community members (6) Industry experts and academics (7) Victorian and Commonwealth Government agencies.

¹⁴⁷ The locations of the three economic hubs funded through Yuma Yirramboi served as pilot sites for further program design work.

¹⁴⁸ Deloitte, *Yuma Yirramboi Program Lapsing Program Evaluation Final Report* (unpublished, November 2023).

determination that did not previously exist. The development and ongoing implementation of these frameworks would not be possible without the expertise and strong advocacy of First Peoples.

154. There has also been progress through portfolio-specific frameworks and agreements. In addition to Yuma Yirramboi, examples include the Aboriginal Justice Agreement, the longest running Agreement of its kind in Australia.¹⁴⁹ It was established in 2000 and is now in its fourth phase – *Burra Lotjpa Dunguludja*. Another example is the action being driven through the Marrung: Aboriginal Education Plan 2016-2026.¹⁵⁰ Gains include a significant boost to the participation of Aboriginal children in kindergarten.¹⁵¹
155. First Peoples have long advocated for the ownership and control of social housing for First Peoples by ACCOs as a means of achieving self-determination and ensuring the provision of culturally safe social housing. The transfer of ownership of 1,448 social housing properties from Homes Victoria to Aboriginal Housing Victoria (AHV) from 2016 to 2018 represented one of the most significant financial and formalised commitments to self-determination that the Victorian Government has undertaken. As of 30 June 2023, there are 1,563 AHV-owned dwellings and a further 90 dwellings owned by Homes Victoria that are managed by AHV. In July 2023, a pilot program commenced to transfer tenancy management responsibilities for Aboriginal renters from Homes Victoria to Aboriginal housing organisations. The Pilot will enable Aboriginal renters to receive enhanced culturally safe service provision, greater choice, flexibility and control over who manages their tenancy.
156. The First Peoples' Assembly, *Ngaweeyan Maar-oo* (the Koorie Caucus of the Partnership Forum on Closing the Gap) and Aboriginal Governance Forums will lead the development of a new VAAF and Implementation Plan in 2024, recognising the importance of First Peoples' self-determining policy and practice. In the interim, both the current VAAF and Implementation Plan have been extended in their current forms to 30 June 2025. Further detail regarding this process was provided by the Department of Premier and Cabinet in response the Commission's Request for Information (Question 48) (DPC.0013.0001.0001).
157. In addition to First Peoples determining what success in the First Peoples' portfolio looks like, First Peoples must be empowered to hold Government accountable for doing what it says it will do.
158. While the VGAAR is an important and necessary mechanism for holding Government accountable for how it is delivering on its commitments to enable First Peoples' self-determination, I acknowledge that it is currently heavily reliant on departmental self-reporting, and therefore lacks independence. I am mindful that accountability mechanisms are most effective for First Peoples when they are led by First Peoples, not Governments, and informed by First Peoples' priorities and aspirations. The Department of Premier and Cabinet's response to the Commission's Request for Information addresses the other challenges facing the full implementation of self-determination policies and frameworks (Question 52) (DPC.0013.0001.0001).

¹⁴⁹ State of Victoria, *The Victorian Aboriginal Justice Agreement* (Melbourne, State of Victoria, 2022).

<https://www.aboriginaljustice.vic.gov.au/the-agreement/the-victorian-aboriginal-justice-agreement> (DJCS.0001.0002.0067).

¹⁵⁰ Department of Education, *Marrung: Aboriginal Education Plan 2016-2026* (Melbourne, Department of Education, 2016).

https://www.education.vic.gov.au/Documents/about/programs/aboriginal/Marrung_Aboriginal_Education_Plan_2016-2026.pdf (DJSI.9004.0001.1374).

¹⁵¹ "Learning and skills", First Peoples – State Relations. Accessed 15 January 2023.

<https://www.firstpeoplesrelations.vic.gov.au/victorian-government-aboriginal-affairs-report-2021/learning-and-skills>

159. I note that Recommendation 4 in the Commission’s landmark *Yoorrook for Justice* report called for the Victorian Government to negotiate with the First Peoples’ Assembly to establish an independent and authoritative oversight and accountability commission for the monitoring and evaluation of policies and programs related to improving outcomes for First Peoples.¹⁵²
160. Treaty negotiations could consider both the Commission’s recommendations together with Victoria’s commitments under clause 67 of the National Agreement to establish an independent mechanism that will support, monitor, and report on the transformation of mainstream agencies and institutions. I am aware that this is an outstanding matter for Victoria to consider and an important priority for First Peoples.
161. Further, while the VGAAR has made data about First Peoples more accessible to First Peoples, Government continues to own and control First Peoples data. This is inconsistent with the principle of Indigenous Data Sovereignty, which I understand to be the right of First Peoples to own, control and access data from and about First Peoples. I acknowledge that the Victorian Government has committed to considering data sovereignty but is yet to comprehensively address this matter.¹⁵³
162. I note under Priority Four of the National Agreement, the Victorian Government has committed to shared access to data and information at a regional level. The desired outcome of this reform is that First Peoples ‘have access to, and the capability to use, locally relevant data and information to set and monitor the implementation of efforts to close the gap, their priorities and drive their own development.’¹⁵⁴
163. The Victorian Government continues to work in partnership with First Peoples organisations and communities, principally through the State’s Aboriginal Governance Forums and the Partnership Forum on Closing the Gap (Partnership Forum), the Victorian Government’s formal National Agreement implementation partner.¹⁵⁵
164. Formal partnerships and governance forums continue to deliver strong outcomes for First Peoples.
165. I hope that Treaty will enable the further transfer of power and resources to First Peoples to control matters which impact their lives for the future. In its first three-yearly Review of the National Agreement, the Productivity Commission highlighted Treaty as an example of ‘what rebalancing of power can look like’.¹⁵⁶

¹⁵² Yoorrook Justice Commission, *Yoorrook for Justice: Report into Victoria’s Child Protection and Criminal Justice Systems*, (Collingwood: Yoorrook Justice Commission, 2023), 27, <https://yoorrookforjustice.org.au/wp-content/uploads/2023/08/Yoorrook-for-justice-report.pdf>

¹⁵³ State of Victoria, *Self-Determination Reform Framework* (Melbourne: State of Victoria, 2019), 11, <https://content.vic.gov.au/sites/default/files/2019-09/Self-Determination-Reform-Framework-August-2019.PDF> (DPC.0009.0009.0202).

¹⁵⁴ See clause 17(d) in Closing the Gap, *National Agreement on Closing the Gap*, (Canberra: Commonwealth of Australia, Department of the Prime Minister and Cabinet, 2020), 3-4. https://www.closingthegap.gov.au/sites/default/files/2022-09/ctg-national-agreement_apr-21-comm-infra-targets-updated-24-august-2022_0.pdf

¹⁵⁵ “Victoria’s Partnership Forum on Closing the Gap Implementation,” First People State Relations, accessed 6 December 2023, <https://www.firstpeoplesrelations.vic.gov.au/victorias-partnership-forum-closing-gap-implementation>

¹⁷⁰ Australian Government Productivity Commission, *Review of National Agreement on Closing the Gap* (Melbourne; Australian Government, 2023), 30. <https://www.pc.gov.au/inquiries/current/closing-the-gap-review/draft/closing-the-gap-review-draft.pdf>

Part 5: The Aboriginal Lands Acts

5.1 Background to the Aboriginal Lands Act 1970

166. The *Aboriginal Lands Act 1970* (1970 Act) is a landmark piece of legislation which I understand from parliamentary debate at the time was created in direct response to the Framlingham and Lake Tyers Aboriginal communities' staunch advocacy for land rights.¹⁵⁷ As former mission sites, Framlingham and Lake Tyers represent the State's past racist, segregationist, and assimilationist laws which actively sought to deny First Peoples any form of self-determination.
167. Residents of the Framlingham and Lake Tyers communities at a specific time were listed in the Victorian Government gazette as members of the respective Framlingham or Lake Tyers Aboriginal Trusts and allocated shares in the Trusts, thereby granting them ownership of the land.¹⁵⁸
168. I acknowledge the State's attempts to close the Framlingham and Lake Tyers missions prior to the Act's creation resulted in people moving elsewhere and further dispossessed First Peoples.¹⁵⁹ The 1970 Act required people to have been a resident of either the Framlingham or Lake Tyers communities for at least three months prior to 1 January 1968 to be eligible for shares in the respective Trusts. This arbitrary choice of date, which was acknowledged as such in the second reading speech, resulted in many former residents (including Traditional Owners) being denied ownership.¹⁶⁰ The 2021 Review of the Act highlights Parliament's consideration of the share scheme, including the limited class of people who would be entitled to hold shares. In 2010, the State decided not to support recognition of native title existing over Lake Tyers land as part of the Gunaikurnai claim, but said it would do so if the Lake Tyers community consented in the future.¹⁶¹ In 2023, the State did support the recognition of Eastern Maar's native title in the Federal Court's March 2023 determination over Framlingham land.¹⁶²
169. The 1970 Act is also addressed in Executive Director of Traditional Owner Relationships and Heritage, Mr. Lloyd's response to the Commission's Request for Information (Question 34) (DPC.0013.0001.0019).

¹⁵⁷ Victoria, *Parliamentary Debates*, Legislative Assembly, 28 October 1970, 1419-21 (Mr. Meagher, Minister for Aboriginal Affairs), <https://www.parliament.vic.gov.au/492eae/globalassets/hansard-historical-documents/sessional/1970/19701028-19701111-hansard-combined.pdf>

¹⁵⁸ Jason Behrendt and Tim Goodwin, *Report to Minister for Aboriginal Affairs on the Aboriginal Lands Act 1970 (Vic)* (2021), 5, <https://www.firstpeoplesrelations.vic.gov.au/review-aboriginal-lands-act-1970>; Diane Barwick, *Rebellion at Coranderrk* (ACT: Aboriginal History Inc., 1998), 92-93; Jan Critchett, "History Of Framlingham And Lake Condah Aboriginal Stations, 1860-1918," Masters Thesis, *Melbourne University* (1980), 62-63, 168, 189.

¹⁵⁹ Jason Behrendt and Tim Goodwin, *Report to Minister for Aboriginal Affairs on the Aboriginal Lands Act 1970 (Vic)*, (2021), 10-11, 98. <https://www.firstpeoplesrelations.vic.gov.au/review-aboriginal-lands-act-1970>

¹⁶⁰ Victoria, *Parliamentary Debates*, Legislative Assembly, 28 October 1970, 1420 (Mr. Meagher, Minister for Aboriginal Affairs). <https://www.parliament.vic.gov.au/492eae/globalassets/hansard-historical-documents/sessional/1970/19701028-19701111-hansard-combined.pdf>

¹⁶¹ *Mullett on behalf of the Gunaikurnai People v State of Victoria* [2010] FCA 1144, <https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2010/2010fca1144>; *Indigenous Land Use Agreement between the State of Victoria and Gunaikurnai Land & Waters Aboriginal Corporation RNTBC*, National Native Title Tribunal, Register of Indigenous Land Use Agreements, File No. VI2010/003, <http://www.nntt.gov.au/searchRegApps/NativeTitleRegisters/ILUA%20Register/2010/VI2010.003/ILUAREgisterExport.pdf>.

