

# Premier's witness statement

## Yoorrook Justice Commission hearing

### Introductory remarks

#### Acknowledgements

1. I acknowledge the Traditional Owners of the lands on which I live and work, the Dja Dja Wurrung and the Wurundjeri Peoples of the Kulin Nation, and I pay my respects to Elders past and present.
2. I extend that respect to all Traditional Owners and First Peoples across Victoria.
3. I acknowledge that sovereignty was never ceded and that the impact of dispossession and colonisation on Aboriginal peoples is still felt today.
4. I acknowledge that Traditional Owners' spiritual and ancestral ties to their lands and waters can never be extinguished.
5. I acknowledge the extraordinary strength and resilience of all First Peoples in Victoria, including the ongoing leadership of Aboriginal leaders and communities across Victoria in advocating and working towards a more equitable and just future.
6. First Peoples' cultures, communities, knowledge, traditions and economies have endured, and continue to grow and thrive today.
7. In making this statement, I acknowledge that:
  - a. Historical sources in this statement contain language and terms that are out of date and offensive. This includes racist language. I have kept such language in quotes to accurately record the attitudes and decision-making of the authorities at the relevant time in Victoria's history.
  - b. The Treaty Negotiation Framework (DPC.0009.0007.0073), agreed between the First Peoples' Assembly and the State of Victoria in October 2022, sets out the requirements and obligations for Treaty negotiations. In keeping with that framework, this statement does not identify specific matters that will be covered in a treaty, as that is properly a matter for that process.
8. I use the term 'First Peoples' in this statement to respectfully refer to all Aboriginal and Torres Strait Islander people in Victoria, while 'Traditional Owner' is used to refer to Traditional Owners of Country in Victoria. Other terminology, such as 'Aboriginal', is used where it is in the title of a program, initiative or organisation, or where appropriate to improve readability.

#### Opening remarks

9. Thank you, Commissioners, for the opportunity to make this statement, and to participate in this once in a generation truth-telling process on behalf of all Victorians.





10. In preparing this statement, I have consulted with subject matter experts within the Department of Premier and Cabinet<sup>1</sup> and other departments across the Victorian Government. I confirm the contents of this statement are true and correct to the best of my knowledge.
11. I became the Member for the seat of