¹⁶² *Austin on behalf of the Eastern Maar People v State of Victoria* [2023] FCA 237 decision within National Native Title Tribunal, *Native Title Determination Details* (Melbourne; National Native Title Tribunal; 2023) http://www.nntt.gov.au/searchRegApps/NativeTitleClaims/Pages/Determination_details.aspx?NNTT_FileNo=VCD2023/001

5.2 The operation of the 1970 Act

170. When it was enacted, I understand the 1970 Act was considered nation leading. It was the first time that the Victorian Parliament recognised Aboriginal rights to land.¹⁶³
171. The Framlingham and Lake Tyers communities sought return of the lands they called home. The State's response to community advocacy for the return of modest parcels of land, while significant, imposed a corporate governance structure that came from Western legal traditions.¹⁶⁴ The 1970 Act has ultimate control and decision making in the hands of the Minister, undermining the self-determination of the Framlingham and Lake Tyers Trust communities. The requirements of Trust governance prescribed by the 1970 Act placed an unfair administrative burden on the communities, which has, and continues to, impact their ability to comply with the legislation.¹⁶⁵ I understand that this has contributed to lengthy periods during which the Trusts have been administered by a third party.
172. The 1970 Act is significantly outdated. Major reform is overdue to reflect the Victorian Government's commitment to First Peoples' self-determination. Given the 1970 Act has not been substantially updated since it was enacted, many of the governance and operational requirements are rooted in outdated corporate governance models. Further, there was no consideration given at the time to the role of Aboriginal models of governance and cultural ways of doing business. As a result, many of the compliance requirements are not fit for purpose and cause significant barriers today.
173. There have been several reviews of the 1970 Act that pointed to ongoing challenges with compliance. The Act was reviewed in 1997, 2002, 2012 and 2017.¹⁶⁶ The most recent review was completed in September 2021 and highlighted a range of legislative amendments to improve compliance within a western corporate governance framework. The Victorian Government's response to the Review's recommendations was made public in September 2023.
174. At this point, I want to thank the Trust communities for their invaluable contributions to the 2021 Review. Their continued willingness to engage in consultations and reviews should be commended. Now it is Government's turn to make the necessary changes, with ongoing engagement from community.
175. I appointed an Administrator to take over the operations of the Framlingham Aboriginal Trust in October 2018. The Trust remains in administration. The Lake Tyers Aboriginal Trust was previously in administration for ten years, from January 2005 to October 2015.
176. I understand that putting the Trusts into administration is a requirement under existing legislation if conditions demand it. As the Minister responsible for this Act, I do not want to continue to exercise this function. Placing the Trusts into administration is a blunt intervention that should be a temporary measure, to enable new community administration to develop and

¹⁶³ Jason Behrendt and Tim Goodwin, *Report to Minister for Aboriginal Affairs on the Aboriginal Lands Act 1970 (Vic)* (2021), 4, <https://www.firstpeoplesrelations.vic.gov.au/review-aboriginal-lands-act-1970>

¹⁶⁴ Ibid.

¹⁶⁵ Ibid.

¹⁶⁶ State of Victoria, *Aboriginal Lands Act Review Options Paper* (2019), <https://www.firstpeoplesrelations.vic.gov.au/sites/default/files/2019-08/Aboriginal-Lands-Act-Review-Options-Paper.pdf>; State of Victoria, *Review of the Aboriginal Lands Act 1970 Discussion paper* (2019), <https://www.firstpeoplesrelations.vic.gov.au/review-aboriginal-lands-act-1970>; Jason Behrendt and Tim Goodwin, *Report to Minister for Aboriginal Affairs on the Aboriginal Lands Act 1970 (Vic)* (2021), 14-15, 24-25, <https://www.firstpeoplesrelations.vic.gov.au/review-aboriginal-lands-act-1970>

assume control. The cycle of placing the Trusts in administration is a marked example of paternalistic and ineffective legacy measures currently in place under the 1970 Act.

177. I read the 2021 Review, which said that the complexity of the Trusts' structure established by the Act has created shareholders and non-shareholding residents with different interests.¹⁶⁷ This has made forging agreement within the Framlingham and Lake Tyers communities on proposed reform challenging. The Government needs to do more to resolve the legacy issues it has created by setting up these land holding Trusts.
178. These legacy issues are in large part a result of past racist and assimilationist policies under which the Government forced First Peoples from their Country onto missions and reserves, and then tried to close these same missions and reserves where people had established their homes.
179. Given these complexities, the 2021 Review made a series of recommendations aimed at strengthening governance and share transfer mechanisms, facilitating economic activity, and increasing Trust communities' understanding of the 1970 Act's requirements and its shareholding system.¹⁶⁸
180. As Minister for Treaty and First Peoples, I am mindful of the challenges the Government will face in working towards consensus regarding any major reform to the 1970 Act. I acknowledge that Government's previous inaction in responding to communities' concerns with the 1970 Act has damaged our relationship with both Trust communities. Both communities have been telling the State of Victoria that change is needed for some time. I deeply regret the current unsatisfactory situation with the Act and commit to proceeding as quickly as possible with required short-term changes to the Act and a renewed effort to resolve longstanding issues.

5.3 Immediate reform priorities

181. In September 2023, the Victorian Government publicly committed to amending the 1970 Act, and continuing to work with the Trust communities to progress recommendations of the 2021 Review in two phases.¹⁶⁹ I am responsible for progression of these recommendations. The first phase of reform will focus on Trust governance, resolving issues with shareholding and providing the Trusts with powers to facilitate economic activity and carry out business on Trust land. To support this process, the Victorian Government is funding the development of resources to bring the Trust communities along the journey of reforming the 1970 Act.
182. Earlier this year I shared a draft of the *Aboriginal Land Legislation Amendment Bill 2024* with community members, including proposed phase one amendments to the 1970 Act, and I will shortly receive their feedback for consideration in the final draft of the Bill.
183. The second phase of reform will commence after shareholdings are clarified, and further discussions are held with the Trust communities around the establishment of an independent share registry and mechanisms to better support governance and resolve disputes.
184. Reforms to the 1970 Act will not end with the implementation of recommendations of the 2021 Review. In coming months, I will visit both Trust communities to hear directly from residents and shareholders. I believe that the path ahead must be one consistent with self-determination,

¹⁶⁷ Jason Behrendt and Tim Goodwin, *Report to Minister for Aboriginal Affairs on the Aboriginal Lands Act 1970 (Vic)* (2021), 28-30, <https://www.firstpeoplesrelations.vic.gov.au/review-aboriginal-lands-act-1970>

¹⁶⁸ *Ibid*, 26-96.

¹⁶⁹ State of Victoria, "Response to the Recommendations of the Independent Review of the Aboriginal Lands Act 1970," (2023), <https://www.firstpeoplesrelations.vic.gov.au/victorian-government-response-recommendations-independent-review-aboriginal-lands-act-1970>

where the State supports the Framlingham and Lake Tyers communities to be self-governing and use the Trust lands for the benefit of residents and shareholders alike for the long-term.

185. I am committed to returning Framlingham Aboriginal Trust to governance by a committee of management elected by members of the Trust as soon as possible. Significant progress has been made over the past 12 months to address the original grounds for which the Trust was placed into administration, and the Trust is on the pathway to safely resume self-governance. I am also looking forward to engaging with the Trust communities to explore options for major reform to the 1970 Act, including an alternative governance system with improved autonomy for the Trusts. Government will also engage with Traditional Owners and the First Peoples' Assembly of Victoria on such reforms.

5.4 The Aboriginal Lands Act 1991

186. Efforts to redress some impacts of the Victorian Government's past racist laws were also reflected in the enactment of the *Aboriginal Lands Act 1991*.¹⁷⁰ Under this Act, freehold title was granted over three Aboriginal burial sites at the former Coranderrk, Ebenezer and Ramahyuck Missions to Wurundjeri Woi Wurrung Cultural Heritage Aboriginal Corporation, Goolum Goolum Aboriginal Co-Operative, and Gippsland and East Gippsland Aboriginal Co-Operative respectively,¹⁷¹ these being the only Aboriginal-led community organisations in the regions at the time.
187. While the *Aboriginal Lands Act 1991* succeeded in transferring culturally significant land to Aboriginal organisations, it conversely restricted the new owners by prohibiting them from transferring their respective interests in the land (Transfer Restriction) and restricting their use of the lands to Aboriginal cultural and burial purposes (Use Restriction).¹⁷²
188. The Government is progressing reforms that will remove restrictions on the transfer of lands held under the *Aboriginal Lands Act 1991*. Alongside the phase 1 reforms to the 1970 Act this year, 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. These changes reflect the way in which I believe the Victorian Government should work with First Peoples — with a focus on listening, appreciating the different circumstances of different Aboriginal groups, and working to give Traditional Owners power and control over their affairs.
189. Having spent time at Ebenezer Mission cemetery in January 2024, I appreciate the significance of the site as the oldest surviving mission cemetery in Victoria, and as an important resting place for many. I also acknowledge the continuing connection that the Wotjobaluk, Wergaia, Jaadwa, Jadawali and Japagulk people have to the land that the cemetery sits on, and the importance of ensuring that control of the site is returned to the Barengi Gadjin Land Council through these reforms.

¹⁷⁰ *Aboriginal Lands Act 1991* (Vic). <https://www.legislation.vic.gov.au/in-force/acts/aboriginal-lands-act-1991/004>

¹⁷¹ *Ibid*, section 6.

¹⁷² *Ibid*, sections 6(5) and 7.

Part 6: The Aboriginal Heritage Act 2006

6.1 Background

190. For all Victorians, cultural heritage underpins our human experience. It is who we are - connecting us to our families, communities and way of life. What is considered cultural heritage and the role it plays in our lives differs between individuals, peoples and cultures, but its importance is undisputed. The heritage of First Peoples is particularly significant because it represents the oldest continuing cultures in the world with unbroken connection to culture over tens of thousands of years.
191. First Peoples' cultural heritage in Victoria is not only indivisible from the identity 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.
192. When I visit different parts of my electorate and other parts of our State, I see Victoria's British history and multicultural character reflected in our places, structures, and stories. Our diverse cultural heritage is our State's great strength. But so often, I fail to see a strong public celebration or recognition of the rich, extensive, diverse and beautiful cultural heritages of First Peoples. This is both a great shame and a missed opportunity. It is all of our responsibility to build opportunities to share culture and therefore, understanding.
193. In Sydenham Park, in my electorate, is a Wurundjeri meeting place at the meeting of Deep Creek, Jacksons Creek and the Maribyrnong River. Due to the efforts of the Wurundjeri Woi Wurrung Heritage Aboriginal Corporation over many years, the sites of cultural and archaeological significance are now recognised and protected under the *Aboriginal Heritage Act 2006* (Vic).¹⁷³ The lookout with views over the meeting place, as well as interpretative signage, allows all visitors to Sydenham Park to appreciate and understand the site's importance and First Peoples' cultural context. The Wurundjeri's gracious sharing of their culture means that it can be enjoyed by all and enhance our knowledge of the lands on which we live and work today.
194. On a terrace in Keilor, overlooking the Maribyrnong River and Dry Creek, and under the flight paths of the many jets landing at Tullamarine Airport, is Murrup Tamboore. In 1940, a human cranium was uncovered and in the 1950s, archaeologists dated this to about 15,000 years old. This represented the oldest known Aboriginal remains at the time. Later, in the 1970s, further archaeological work uncovered hearth sites nearby, dating to around 31,000 years ago. This makes the Keilor site one of Australia's oldest known places where Aboriginal people lived. Murrup Tamboore is a place of immense importance to First Peoples, particularly to the Wurundjeri People, as a place where we find tangible evidence of Ancestors' lives from deep time. Despite being well-publicised at the time, and being well-known in academic circles, Murrup Tamboore is not a well-known place today. More can be done to elevate places of such international significance among Victorians, with the consent of Traditional Owners, so we can celebrate the history of this State.
195. It is critical for the Victorian Government to continually elevate the recognition of First Peoples cultural heritage among the Victorian community, to accord with its significant historical, scientific and cultural values. Recognising, supporting and celebrating First Peoples' culture strengthens and enriches the identity of all Victorians.

¹⁷³ Brimbank City Council, *Sydenham Park Master Plan* (2020), 44, <https://www.brimbank.vic.gov.au/plans-policies-and-strategies/plans/sydenham-park-master-plan>.

196. The importance of Aboriginal cultural heritage was not acknowledged by the Victorian Government until 1972 in the *Archaeological and Aboriginal Relics Preservation Act 1972*. We have come a long way in the last 52 years. The modern Victorian State seeks to raise Aboriginal cultural heritage to its proper place at the heart of Victorian cultural identity and recognise the centrality of Aboriginal cultural heritage to Traditional Owners of Victoria.
197. The *Aboriginal Heritage Act 2006* (AHA) provides a means to now protect Aboriginal cultural heritage while also enabling land use and development. I acknowledge there are times when there are tensions between the need to protect cultural heritage and the need to house people, provide public facilities and other industries. The AHA seeks to facilitate resolution through dialogue and collaboration between Traditional Owners, industry and Government to achieve the right balance between protecting and celebrating Aboriginal culture and promoting strategic land use.
198. The present-day cultural heritage regime under the AHA, like many other advances towards land justice, was the result of First Peoples' tireless advocacy and determination. Since the first acts of colonisation, First Peoples have fought to protect cultural heritage. Shamefully, it was not until 1972 that the State of Victoria responded to First Peoples' advocacy with the *Archaeological and Aboriginal Relics Preservation Act 1972* (Vic) (Relics Act), joining South Australia, New South Wales and Queensland in providing basic legislative protection for Aboriginal places and objects.¹⁷⁴
199. The Relics Act, while an important and necessary first step, applied a Western, archaeological lens to Aboriginal heritage with little regard for Aboriginal cultural heritage values. The 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.¹⁷⁵ 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.¹⁷⁶
200. The Relics Act also established the Victorian Aboriginal Heritage Register, which still operates today, and an Archaeological Relics Advisory Committee. Members of the Committee were primarily non-Aboriginal museum and archaeological experts, with only one Minister-nominated Aboriginal member.¹⁷⁷ The Committee was chaired by the 'Protector of Relics' who was the director of the National Museum of Victoria.¹⁷⁸
201. In the early 1980s, the Victorian Government sought to improve the Relics Act but was unable to pass its proposed changes through Parliament. It turned to the Commonwealth Government

¹⁷⁴ *Archaeological and Aboriginal Relics Preservation Act 1972* (Vic); *Aboriginal and Historic Relics Preservation Act 1965* (SA). http://classic.austlii.edu.au/au/legis/sa/num_act/aaarpa33o1965464/; *National Parks and Wildlife Act 1967* (NSW). <https://legislation.nsw.gov.au/view/pdf/asmade/act-1967-35>; *Aboriginal Relics Preservation Act 1967* (Qld). https://digitalcollections.qut.edu.au/2247/1/qsr_aboriginal_relics_preservation_act_1967to1976_1Mar81.pdf

¹⁷⁵ *Archaeological and Aboriginal Relics Preservation Act 1972* (Vic). https://content.legislation.vic.gov.au/sites/default/files/ffd767a9-fe4a-306e-9425-7e10550020f9_72-8273a051.pdf, section 2 (definition of 'relic' – "pertaining to the past occupation of Aboriginal people") and section 26(3) (consent required to buy or sell a relic), http://www8.austlii.edu.au/au/legis/vic/hist_act/aaarpa1972421.pdf. The Act is silent on display; See also Rob McWilliams, "Resting Places; A History of Australian Indigenous Ancestral Remains at Museum Victoria" (2016), 10. https://museums victoria.com.au/media/4273/resting_places_history_of_ancestral_remains_25_aug_2016.docx

¹⁷⁶ "Timeline of Historical Events," Victorian Aboriginal Heritage Council, accessed 6 December 2023, <https://www.aboriginalheritagecouncil.vic.gov.au/timeline-historical-events>; *Archaeological and Aboriginal Relics Preservation (Amendment) Act 1984* (Vic), section 17, http://www.austlii.edu.au/au/legis/vic/hist_act/aaarpa1984501.pdf.

¹⁷⁷ *Archaeological and Aboriginal Relics Preservation Act 1972* (Vic), section 5(1)(b)(ix). http://www8.austlii.edu.au/cgi-bin/viewdb/au/legis/vic/hist_act/aaarpa1972421/

¹⁷⁸ *Ibid*, section 5(1)(a).

for assistance¹⁷⁹ and this resulted in the 1987 addition of Part IIA to amend the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) which applied exclusively to Victoria.¹⁸⁰ One of the key components of this Commonwealth legislation was the establishment of Local Aboriginal Community organisations with powers to grant or refuse permission to damage Aboriginal heritage places or objects.¹⁸¹ The Commonwealth legislation also adopted a broader definition of Aboriginal Cultural Heritage which enabled the protection of Aboriginal intangible cultural heritage,¹⁸² such as creation stories and Aboriginal scientific knowledge, and defined Aboriginal cultural heritage in relation to ‘Aboriginal tradition’ as well as archaeological evidence.¹⁸³ The 1972 State and 1984 Commonwealth provisions operated concurrently in Victoria, until the AHA commenced.

202. I understand that in 2004 and 2005, the Victorian Government was considering changes to Victoria’s heritage legislation and a meeting of representatives from twenty Traditional Owner groups issued a Statement to State Government Ministers seeking a comprehensive land justice settlement. As part of this Statement, Traditional Owners requested development of a new Aboriginal cultural heritage protection regime under which ‘incorporated bodies of Traditional Owners would control and administer Aboriginal cultural heritage in their country’.¹⁸⁴ This request from Traditional Owners informed the Government’s approach to the new legislation. Widespread consultations held on the design of the new cultural heritage protection regime identified two key aims, among others: that decision-making over cultural heritage be placed in the hands of Traditional Owners, and that the regime provide clear and consistent procedures for industry to follow.¹⁸⁵
203. In 2014 the Victorian Government began to consider reforms to the Act and started another round of intensive consultation. Traditional Owners urged the Government to enact legislation to protect their traditional knowledge, their music, stories, dance and languages. In 2016, when I was Minister for Aboriginal Affairs, the Government enacted Australia’s first explicit legal protection for this heritage, increasing Traditional Owners’ control over their cultural heritage. Victoria remains the only jurisdiction in the nation with explicit legal protection for Aboriginal intangible cultural heritage.

6.2 The operation of the Act

204. The AHA ensures decision-making over cultural heritage is placed in the hands of Traditional Owners through the Victorian Aboriginal Heritage Council and the Registered Aboriginal Parties process. The Council, which replaced the former Archaeological Relics Advisory Committee, is a statutory authority, composed entirely of Traditional Owners, with the power to determine the

¹⁷⁹ Hon. Jim Kennan (Minister responsible for Aboriginal Affairs), Letter to Hon. Clyde Holding (Minister for Aboriginal Affairs (Cth)), 4 December 1986, incorporated into Hansard: Victoria, *Parliamentary Debates*, Legislative Council, 4 December 1986, 1592 (Hon. J.H. Kennan, Minister for Planning and Environment).

¹⁸⁰ Part IIA inserted by the *Aboriginal and Torres Strait Islander Heritage Protection Amendment Act 1987* (Cth). https://www8.austlii.edu.au/cgi-bin/viewdb/au/legis/cth/num_act/aatsihpaa1987629/

¹⁸¹ *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth), Part IIA (Cth), s 21U(3) and (4). See previous version of Act at <https://www.legislation.gov.au/Details/C2004C01531>

¹⁸² *Ibid*, Part IIA, s 21A.

¹⁸³ Environment and Natural Resource Committee, *Inquiry into the Establishment and Effectiveness of Registered Aboriginal Parties* (Parliament of Victoria, 2012), 12, <https://vpls.sdp.sirsidynix.net.au/client/search/asset/1263865>; *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth), Part IIA, s 21A. See previous version of Act at <https://www.legislation.gov.au/Details/C2004C01531>

¹⁸⁴ “Statement,” Victorian Traditional Owners Land Justice Group, 2, accessed 18 December 2023, <http://www.landjustice.com.au/document/Communique-Statewide-Meeting-17-18Feb05.pdf>.

¹⁸⁵ Victoria, *Parliamentary Debates*, Legislative Assembly, 6 April 2006, 1033-134 (Johnstone Thwaites, Minister for Environment). <https://hansard.parliament.vic.gov.au/downloadhansard/pdf/Assembly/Feb-Jun%202006/Assembly%20Extract%206%20April%202006%20from%20Book%204.pdf>

right people to make heritage decisions for Country and declare them as a Registered Aboriginal Party (RAP).¹⁸⁶ Today there are 11 RAPs working to protect cultural heritage over about 75 percent of Victoria through the AHA's various protective mechanisms.¹⁸⁷

205. In 2016, the AHA was amended to enhance Traditional Owners' self-determination, including by devolving responsibility for Aboriginal Ancestral Remains and approval of cultural heritage permits to the Council and RAPs respectively.¹⁸⁸ The Council's work in both areas reflects its commitment to addressing land injustices, by supporting the process of healing for Traditional Owners through the repatriation of Aboriginal Ancestral Remains, as well as ensuring First Peoples are given due recognition as the authoritative voice on matters regarding their own cultural heritage.
206. The 2016 amendments compelled public entities such as Museums Victoria to notify the Council of Ancestral Remains in their possession within two years. Public entities were then required to take all reasonable steps to transfer Ancestral Remains into the custody of Council. Most Ancestors currently in Council's care were transferred from Museums Victoria in August 2018.
207. Since 2018, the Office of the Victorian Aboriginal Heritage Council (Council's Office) within DPC has supported Council to develop and initiate a comprehensive repatriation program. The first important step was to catalogue the more than 2,000 Ancestors in Council's care. With this phase complete, Council has endorsed a repatriation plan that prioritises the return of Ancestral Remains to Registered Aboriginal Parties (RAPs). The repatriation program provides for six repatriations to RAPs in the 2023-24 financial year. To date, Council has actioned five legal transfers of Ancestral Remains in its care belonging to:
- a. Barengi Gadjin Land Council Aboriginal Corporation
 - b. Dja Dja Wurrung Clans Aboriginal Corporation
 - c. Gunaikurnai Land and Waters Aboriginal Corporation
 - d. Wadawurrung Traditional Owners Aboriginal Corporation
 - e. Yorta Yorta Nation Aboriginal Corporation.
208. In July 2023, the Council and the former Minister for Treaty and First Peoples established the Ancestral Remains Repatriation Fund. The Fund permits eligible RAPs to apply for up to \$30,000 for any activity associated with their Ancestors' repatriation journey. Council has received three applications from RAPs which are currently being assessed and is expecting two more applications imminently.
209. Council has continued its collaborative relationship with the University of Melbourne (UoM), underpinned by a Memorandum of Understanding (MoU) that was signed in October 2022. The MoU defines the partnership between Council and UoM, as it relates to repatriation of objects in UoM's care and Ancestors in Council's care that were once part of the Donald Thompson Collection. The 'pilot project' under the MoU was the repatriation of Ancestors belonging to the Gupapuyŋu Yolŋu Clan (including but not limited to Birrkili, Daygurrurr and Liyalanmirri Gupapuyŋu Clans). In 2023, Council approved the legal transfer of 13 Ancestors to the Gupapuyŋu Clan Alliance. In late 2023, Council approved the repatriation of two Ancestral

¹⁸⁶ *Aboriginal Heritage Act 2006* (Vic), sections 132(2)(a) and 151, <https://www.legislation.vic.gov.au/in-force/acts/aboriginal-heritage-act-2006/027>

¹⁸⁷ "Victoria's Registered Aboriginal Parties," Victorian Aboriginal Heritage Council, accessed 13 December 2023, <https://www.aboriginalheritagecouncil.vic.gov.au/victoria-registered-aboriginal-parties>.

¹⁸⁸ *Aboriginal Heritage Amendment Act 2016* (Vic), sections 10-18 (Aboriginal Ancestral Remains) and section 31 (permits). <https://www.legislation.vic.gov.au/as-made/acts/aboriginal-heritage-amendment-act-2016>

Remains to Weipa West Cape York Traditional Owners. Community representatives from Weipa travelled to Melbourne in October 2023 to physically collect one of the remains.

210. Council is currently working with the South Australian Museum (SAM) on: (i) the transfer to SAM of 273 Ancestors provenanced to specific Traditional Owner groups in South Australia; and (ii) the transfer to SAM of 45 Ancestors provenanced to SA but 'Locality Unknown'.
211. The repatriation of Ancestral Remains is highly sensitive work that requires Traditional Owner groups to reach consensus within community about their Ancestors return journey to Country. Further, when it comes to Ancestors provenanced to non-RAP areas, the rightful Custodians may be unknown or disputed. Until the 'right people for Country' have been recognised, privileging one group in repatriation over others may be harmful to community and undermine Council's important task of appointing RAPs to that Country. Some Traditional Owner groups may also not be ready to undergo repatriation due to a lack of adequate facilities for safekeeping or appropriate options for reinterment.
212. I understand the Council's Office works alongside Traditional Owner groups to understand any obstacles and provide a way forward. For example, Council's Office prepares Traditional Owner Reports with key data sets, provenance information and mapping; supports groups with interment site integrity, suitability, access, safety; negotiate land access with public land managers; helps with meeting any regulatory requirements (e.g. relating to interment in historic cemeteries); assists with the preparation of grant applications and Cultural Heritage Permits for internment of Ancestors at an Aboriginal Place; and helps to finalise registrations for the ongoing protection of burial sites.
213. The 2016 amendments also established the first system to protect Aboriginal intangible cultural heritage. This includes measures to protect traditional intellectual knowledge from unauthorised commercial exploitation, in recognition of the gap in copyright and intellectual property law.¹⁸⁹
214. The AHA is one of only two protection regimes in Australia where Traditional Owners are the primary decision makers on applications to develop land that will damage Aboriginal heritage.¹⁹⁰ In Victoria, RAPs make these decisions every day and their decisions are only reviewable by the Victorian Civil and Administrative Tribunal (VCAT).¹⁹¹ Mr. Lloyd's response to the Commission's Request for Information addresses how the Charter is applied to departmental

¹⁸⁹ *Aboriginal Heritage Act 2006* (Vic), Part 5A. <https://www.legislation.vic.gov.au/in-force/acts/aboriginal-heritage-act-2006/027>

¹⁹⁰ *Aboriginal Cultural Heritage Act 2003* (Qld), sections 107 and 120.

<https://www.legislation.qld.gov.au/view/html/inforce/current/act-2003-079> – Department Chief Executive decides on CHMPs, Minister may overturn decision; *Aboriginal Heritage Act 1972* (WA), sections 18(3) and 18(5).

https://www.legislation.wa.gov.au/legislation/statutes.nsf/main_mrtitle_3_homepage.html – Minister decides consents, Tribunal review available; *Aboriginal Heritage Act 1988* (SA). Sections 19I, 21 and 23.

<https://www.legislation.sa.gov.au/lz/path=%2Fc%2Fa%2Faboriginal%20heritage%20act%201988> – Minister decides agreements, consents, no specific appeal; *Heritage Act 2004* (ACT). Section 61G, 60, 60(2).

<https://www.legislation.act.gov.au/a/2004-57> – ACT Heritage Council (9 members, at least 1 Aboriginal member) decides Statements of Heritage Effects (CHMPs) and advises planning department about its approvals (planning department approves development). Council may appeal decision to approve development to Tribunal; *Northern Territory Aboriginal Sacred Sites Act 1989* (NT), sections 19B, 30-32. <https://legislation.nt.gov.au/en/Legislation/NORTHERN-TERRITORY-ABORIGINAL-SACRED-SITES-ACT-1989>. AAPA decides development consents, Minister can override AAPA decision; *Aboriginal Heritage Act 1975* (TAS), section 14. <https://www.legislation.tas.gov.au/view/html/inforce/current/act-1975-081> – Minister decides consents, no review process specified.

¹⁹¹ When the AHA was enacted, it also amended the VCAT Act to make sure that when VCAT hears a matter related to Aboriginal cultural heritage, the Tribunal must be constituted of a member (or members) who have "sound knowledge of, and experience in, Aboriginal cultural heritage." *Aboriginal Heritage Act 2006* (Vic), Section 116.

<https://www.legislation.vic.gov.au/in-force/acts/aboriginal-heritage-act-2006/027>; *Victorian Civil and Administrative Tribunal Act 1988* (Vic), Schedule 1, Part 1A. <https://www.legislation.vic.gov.au/in-force/acts/victorian-civil-and-administrative-tribunal-act-1988/136>.

decision-making with respect of Aboriginal Cultural Heritage (Question 24) (DPC.0013.0001.0019).

215. The AHA has also delivered on its second aim of providing a clear, consistent process for land users to assess the impact of development proposals on Aboriginal cultural heritage.¹⁹² The AHA requires an assessment to be completed in the early stages of a development proposal to ensure that Traditional Owners and proposal proponents can discuss and agree how to avoid or minimise impacts on Aboriginal cultural heritage before the development commences. Planning and other statutory approvals cannot be obtained if a Cultural Heritage Management Plan is required but not approved.¹⁹³
216. This process provides certainty to project proponents on how Aboriginal cultural heritage protection may alter their proposal, and protects them from reputational damage stemming from inadvertent destruction of cultural heritage. It also mitigates the risk of additional cost and time delays for proceeding without a Cultural Heritage Management Plan, because Aboriginal heritage places discovered during development may hold up, and potentially permanently halt, that activity.¹⁹⁴
217. I would like to share some examples of how the AHA has worked to protect Aboriginal cultural heritage, and how the cultural heritage protection regime has developed over the years.
218. The first example is the Sunbury Rings, three large earthen rings, created by Aboriginal people. They are part of Aboriginal cultural values that existed across the landscape before Europeans settled in the area. I understand that the Sunbury Rings are of great cultural significance to the Wurundjeri People. The archaeological bias of the system in the 1980's resulted in Government managing and protecting each individual ring as a discrete Aboriginal place. Because the space between the rings was not considered an integral part of that place, a housing development was allowed to encroach among and between the rings, obscuring each from the other, resulting in a diminishing of the cultural values of the landscape. Today, mainly due to the greater influence of First Peoples in decision-making in the Aboriginal cultural heritage space, the Sunbury Rings would be protected and managed as a cultural landscape.
219. The second example, a cultural landscape, is Anakie Youang near Geelong on Wadawurrung Country. At the base of two hills is a quarry which has been operating for many decades. In 2014, the quarry sought permission to expand its operations. Previously, the Wadawurrung People were not consulted on the location of the quarry. At the time of the proposed expansion, the Wadawurrung objected to the quarry expansion as this would have removed a substantial part of the hills which form part of Wadawurrung Creation narratives and therefore have cultural significance. Given this cultural significance, Anakie Young was registered as an Aboriginal place in 2017 under the AHA. This registration is significant because it was based largely on Traditional Owner knowledge, in recognition that Traditional Owners' oral history and knowledge systems are as valid as archaeological evidence in establishing cultural heritage value. 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.

¹⁹² *Aboriginal Heritage Act 2006* (Vic), sections 42-45A, <https://www.legislation.vic.gov.au/in-force/acts/aboriginal-heritage-act-2006/027>

¹⁹³ *Ibid*, section 52. Note: Queensland applies a similar restriction, but only for activities that require environmental impact statements or other environment assessment, and even then, allows for those approvals to be granted first, with a *condition* that a CHMP is approved – *Aboriginal Cultural Heritage Act 2003* (Qld), sections 87 and 88.

<https://www.legislation.qld.gov.au/view/html/inforce/current/act-2003-079>. The ACT legislation also provides a limited prevention of works occurring under another approval, but does not prevent that approval from being granted: *Heritage Act 2004* (ACT), section 611. <https://www.legislation.act.gov.au/a/2004-57>

¹⁹⁴ Aboriginal Victoria and PwC, *Aboriginal Heritage Regulatory Impact Statement* (PwC, 2018), xiii.

220. The third example I would like to share is *Ghow Swamp*. Ghow Swamp is a large wetland located approximately 215 kilometres north of Melbourne, near the town of Leitchville. I understand that it is an immensely significant place for Yorta Yorta People, and contains many Aboriginal cultural heritage values. This includes what are considered to be the world's largest known grouping of Late Pleistocene Aboriginal Ancestral Remains, which have been dated to 9,000 to 13,000 years old. Given its cultural significance, my predecessor as Minister for Treaty and First Peoples made an Ongoing Protection Declaration over Ghow Swamp in September 2022. This is the largest of the three such declarations in Victoria, applying over 3,177 hectares. These Declarations are only made over areas of the State where Traditional Owners have advised me that special management of such areas is needed to maintain the relationship between Traditional Owners and Country.
221. Ongoing Protection Declarations may impose restrictions on activities that can occur within the boundaries of their areas. The Traditional Owners of Ghow Swamp were critical to the process of developing the protective measures applied by this Ongoing Protection Declaration. The Ongoing Protection Declaration was also preceded by consultation with organisations and individuals considered likely to be affected by the proposal. This guided development of the protections and minimised their impact on economic and recreational activities such as picnics, birdwatching and fishing. The protection measures apply primarily to Crown land to limit the expansion of infrastructure development and prohibit some activities that can degrade the Aboriginal cultural landscape, such as cattle grazing on the foreshore, rubbish dumping and uncontrolled boat launching.¹⁹⁵

6.3 Opportunities and challenges

222. I believe that Victoria's Aboriginal cultural heritage protection and management system is strong in terms of both Aboriginal rights and regulation of industry behaviour.¹⁹⁶ This system is the only planning system in Australia where other statutory approvals are prevented if a Cultural Heritage Management Plan is required and not approved.¹⁹⁷ The AHA places Traditional Owners in a position of real decision-making in the protection of cultural heritage and land use through the development process.
223. Nevertheless, I acknowledge that we can and must do more to ensure the AHA better reflects First Peoples' right to self-determination. I understand, given the widespread destruction of Aboriginal cultural heritage as a result of colonisation, Traditional Owners, Registered Aboriginal Parties and the Victorian Aboriginal Heritage Council desire clearer powers to proactively protect their culture today. I recognise the work of the Victorian Aboriginal Heritage Council

¹⁹⁵ State of Victoria, "Ongoing Protection Declaration for Ghow Swamp Aboriginal Place," First Peoples – State Relations, last modified 6 October 2022, <https://www.firstpeoplesrelations.vic.gov.au/proposed-ongoing-protection-declaration-ghow-swamp-aboriginal-place>

¹⁹⁶ "The National Native Title Council considers the legislation as best-practice, noting that it comes the closest of all jurisdictions to embedding the legal norms of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). The Minerals Council of Australia submitted that it considers that Victoria is 'leading the way at a national level': Parliament of Australia, Joint Standing Committee on Northern Australia, *A Way Forward – Final Report into the Destruction of Indigenous Heritage Sites at Juukan Gorge*, (Canberra: Commonwealth of Australia, 2021), 112, https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/024757/toc_pdf/AWayForward.pdf;fileType=application%2Fpdf

¹⁹⁷ *Aboriginal Heritage Act 2006* (Vic), section 52. <https://www.legislation.vic.gov.au/in-force/acts/aboriginal-heritage-act-2006/027>. Note: Queensland applies a similar restriction, but only for activities that require environmental impact statements or other environment assessment, and even then, allows for those approvals to be granted first, with a *condition* that a CHMP is approved – *Aboriginal Cultural Heritage Act 2003* (Qld), sections 87 and 88. <https://www.legislation.qld.gov.au/view/html/inforce/current/act-2003-079>. The ACT legislation also provides a limited prevention of works occurring under another approval, but does not prevent that approval from being granted – *Heritage Act 2004* (ACT), section 61I. <https://www.legislation.act.gov.au/a/2004-57>

(Council) including in its report *Taking Control of Our Heritage*. I am committed to continuing to work with the Council and Traditional Owners, alongside industry and other parties, on the continued and strengthened protection of Aboriginal cultural heritage under the AHA as we work together towards this goal.

224. The Department of Premier and Cabinet's response to the Commission's Request for Information outlines the key impediments to the protection of Aboriginal cultural heritage (Question 18) (DPC.0013.0001.0001), and I wish to expand on them in my statement. I acknowledge that the pace of development in Victoria, as our population continues to expand, has made the State's cultural heritage regime highly reactive. I also acknowledge that instead of advancing plans for strengthening of their cultural heritage, Traditional Owners' efforts may be often focused on minimising harm caused by development and other land uses.¹⁹⁸ I recognise the need to better support Traditional Owners to exercise their decision-making powers under the AHA in order to address this issue.
225. Western colonial conceptions of land, natural resources and cultural heritage influence the operation of Victoria's cultural heritage regime. This can result in a focus on the individual places and objects themselves, rather than their cultural values. While this has served well to protect such places and objects of significance, it does not fully protect other cultural values important to Aboriginal people and does not reflect the extent of Traditional Owner obligations to preserve and protect Country in its entirety.
226. All legislative schemes raise practical challenges as part of their implementation as they balance a variety of interests and purposes. One such example is the interaction between the AHA and the Western highway duplication. This matter highlights the need to ensure that Aboriginal heritage can be protected while allowing an important development to occur. Extensive consultation work has been undertaken with the Djab Wurrung community for several years, including with the former Registered Aboriginal Party, Martang Pty Ltd as well as the current RAP, Eastern Maar Aboriginal Corporation. The Government worked with the Aboriginal community (Martang and Eastern Maar representatives) on localised design changes to the Western Highway duplication, to ensure 16 culturally significant trees are retained along the alignment. A further Cultural Heritage Management Plan is being completed and will determine further protections that are required as approved by Eastern Maar.
227. Victoria's Aboriginal cultural heritage protection regime could also be strengthened by better recognising and protecting intangible cultural heritage. While the AHA protects intangible forms of cultural heritage such as knowledge, this is a preliminary step.¹⁹⁹ The provisions protecting intangible cultural heritage are also not being widely used and are not fully understood, with only one example of traditional knowledge being registered to date. I suspect that this may be because the Aboriginal Heritage Register is still operated by the Victorian Government, even though access to the Register is limited by Traditional Owner permissions.²⁰⁰ I recognise that many Traditional Owners may understandably be reluctant to entrust the Victorian Government with the protection of sensitive, intangible cultural heritage.²⁰¹

¹⁹⁸ Victorian Aboriginal Heritage Council, *State of Victoria's Aboriginal Cultural Heritage Report 2016-2021* (Rosebery: Terri Janke and Company, 2021), 143, <https://content.vic.gov.au/sites/default/files/2022-09/VAHC-State-of-Victorias-Aboriginal-Cultural-Heritage-Report-2016-2021.pdf>.

¹⁹⁹ *Aboriginal Heritage Act 2006* (Vic), Part 5A. <https://www.legislation.vic.gov.au/in-force/acts/aboriginal-heritage-act-2006/027>.

²⁰⁰ *Ibid*, section 79C.

²⁰¹ Victorian Aboriginal Heritage Council, *State of Victoria's Aboriginal Cultural Heritage Report 2016-2021*, (Rosebery: Terri Janke and Company, 2021), 105-106, <https://content.vic.gov.au/sites/default/files/2022-09/VAHC-State-of-Victorias-Aboriginal-Cultural-Heritage-Report-2016-2021.pdf>

228. It is worth reflecting on the significance of the AHA's intent in protecting Aboriginal intangible heritage. It is no small thing that Victoria is the first jurisdiction to explicitly protect this heritage in Australia and the second Commonwealth jurisdiction to do so, after Quebec in 2011.²⁰² As I stated in my second reading speech in 2015, 'Victoria's rich Aboriginal culture has significantly shaped our values and traditions — from our music, art and stories to environmental management practices and even the development of Australian Rules football. The influence of Aboriginal culture on Victorian society has not been properly acknowledged in our past, and it is important we recognise its value in the future.'²⁰³ The intent of the Act is to protect Aboriginal intangible heritage from commercial exploitation, to promote agreements between Traditional Owners and people wishing to use traditional knowledge and to empower Traditional Owners to control what happens to their traditional knowledge.
229. I regret that the Aboriginal intangible heritage provisions have not yet been used to their full potential. Government can improve this by informing communities about these provisions and addressing Traditional Owner's fears, particularly about the security of sensitive cultural information. We can also work harder to ensure and communicate that Government involvement is limited to providing the necessary technical infrastructure and legal frameworks. Government has no interest in controlling information about sensitive Aboriginal intangible heritage. We do, however, have a strong interest in helping Traditional Owners to protect it from commercial exploitation and misuse. We will continue to work with Traditional Owners to improve the Act's intangible heritage provisions beyond the first incremental but significant steps we have already taken.
230. I understand that the Commission has requested that I speak to State activities in relation to Keeping Places. I understand Keeping Places to be facilities that provide culturally appropriate places for Traditional Owners to hold, store and display objects of Aboriginal cultural heritage as they see fit. They are often places that hold returned material taken from Traditional Owners in the past, in many cases without their consent. The Government has assisted Traditional Owners to plan, establish and maintain such places through the Aboriginal Community Infrastructure Program, and has provided funding to build the Budj Bim Keeping Place. There is, however, no dedicated program to support the operations of Keeping Places.
231. I appreciate the significance of Keeping Places for Traditional Owners and therefore look forward to considering the Commission's recommendations. The Department of Premier and Cabinet's response to the Commission's Request for Information provides additional detail on the establishment and operation of Keeping Places (Question 38), government support provided to them (Question 39) and the associated challenges and opportunities (Question 40) (DPC.0013.0001.0001).
232. I believe that better integrating Aboriginal cultural heritage values into the Victorian cultural heritage system is more likely to occur if we provide Traditional Owners with a more significant, independent role in overseeing the system. Understanding the broader cultural values of large areas of Victoria – both lands and waters – is also required before these values can be factored into strategic land use and development decisions. The State's role in this respect is to support Traditional Owners to research and educate the broader public around the significance of Aboriginal landscapes, if appropriate to do so.

²⁰² *Cultural Heritage Act 2011* (Quebec), Chapter III, Division II

²⁰³ Victoria, *Parliamentary Debates*, Legislative Assembly, 11 November 2015, 4314 (Hon. Natalie Hutchins, Minister for Aboriginal Affairs). https://hansard.parliament.vic.gov.au/images/stories/daily-hansard/Assembly_2015/Assembly_Daily_Extract_Wednesday_11_November_2015_from_Book_16.pdf

233. Consultation and awareness raising among all key stakeholders in lands and waters is also needed to ensure that the regime operates as intended. I understand that it is the State's role to make the AHA as clear as possible, so that it may be understood by all stakeholders and that Traditional Owners are appropriately supported to exercise their powers under the AHA.
234. I recognise that the State needs to do better in raising awareness amongst stakeholders, including RAPs, about the full range of protective mechanisms under the AHA and their potential benefits. For example, under the AHA, landowners are able to make cultural heritage agreements with RAPs about managing Aboriginal places on their lands. These agreements provide ongoing protection for places of Aboriginal cultural heritage significance on private land and promote closer relationships between private landowners and Traditional Owners. However, these provisions of the AHA are not used. I am committed to working with all stakeholders to ensure that the AHA's provisions are understood and appropriately used to achieve the legislation's aims.
235. 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.
236. Broader acceptance and understanding also helps to shield Aboriginal people from unjustified attacks. I have heard first-hand about the harm to Wotjobaluk Peoples, including direct acts of racism against Barengi Gadjin Land Council members, due to misinformation about the 2022 Recognition and Settlement Agreement signed between the State and the Wotjobaluk Peoples. We must do more to ensure that our communication with the broader community reinforces the benefits of protecting First Peoples' cultural heritage and speaks to the strengths of the oldest cultures in the world.
237. Victoria's Aboriginal cultural heritage protection system and its underpinning legislation is nation leading. It is a model for the rest of the nation. But more needs to be done to improve Aboriginal self-determination, fully realise the aspirations of Victorian Traditional Owners, the intent of the Victorian Human Rights Charter and the UN Declaration on the Rights of Indigenous Peoples, and to improve and strengthen the protection and management of unique Aboriginal cultural heritage in Victoria for generations to come. More also can be done to enhance all Victorians' understanding of and support for the protection of cultural heritage.

Part 7: The Traditional Owner Settlement Act 2010

7.1 Background

238. I will now turn to the legislation and policy that speaks directly to compensation, rights and redress for the loss of Country in Victoria. Here, too, I understand a legislative response took a long time to gain momentum. I acknowledge that Traditional Owners have communicated to me that land justice outcomes remain both insufficient and slow.
239. It wasn't until the passage of the *Traditional Owner Settlement Act* (TOS Act) in 2010 that Victoria had a comprehensive and systematic approach to seeking to redress land injustice experienced by Victorian Traditional Owners. I want to spend some time considering that legislation, what it has delivered and, importantly, how the State can do more to deliver more just outcomes for Victorian Traditional Owners.

240. Before the passage of the TOS Act, returns of land to Traditional Owners and Aboriginal organisations in Victoria were ad hoc, and not part of a systemic approach to providing recompense for dispossession. Some grants of land to Aboriginal Community-Controlled organisations and Traditional Owners occurred from the 1980s. For example, land was transferred in 1982 to the Victorian Aborigines' Advancement League and in 1992 to the Murray Valley Aboriginal Co-operative Limited.²⁰⁴ Leases have also been used to enable Aboriginal control over lands such as the Echuca Courthouse and the site of the Victorian Aboriginal Health Service in Fitzroy, among others. Whilst very modest, these grants of land were important. They provided land to Aboriginal people to carry out cultural business and supported Aboriginal communities to promote health and social wellbeing in their communities. Nevertheless, these grants were piecemeal and not intended to address the extent of dispossession.
241. I have referred to the *Aboriginal Lands Act 1970* in part five above. I note that while that was the first legislation in Victoria to recognise First Peoples' entitlement to land, it did so only in relation to former mission land. I set out below a brief outline of the steps relevant to the development of a systemic approach to land justice in Victoria.
242. In 1982, the Victorian Government set up a Parliamentary committee to report on compensation for the dispossession of Victorian Traditional Owners. Parallel to the Committee's inquiry, in 1983 the Victorian State Government introduced the Aboriginal Land Claims Bill.²⁰⁵ The Bill acknowledged prior Aboriginal ownership of land in Victoria and that the land has spiritual, social, cultural and economic importance to present-day First Nations People.²⁰⁶ The Bill intended that an Aboriginal Land Claims Tribunal would be set up to hear and make recommendations to the government on claims by Victorian Traditional Owners to Crown land based on historical association, traditional rights and compensation for dispossession.²⁰⁷ An Aboriginal representative body was also to be appointed by the State to assist Aboriginal claimants with questions of 'right Country'.²⁰⁸ The Bill was introduced into Parliament by former Premier John Cain on 16 March 1983, but did not proceed, pending further discussion with Aboriginal communities²⁰⁹ and government's interest in waiting for the 'advice of the [Committee] before making any policy determinations'.²¹⁰
243. In 1984, the Committee recommended that the 'land rights issue' could not be resolved without the provision of compensation to Traditional Owners and proposed a minimum annual amount of \$5 million from Victorian and Federal Government revenue as compensation.²¹¹ Government provided in principle support to the Committee's recommendations, but proposals in the 1983 Bill were not revived.²¹² A subsequent attempt in 1991 to introduce an Aboriginal Land Grants

²⁰⁴ *Aboriginal Lands (Aborigines' Advancement League) (Watt Street, Northcote) Act 1982* (Vic).

<https://www.legislation.vic.gov.au/in-force/acts/aboriginal-lands-aborigines-advancement-league-watt-street-northcote-act-1982/004>; *Aboriginal Land (Manatunga Land) Act 1992* (Vic). <https://www.legislation.vic.gov.au/repealed-revoked/acts/aboriginal-land-manatunga-land-act-1992/004>

²⁰⁵ *Aboriginal Land Claims Bill 1983* (Vic). <http://www5.austlii.edu.au/au/legis/vic/bill/alcb1983187/>

²⁰⁶ *Ibid*, Preamble.

²⁰⁷ *Ibid*, sections 3 and 12.

²⁰⁸ *Ibid*, sections 7, 24 and Explanatory memorandum.

²⁰⁹ Victoria, *Parliamentary Debates*, Legislative Assembly, 16 March 1983, 3145 (Mr Cain, Premier).

<https://www.parliament.vic.gov.au/4afdae/globalassets/hansard-historical-documents/sessional/1982/19821215-19830316-hansard-combined.pdf>. Australian Law Reform Commission, 'Legislation on hunting and gathering rights', 18 October 2010. <https://www.alrc.gov.au/publication/recognition-of-aboriginal-customary-laws-alrc-report-31/35-aboriginal-hunting-fishing-and-gathering-rights-current-australian-legislation/legislation-on-hunting-and-gathering-rights/>

²¹⁰ Victoria, *Parliamentary Debates*, Legislative Assembly, 29 November 1983, 2371 (Mr. Cain, Premier).

²¹¹ Social Development Committee, *Report upon Inquiry into Compensation for Dispossession and Dispersal of the Aboriginal People* (Parliament of Victoria, 1984), 4, 36-37.

²¹² Victoria, *Parliamentary Debates*, Legislative Council, 1 May 1985, 6 (Hon. E.H. Walker, Minister for Agriculture and Rural Affairs).

Bill with measures for land redress – including establishing the parameters through which an ongoing process of land claims and transfers would operate – also did not proceed.

244. The 1983 Bill and Parliamentary Committee occurred in a broader context of the Gunditjmarra people in south-west Victoria finding new ways to assert their rights and obtain recognition. Sandra Onus and Christina Frankland led a movement to prevent the destruction of cultural sites by an aluminium smelter near Portland.²¹³ Even before Eddie Mabo and other Meriam people had brought their case before the High Court, Gunditjmarra People had brought their case before that same court to oppose the construction of the smelter.²¹⁴ The High Court recognised in 1981 that the Gunditjmarra people had a right to challenge the construction by virtue of their unique cultural identity. In response, the Victorian Government, which did not have control in the Legislative Council and was unable to gain support from the Opposition,²¹⁵ worked with the Commonwealth Government to affect the transfer of both Lake Condah and Framlingham Forest lands.²¹⁶
245. Despite the Gunditjmarra's successful challenge to Alcoa's aluminium smelter, and the recognition of the group's Traditional Ownership by the Victorian Government, there was no further Victorian Government recognition of Traditional Owner rights to land for some years afterwards.
246. This impasse continued despite the High Court's Mabo decision on 3 June 1992, in which the court found that the common law of Australia recognises rights and interests to land held by Aboriginal and Torres Strait Islander people under their traditional laws and customs.²¹⁷ It continued after the Commonwealth's *Native Title Act 1993* (Cth) commenced on 1 January 1994, which was the Federal Government's response to the High Court decision in Mabo. The Act enabled, for the first time in Victoria, a statutory process for First Peoples' claims of legal recognition of their native title rights in public lands and waters, as well as compensation for impacts on those rights since 1975.
247. The first significant move in light of the new possibilities opened by the Native Title Act was when Yorta Yorta People lodged a native title claim in Victoria on 21 February 1994. This was one of the first native title claims to be lodged in Australia following the Mabo decision, and the first in Victoria, but it was the culmination of a long history of Yorta Yorta people asserting their rights to Country.

²¹³ *Onus v Alcoa of Australia Ltd* [1981] 149 CLR 27 ("Onus case"), 1-2

<https://eresources.hcourt.gov.au/showbyHandle/1/11533>

²¹⁴ *Onus case*, <https://eresources.hcourt.gov.au/showbyHandle/1/11533>

²¹⁵ Hon. Jim Kennan (Minister responsible for Aboriginal Affairs), Letter to Hon. Clyde Holding (Minister for Aboriginal Affairs (Cth)), 4 December 1986, incorporated into Hansard: Victoria, Parliamentary Debates, Legislative Council, 4 December 1986, 1592 (Hon. J.H. Kennan, Minister for Planning and Environment).

<https://www.parliament.vic.gov.au/492eae/globalassets/hansard-historical-documents/sessional/1986/19861204-19861205-hansard-lc.pdf>; Victoria, *50th Parliament Index*, 'Members of Council', xiv. https://www.parliament.vic.gov.au/497162/contentassets/bd2371d548414a63b0b9fd0411545674/50_parliament_index_part_1.pdf

²¹⁶ *Aboriginal Lands Act (Lake Condah and Framlingham Forest) Act 1987* (Cth).

<https://www.legislation.gov.au/Details/C2016C00958>. The preamble to the Act acknowledges the prior ownership of the lands by the Kerrup-Jmara and Kirrae Whurrong people and recognises that their rights to the land had never been extinguished and that the land had been taken without compensation. Part of the settlement included \$50,000 annually for the upkeep of the mission buildings, and a \$1.5 million Trust Fund which was used to purchase three farming properties in the area. Another part of the settlement was the promised re-flooding of Lake Condah – with \$230,000 for feasibility studies and associated works, and any remaining money to be spent on the reconstruction of fish traps, stone houses, and/or, interpretive facilities. See Jessica K. Weir, *The Gunditjmarra Land Justice Story* (Canberra: The Australian Institute of Aboriginal and Torres Strait Islander Studies, 2009), 13-14, https://aiatsis.gov.au/sites/default/files/research_pub/weir-2009-gunditjmarra-land-justice-story_0_3.pdf.

²¹⁷ Providing certain criteria are met, such as proof of ongoing connection to the land claimed since the assertion of British sovereignty in 1788. *Mabo case*, 66 (Brennan J), 58-59, 76 (Deane and Gaudron JJ) <https://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/1992/23.html>

248. The Victorian Government at the time was not receptive to the Yorta Yorta claim. Following unsuccessful Federal Court proceedings in 1995 to 1998, and then an appeal to the Full Court of the Federal Court in 1999 to 2001, the claim was finally lost on appeal to the High Court in 2002.
249. In reflecting on the Yorta Yorta native title claim outcome, I am disappointed that not only did the Government fail to see this process in the context of historical dispossession, but it actively opposed the basis of the Yorta Yorta claim. In its submissions, the State stated that ‘the rights and interests contended for by the [Yorta Yorta were] incompatible with public purposes’.²¹⁸ The State’s submissions to the Federal Court were dismissive of the notion that traditional culture survived, asserting that ‘the original laws and customs of the Bangerang ancestors have disappeared with the passage of time.’²¹⁹
250. It was not until September 2001, nearly a decade after the Yorta Yorta commenced their claim, that the Victorian Government adopted a more conciliatory approach to the resolution of native title claims and issued Guidelines for Native Title Proof.²²⁰ The guidelines raised, for the first time, the possibility of the State consenting to the recognition of native title over parts of Victoria. The Guidelines signalled the State’s intention to negotiate and settle native title claims in good faith, and indicated that the high evidentiary burden that had been set in Yorta Yorta was not necessarily a barrier to the recognition of what it called ‘indigenous cultural boundaries’.²²¹ Several years later, in 2004, the Victorian Government entered into an ongoing Cooperative Management Agreement that recognised Yorta Yorta People as the Traditional Owners of certain public land along the Murray and Goulburn Rivers and in 2010 recognised the Yorta Yorta People as the Traditional Owner group for Barmah National Park.²²²
251. In February 2005, in the aftermath of the Yorta Yorta decision, a meeting of representatives from Traditional Owner groups across Victoria issued a Statement to the Government seeking a comprehensive out of court approach to land justice settlements as an alternative way of resolving native title in Victoria. As generations of Victorian Traditional Owners before them had done, Traditional Owners once again called on the Victorian Government to finally recognise their rights to Country. The statement outlined that Traditional Owners sought the return of land to the ownership of Traditional Owners, compensation funded from State revenue, a new Aboriginal cultural heritage regime and a commercial share of natural resources.²²³
252. The meeting set a course for what would eventually become the TOS Act, via a Steering Committee for the development of a Victorian Native Title Settlement Framework, chaired by Professor Mick Dodson. The committee sought to develop a framework that would deliver equitable outcomes, strengthened relationships between Traditional Owner Groups and the State of Victoria and a flexible, expedited approach to resolving native title claims. The

²¹⁸ State of Victoria, Submissions in Reply on Extinguishment Issues on behalf of the State of Victoria (2), Federal Court, 1995, 12.

²¹⁹ State of Victoria, Summary of Submissions by the State of Victoria in Relation to Native Title Issues, Federal Court, 1995, 21.

²²⁰ Native Title Unit, Department of Justice, Guidelines For Native Title Proof – Victoria, not published; 2001.

This document is held by government.

²²¹ Ibid.

²²² Yorta Yorta Nation Aboriginal Corporation and the State of Victoria, *Co-operative Management Agreement*, (Yorta Yorta Nation Aboriginal Corporation and the State of Victoria 2004),

https://www.forestsandreserves.vic.gov.au/_data/assets/pdf_file/0018/29511/Agreement2004.pdf; “Yorta Yorta Traditional Owner Land Management Agreement,” Yorta Yorta Traditional Owner Land Management Board, accessed 6 December 2023, <https://www.yytolmb.com.au/about/yyto-land-management-agreement/>

²²³ “Statement,” Victorian Traditional Owners Land Justice Group, accessed 23 November 2023,

<http://www.landjustice.com.au/document/Communique-Statewide-Meeting-17-18Feb05.pdf>

proposed framework was aimed at enabling the State to formally recognise and provide numerous tailored benefits to Traditional Owner Groups.

253. While this work towards the TOS Act was ongoing, in December 2005 the Federal Court made the first positive native title determination in Victoria by recognising rights of the Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagulk People. This was a ‘consent determination’, meaning that all parties, including the Victorian Government, consented to the Federal Court making the determination.²²⁴ Two other consent determinations followed after this with the Gunditjmarra’s native title determination in 2007, and Gunaikurnai’s in 2010.²²⁵ There were further consent determinations relating to Eastern Maar and Gunditjmarra in 2011 and Eastern Maar in 2023.²²⁶ I understand there is also now a further listing on 21 March 2024 for a further Eastern Maar consent determination.

7.2 The operation of the Act

254. The passage of the TOS Act in 2010, with bi-partisan support, was a significant move towards a fuller recognition by the Victorian Government of Traditional Owners’ ongoing rights on Country. The TOS Act has brought a more collaborative relationship with Traditional Owners towards the recognition of those rights. Mr. Cowie’s response to the Commission’s Request for Information comprehensively addresses the background to, and key objectives of, the introduction of the TOS Act (Question 2(c)) (DPC.0011.0001.0001). I am mindful that talking with the State about rights and recognition can be a painful reminder for Traditional Owners of dispossession. The State remains open to ongoing dialogue with Traditional Owner groups to ensure that agreement making under the TOS Act is both culturally informed and takes account of individual community preferences for negotiation timeframes and methods.

255. Since the time of that first Steering Committee meeting between Government and Traditional Owners, the Victorian Government has reached Recognition and Settlement Agreements under the TOS Act with four Traditional Owner groups: Gunaikurnai in 2010 (and revised in 2022), Dja Dja Wurrung in 2013 (and revised in 2022), Taungurung in 2018, and the Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagulk Peoples (WJJWJ Peoples) in 2022.²²⁷ Of these groups, two have Federal Court determinations of native title (Gunaikurnai and the WJJWJ Peoples), in addition to recognition of their Traditional Owner rights under the TOS Act. Currently, both Gunaikurnai and WJJWJ Peoples also have procedural rights under the ‘future act’ regime of the Native Title Act, as neither group has yet entered into Land Use Activity Agreements which would replace this regime. Gunaikurnai, Dja Dja Wurrung and WJJWJ Peoples have all committed to continue negotiations with the State to revise or consider entering all agreements available under the TOS Act.

²²⁴ *Clarke on behalf of the Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagulk Peoples v State of Victoria* [2005] FCA 1795 (No.2), <https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2005/2005fca1795>; “The Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagulk People of the Wotjobaluk Nations Recognition and Settlement Agreement,” First People State Relations, accessed 15 December 2023, <https://www.firstpeoplesrelations.vic.gov.au/wotjobaluk-jaadwa-jadawadjali-wergaia-and-jupagulk-people-wotjobaluk-nations-recognition-settlement-agreement>

²²⁵ Federal Court of Australia, *Lovett on behalf of the Gunditjmarra People v State of Victoria* [2007] FCA 474, <https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2007/2007fca0474>; *Mullett on behalf of the Gunaikurnai People v State of Victoria*, [2010] FCA 1144, <https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2010/2010fca1144>

²²⁶ Federal Court of Australia, *Lovett on behalf of the Gunditjmarra People v State of Victoria (No 5)* [2011] FCA 932, <https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2011/2011fca0932>; *Austin on behalf of the Eastern Maar People v State of Victoria* [2023] FCA 237,

<https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2023/2023fca0237>

²²⁷ “Agreements with Traditional Owners,” Department of Energy, Environment and Climate Action, accessed 6 December 2023, <https://www.forestsandreserves.vic.gov.au/joint-management/agreements-with-traditional-owners>

256. A Recognition and Settlement Agreement entered into between the State and a Traditional Owner group recognises that Traditional Owner group based on their traditional and cultural associations to certain land. The components of a Recognition and Settlement Agreement package offer advantages that go beyond native title recognition through the courts. The Department of Premier and Cabinet's response to the Commission's Request for Information addressed the importance of recognising Traditional Owners (Question 2(a)) (DPC.0013.0001.0001).
257. A package can include recognition of the Traditional Owner group's rights in all public lands and waters within a defined geographical boundary and the return of public land through grants of freehold and 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.²²⁸ It is a more limited form of land ownership than freehold, but one that enables Traditional Owners to access and care for Country over significant amounts of public land.
258. Settlement packages can also include ongoing procedural rights and compensation in relation to proposed future uses of public lands; funding in lieu of native title compensation for acts done prior to settlement and for the operation of a Traditional Owner corporation; access, use and management of natural resources; joint management of certain parks and reserves; and an Indigenous Land Use Agreement to address native title matters such as protecting native title from being extinguished by public works, agreeing not to make native title compensation claims, and opting out of the 'future acts' regime.
259. Over time, each of these settlements has built on the last. For instance, the settlement quantum offered to each Traditional Owner group has increased considerably since 2010 – but those groups who reached a TOS Act agreement with the State some years ago have also since been able to revisit the contents of their settlement package. Every RSA includes 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. This can result in an upgrade to the settlement package, including in relation to funding and more land and to reflect new Traditional Owner aspirations and priorities. The TOS Act was also amended in 2016 to enhance the ability of Traditional Owners to exercise their rights on public land.²²⁹
260. In relation to how the Victorian *Charter of Human Rights and Responsibilities Act 2006* (Charter) is applied to decision making under the *Native Title Act 1993* and TOS Act, I have consulted with the Department of Premier and Cabinet to ensure that the information here is legally correct, and I have referred to Mr. Cowie's response to question 24 of the Commission's Land Injustice Request for Information (DPC.0011.0001.0001). Section 38 of the Charter generally requires public authorities to always act compatibly with the Charter, as well as have proper consideration to it when making a decision under Victorian legislation and Commonwealth legislation.²³⁰

²²⁸ *Traditional Owner Settlement Act 2010* (Vic), Part 3, division 4, <https://www.legislation.vic.gov.au/in-force/acts/traditional-owner-settlement-act-2010/025>

²²⁹ *Traditional Owner Settlement Amendment Act 2016* (Vic). <https://www.legislation.vic.gov.au/as-made/acts/traditional-owner-settlement-amendment-act-2016>

²³⁰ *Charter of Human Rights and Responsibilities Act 2006* (Vic), section 38. <https://www.legislation.vic.gov.au/in-force/acts/charter-human-rights-and-responsibilities-act-2006/015>

261. The Charter recognises that Aboriginal peoples have the right ‘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.’²³¹ Public authorities must consider the Charter rights of the relevant Traditional Owner group and any other known individual or groups asserting traditional owner interests or rights in an area, when administering the TOS Act, the *Native Title Act 1993*, the *Aboriginal Heritage Act 2006 (Vic)* (AHA), agreements made pursuant to these Acts, or making any other decisions that may impact cultural rights.
262. Prior to entering into agreements under the TOS Act or the *Native Title Act 1993*, the State has regard to Charter issues (typically set out in a Charter assessment) and acts compatibly with the Charter. Usual State practice when dealing with Traditional Owner negotiations or native title claims is to have continuous regard to Charter issues along the whole journey of the matter and seek to mitigate any Charter risk by ensuring that the rights of all of those with relevant interests are properly considered at all stages. When an agreement goes to Cabinet or a Minister for endorsement or signing, the briefing papers will include a Charter assessment or Departmental advice relating to the Charter implications to inform the decision making. The assessment or advice draws on information the State holds that is relevant to the decision, including consultations with Traditional Owners. While the State does not typically make all Charter information available (given that it applies to every decision and would be a huge amount of information), Charter information and assessments can be made available through Freedom of Information (FOI) processes or through litigation.

7.3 Challenges in reaching a settlement under the Act

263. We can reflect positively on the partnership approach to the development of the TOS Act framework and recognise that the Victorian Government met many of the 2005 Statement’s aspirations. At the same time, I am aware that Traditional Owners’ calls for a greater share of land and natural resources for commercial use and water allocations have not been fully met. I acknowledge the importance of this to Traditional Owners, and the importance of the Government’s engagement on these issues to achieve land justice.
264. I understand from the Department of Premier and Cabinet that since 2010, an additional five Traditional Owner groups have entered into negotiations with the State for a TOS Act settlement, but these negotiations have not yet concluded. I am told by my Department that groups either sought to prosecute their native title recognition via the Federal Court (and may yet return to TOS Act negotiations), 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. Offers were made to one Traditional Owner group that were not subsequently accepted.
265. While dispossession did not sever Traditional Owners’ connections to Country, the State and non-State actors’ forcible removal of First Peoples from their lands and First Peoples children from their parents, among other abhorrent practices, has impacted Traditional Owner groups’ ability to define group membership and boundaries between groups and nations. A ‘threshold stage’ and accompanying guidelines were developed to ensure that settlements over Country involved the right people for Country.²³² In 2017, the long delays in achieving outcomes were

²³¹ Ibid, section 19(2)(d).

²³² State of Victoria, *Threshold Guidelines for Victorian Traditional Owner Groups Seeking a Settlement Under the Traditional Owner Settlement Act 2010*, (Melbourne: Victorian Government, 2015).
https://www.vgls.vic.gov.au/client/en_AU/search/asset/1264962/0

the catalyst for a review of the threshold stage and the guidelines. The review found that the threshold process had been protracted for all groups; Traditional Owner groups were not sufficiently resourced to engage in these processes; and there was no 'circuit breaker' in the event of a dispute.²³³

266. The State agreed on revisions to the threshold process in 2018, including further funding and resources to support Traditional Owners to meet threshold requirements and developing a model for independent case management. However, the Federal Court had indicated in late 2017 that it was not appropriate for a Traditional Owner group to make a native title application but to then seek a TOS Act outcome without prosecuting its native title claim. This raised questions for the State about duplication of effort and the simultaneous pursuit of native title and TOS Act recognition outcomes, noting that native title determinations override threshold decisions that the relevant Minister may make. The State's current policy is to not support the simultaneous pursuit of native title and TOS Act outcomes, and to adopt a customised thresholds process specific to each Traditional Owner group. However, the question of right people and right Country remains at the forefront of any decision to enter TOS Act negotiations.
267. As I have already acknowledged in part two of this statement, a Westminster system of Government and then the Victorian State was imposed on First Peoples without their consent. The State assumed ownership of First Peoples' lands, participated in the killing and removal of First Peoples from those lands and then worked to confine First Peoples to Reserves under a racist and oppressive system of State control. The State distributed the Aboriginal lands and waters to Europeans and fortunes were made off the abundance of these lands and waters, to the exclusion of Traditional Owners. As noted above, within fifty years of colonisation the entire area of Victoria had been surveyed, sold, leased, licensed or designated for a particular future purpose.
268. Now, after 189 years of settlement in Victoria, the State bears responsibilities towards all Victorians both First Peoples and the broader community. There will always be Traditional Owner aspirations that are more challenging to meet. This might be for a range of financial or policy reasons, including reasons relating to competing interests or other groups of Victorians. Where there are significant policy changes for Traditional Owners that impact other groups, there may be a balance to be struck between Traditional Owner interests and the interests of others. Returning lands and waters to Traditional Ownership also requires navigation of a complex system of ownership and regulation, requiring negotiation with multiple parties and ensuring land returned can be maintained and insured so that Traditional Owners can use the land for their own purposes.
269. The Government has approached progressing land justice by balancing the British system of property tenure and land management with Traditional Owners' connection to Country and their enduring responsibility for it. This is a difficult exercise, and the State does not always get the balance right.
270. Despite these challenges, the TOS Act has significantly increased formal recognition of Traditional Owner rights and interests related to Country. As of October 2023, rights under the TOS Act are recognised over areas totalling approximately 34,920 square kilometres of public land. Native title has also been recognised over part of this land. Under the RSAs currently in place, the State of Victoria has also returned, or committed to return, over 2,287,594 hectares to Traditional Owner Groups as Aboriginal title land to be jointly managed with the State. As of

²³³ Timothy Goodwin, *Independent Review of the Threshold Guidelines and Threshold Stage Process Under the Traditional Owner Settlement Act 2010 (Vic)*, (Melbourne: Social Ventures Australia Consulting, 2017), 34.

October 2023, the State of Victoria has also returned, or committed to return, over 756 hectares of public land by freehold grants to Traditional Owner Groups.²³⁴ However, it was intended that the TOS Act make settlements possible for all Traditional Owner groups, in recognition of the impacts of colonisation and the difficulties imposed by native title evidentiary standards. We have some way to go before all Traditional Owners are afforded recognition and rights inherent to their status as First Peoples.

271. When compared to what existed prior to 2010, I believe that the TOS Act has established a more transparent, respectful, flexible and less adversarial approach to identifying the ‘right people for Country’. It was supported by the State’s funding for the ‘Right People for Country’ program to provide a Traditional Owner-led dispute resolution service, administered by the Department of Premier and Cabinet. The first stage of entering into negotiations with the State, which encouraged Traditional Owner dialogue and engagement with their Traditional Owner neighbours, was also intended to minimise State involvement in determining those questions that are properly decided by Traditional Owners themselves: right people for right Country. I remain of the view that these were the right aims. I am hopeful that the formation of Treaty Delegations, supported by the Treaty Authority and the Self-Determination Fund, will provide a more culturally appropriate process for identifying the right people for Country.

7.4 The State response to the First Principles Review

272. In 2020 the Victorian Government, in partnership with Traditional Owners, embarked on a review of the policy settings of the TOS Act, to consider changes to the State’s offers that would better reflect and respond to the inherent rights, as well as the aspirations, of Traditional Owner groups (First Principles Review). The Review included a consideration of compensation available as part of an RSA, given that the 2019 High Court Timber Creek decision created the first judicial precedent for calculating the economic component of native title compensation in Australia.²³⁵ Once again it was Victorian Traditional Owners who led the way by identifying the key areas in which the TOS Act was considered to have not delivered on its aims.
273. The Review was conducted from February 2020 and, although it was intended to conclude in August 2020, it was not finalised until November 2023. In part this delay was due to COVID-19 restrictions but the State partners to the Review also undertook protracted consideration of some complex policy matters. In particular, the State parties to the Review gave considerable time to compensation issues – both in terms of how economic loss should be determined and how redress for suffering arising from loss of Country should be quantified in monetary terms. The State also gave particular attention to issues raised as priority matters by the Traditional Owner partners to the Review. Among these, commercial access to natural resources figured prominently. Though progress was made, these issues proved to be particularly complex and difficult to resolve. The Department of Premier and Cabinet’s response to the Commission’s Request for Information provides additional explanation for the current status of the State’s consideration of the Review (Question 21) (DPC.0013.0001.0001).
274. As identified in the Review’s final report, these and other issues require further expert advice, policy work, and establishing final government positions. In December 2023 I communicated to Paul Paton, the CEO of the Federation of Victorian Traditional Owner Corporations, my thanks to the Federation for partnering with the State in its capacity as Secretariat for Traditional Owner participants to the Review. I also acknowledged the frustration experienced by Victorian

²³⁴ Unpublished figures obtained from the National Native Title Tribunal and Department of Premier and Cabinet, Heritage.

²³⁵ *Northern Territory v Mr A. Griffiths (deceased) and Lorraine Jones on behalf of the Ngaliwurru and Nungali Peoples* [2019] HCA 7. <https://eresources.hcourt.gov.au/showCase/2019/HCA/7>

Traditional Owners caused by the delays in producing the final report which had been authorised by the Traditional Owner partners to the Review in March 2022.

275. Traditional Owners should expect that the State will respect the Terms of Reference for joint undertakings, agreed between the State and Traditional Owners in good faith. 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. This was a missed opportunity to build trust and work collaboratively with Traditional Owners on matters which I understand are deeply personal and important to First Peoples and communities. I will endeavour to ensure the next steps of this reform do not repeat these failures.
276. I communicated to the Federation the key government responses to the Review, including that the Government has now adopted the key overarching principle put forward by Traditional Owners in the Review, that offers made under the TOS Act should be fair and just. Whether a settlement is fair and just will be assessed against the extent to which the settlement promotes self-determination, meets or exceeds rights and compensation available through the *Native Title Act 1993*, and reflects the United Nations Declaration on the Rights of Indigenous Peoples.
277. In practice, this means that Traditional Owners must have adequate opportunity to engage with the State and advance their aims and aspirations during TOS Act negotiations and that the State must consider Traditional Owner proposals in good faith. In the State's engagement with Traditional Owners on land justice matters, this understanding of fairness and justness will rightfully be one of the guiding principles by which Traditional Owners will judge our success.
278. The formulae for compensation offered under the TOS Act to date have not kept pace with the High Court Timber Creek decision.²³⁶ A key Review outcome 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. The Timber Creek decision awarded a cultural loss sum to the Ngaliwurru and Nungali Peoples consistent with the particular facts of their own claim.²³⁷ An interim community benefits formulae has been developed and will deliver more just outcomes to Traditional Owners. I recognise that Traditional Owners have advocated to the Government for this redress following the landmark Timber Creek decision. This policy measure is well overdue.
279. The Government has agreed in principle to the remaining jointly agreed recommendations of the First Principles Review. An interdepartmental committee (IDC) was established early this year to further consider policy, financial and community implications of the proposed changes. The IDC will work with Traditional Owner representatives on the development and implementation of these recommendations. This further consideration includes policy work and stakeholder consultation that will be undertaken in 2024 on increasing the number of leases and licences that require negotiation with Traditional Owners and community benefits payments before they can proceed, that the commercial use of animals, except for fish, be permitted, and that a Land Use Activity Agreement does not carve out exceptions for Alpine Resorts and State Game Reserves.
280. The Government has not currently agreed to certain recommendations made by Traditional Owners in the Review. Pre-1975 compensation, for instance, was considered to be out of scope given one of the key mandates of the Review was to respond to the Timber Creek decision. Nor

²³⁶ First Principles Review Committee and the Executive Policy Owners Forum, "First Principles Review of the *Traditional Owner Settlement Act 2010*", (unpublished, 2020), 16 (DPC.0011.0003.0010). Provided to the Commission in September 2023.

²³⁷ *Northern Territory v Mr A. Griffiths (deceased) and Lorraine Jones on behalf of the Ngaliwurru and Nungali Peoples* [2019] HCA 7. <https://eresources.hcourt.gov.au/showCase/2019/HCA/7>

did the Government agree to a right to commercial use of fish and water, as these resources are fully allocated for commercial use, or nearly so. However, Government is taking steps to enable Traditional Owners' participation in the commercial water and fish regimes. The Department of Premier and Cabinet's response to the Commission's Request for Information identifies fisheries related rights provided for under the TOS Act (Question 62) (DPC.0013.0001.0001). I understand that Traditional Owners may pursue these aspirations through future Treaty negotiations.

281. Knowing the importance of a greater share of natural resources to Traditional Owners, I intend to keep an open line of communication with Traditional Owners on ways to realise their aspirations for lands and waters in Victoria. In addition to outcomes under the TOS Act, this can be by the Government responding in good faith to Traditional Owner proposals put forward in Treaty negotiations, by enabling Traditional Owners to eventually buy into existing land, water and natural resource regimes or by including Traditional Owner rights into State land and water policy and processes.
282. The State can be more creative in how it approaches land justice and work closely with local stakeholders to address their interests and concerns. The Government must also address the perception that enhancement of Traditional Owner rights comes at a risk to Government's use of lands for public purposes, and to private property interests. I will have more engagement with local governments and community members who are not full parties to TOS Act negotiations. I acknowledge the concerns some non-Aboriginal people have about losing access and rights to land and water, as well as concerns around potential delays and compliance costs of negotiating with Traditional Owners. I want to bring these groups into a broader conversation about how promoting Traditional Owner rights can co-exist with and enhance land and water management, and broader community development and prosperity.
283. I am open to considering how Traditional Owner rights on Country intersect with the complexity of land and natural resource management. Some examples of this include where there are fully allocated commercial resources for water and fisheries; where multiple existing uses of public land for economic, recreation and/or biodiversity already exist; where land otherwise available for return to Traditional Owners is contaminated; and where insurance costs in bushfire and flood prone areas is prohibitive.²³⁸
284. I want to reiterate that I understand land justice measures to date have not reached enough Traditional Owners, and have not delivered land justice as quickly as intended.
285. I recognise that the call by First Peoples for land justice is one of the longest running campaigns for justice in Victoria. I recognise the ties of Country and kinship between those Traditional Owners who now call for land justice and those ancestors from Traditional Owner communities across Victoria who have been calling for the return of their own land since Woiwurrung Ngurungaeta Billibellary petitioned the colonial government for land in 1843.²³⁹
286. The impact of dispossession of First Peoples' land and waters in the nineteenth century continues to be felt by some Traditional Owner Groups without recognised rights to land through existing schemes. When Traditional Owners have no access to land for ceremony and culture,

²³⁸ On Traditional owner rights and commercial and state interests see, Katie O'Bryan, "More Aqua Nullius? The Traditional Owner Settlement Act 2010 (Vic) and the Neglect of Indigenous Rights to Manage Inland Water Resources," *Melbourne University Law Review* 40, no. 547 (2016), 547-593, https://law.unimelb.edu.au/_data/assets/pdf_file/0005/2369588/04-OBryan-402-Post-Press.pdf; Alice Petrie, *Land and Water Rights of Traditional Owners in Victoria*, Department of Parliamentary Services, Parliament of Victoria, 3, (Melbourne: Parliamentary Library & Information Service, Parliament of Victoria, 2018), <https://apo.org.au/sites/default/files/resource-files/2018-09/apo-nid194176.pdf>

²³⁹ Giordano Nanni and Andrea James, *Coranderrk: We Will Show the Country* (Acton: Aboriginal Studies Press, 2013), 201.

have limited access to places of historical and spiritual significance, are unable to build corporate offices, housing and cemeteries for their People, and where they have little land of economic value that can generate independent income and sustain communities through the generations, we cannot say that dispossession is a thing of the past. We must address this inequity of outcomes between Traditional Owner groups.

287. I commit to continuing to work with Traditional Owners and other Ministers on better integrating First Peoples' rights, practices and knowledges into State land and water regimes – be it through progressing the First Principles Review recommendations, the review of State land policies or other means.

Part 8: My vision for the portfolio

288. Colonisation involved taking vast lands and waters of enormous value from First Peoples. This dispossession lies at the heart of many of the injustices experienced by First Peoples historically and today.
289. Dispossession was justified through an erroneous and deeply damaging ideology of racial supremacy. We must reckon with the harm that colonial violence inflicted on First Peoples; recognise the steadfast presence and persistent contributions of First Peoples in the face of it; and address the ongoing legacies that continue today.
290. Truth-telling provides an opportunity for us to develop a shared understanding of our history and of the contemporary injustices that persist and to guide the reforms needed to address them.
291. The Victorian Government is committed to preventing the recurrence of past wrongs and addressing ongoing injustices through self-determination. This includes reform of existing legislation and policy, as well as negotiated change through Treaty.
292. I reiterate my commitment to implement changes to the *Aboriginal Lands Act 1970* as recommended by the 2021 Review, and to change land-related restrictions in the *Aboriginal Lands Act 1991* in line with community aspirations. I will work with the Framlingham and Lake Tyers communities to consider further reform of the 1970 Act and bring Framlingham out of administration.
293. I will also lead the Government's response to the First Principles Review and work to make sure that the compensation and rights available to Traditional Owners are just and fair.
294. I look forward to continuing to work with the Aboriginal Heritage Council and other stakeholders to ensure the Aboriginal cultural heritage regime is self-determining and strong.
295. In relation to Victoria's whole of government Victorian Aboriginal Affairs Framework, and our commitments under the National Agreement on Closing the Gap, I will work across Government to address the critical issue of First Peoples' control and ownership of their own data and measurements of success. I will also continue to ensure the priorities put forward by ACCOs and governance forums are heard and prioritised in Victoria and on the national stage.
296. Treaty is agreement-making to ensure First Peoples have decision-making power over their healthcare, their family's housing, their kids' education, and the practice of their culture for now and into the future. The Treaty process is about coming together to make a practical agreement to change what isn't working, and make sure Aboriginal Victorians can make decisions about their own futures. This path to self-determination offers the State a chance to build a more equitable and inclusive Victoria, in which all Victorians can take pride.

297. The Government is mindful of the State's obligation to be ready to negotiate Treaties that potentially include innovative and more equitable approaches to land and water justice, environmental management, economic and community development, cultural heritage and Indigenous Data Sovereignty. While the Treaty framework does not place any limitations on what can be negotiated through Treaty, it does specify these topics and a range of others as being subject matters for negotiations.²⁴⁰
298. The Victorian Government must also be responsive to the decisions of Traditional Owners in pursuing formal recognition and must deliver outcomes that meet Traditional Owner aspirations. Traditional Owner Treaties will provide a mechanism for Traditional Owner groups to form First Peoples' Treaty Delegations and negotiate directly with the State for the recognition of their inherent rights and their connection to Country.
299. Traditional Owner Treaties can progress land justice for Traditional Owners while also contributing to regional investment and rejuvenation. At the heart of this approach there must be a critical focus on relationship-building and collaborative negotiation. This will enable Traditional Owners, the State, local governments and other stakeholders to work together towards a mutually beneficial and just future, that benefits all Victorians.
300. The State has taken significant steps to address the harm it has caused, yet injustices persist. I acknowledge that we have yet to adequately address the prevalence of interpersonal, institutional and structural racism, or fully make way for true self-determination. The Government is learning from the mistakes of the past.
301. We are on the cusp of fuller expressions of self-determination through Treaty, and what I hope will be the meaningful realisation of First Peoples' self-determination, taking into account the recommendations from the Yoorrook Justice Commission.
302. Treaty and truth offer all Victorians – Aboriginal and non-Aboriginal – an opportunity to shape a new relationship and a new future. This is an opportunity for a renewed state identity – an identity based on a shared understanding of our history, including the systemic injustices and deliberate exclusion that prevented First Peoples from practicing culture and passing on knowledge, as well as denying First Peoples of economic, social and political opportunities that all Victorians have the right to share in.
303. First Peoples' culture is rich and strong. We all have a brighter future if we can learn from Aboriginal culture, practices and ways of working. Victoria will thrive in the future if we can come to terms with the Truth of the unfinished business of our past. If we come to terms with our past, we can all be a part of a better future. Treaty is the path to getting there.
304. It is an immense privilege to be the Minister for Treaty and First Peoples at this moment in time. I am deeply indebted to the work of inspirational Aboriginal leaders and community members who have brought us to this point. I want to express my sincere thanks to First Peoples' communities for engaging in this process and for sharing their truths. I am deeply humbled by the patience and dedication of Aboriginal communities in their pursuit of justice.
305. I am acutely conscious of the enormous responsibility on the State, and myself as the Minister for Treaty and First Peoples, as we work to achieve truth and Treaty. The State must listen to First Peoples, and in turn bring the broader community along with us. As stated in the Treaty Act, future treaties should 'enhance the existing laws of this State, acknowledge the importance

²⁴⁰ See clause 25.1 and clause 25.1 in First Peoples' Assembly of Victoria and the State of Victoria, *Treaty Negotiation Framework*, 20 October 2022, <https://content.vic.gov.au/sites/default/files/2022-10/Treaty-Negotiation-Framework.pdf> (DPC.0009.0007.0073)

of culture to Aboriginal identity, bring pride to all Victorians and have positive impacts for all of Victorian society'.²⁴¹ In other words, Treaty is for everyone.

306. The process of truth-telling that this Commission has been undertaking necessarily involves the sharing of facts that many find difficult to hear. But responding to the facts must involve transformative change – we cannot continue with the status quo, because we know that it has produced injustice. I believe that with a collaborative approach, Victoria will be able to demonstrate the power of transformation through Treaty. We have been making steady progress on Treaty since 2016, and we remain committed to this work.
307. In the introduction of my statement, I referred to my aims as Minister for Treaty and First Peoples to ensure that all Traditional Owner groups have access to Country that fulfills their rightful cultural, social and economic aspirations. This is a future where Traditional Owners have access to land for ceremony and culture; to build housing for their people, and to generate collective wealth that sustains their communities and contributes to regional economies. A future where Traditional Owners can truly participate in, and enrich, the social, political and economic life of this State.
308. The State must give due respect to First Peoples' relationship with the lands, waters and resources of Victoria that we all share, and ensure that this relationship is protected and coexists with other types of public land use. I want to see a Victoria where First Peoples' places of historical and spiritual significance are valued by all, and First Peoples' culture, knowledge and heritage is celebrated as a foundational part of our State's identity. I am committed to working with Traditional Owners to ensure that First Peoples' knowledge is properly respected and valued to inform State management of lands and waters for the benefit of all.
309. I commit to working towards a future, through Treaty, where self-determination is not an aspiration, but a reality for First Peoples. A future where First Peoples and the State come together in partnership to meet the opportunities and challenges of tomorrow.
310. Thank you for the opportunity to speak frankly about this unique and complex portfolio. Thank you, Commissioners, for your work in ensuring that the truth of First Peoples' experiences is heard and recognised. A collective understanding of Victoria's past and its present will enable us all to walk together towards a better future.



The Hon. Natalie Hutchins MP

Member for Sydenham

Minister for Jobs and Industry

Minister for Treaty and First Peoples

Minister for Women

18/03/2024

²⁴¹ *Advancing the Treaty Process with Aboriginal Victorians Act 2018* (Vic), Preamble, <https://www.legislation.vic.gov.au/in-force/acts/advancing-treaty-process-aboriginal-victorians-act-2018/002>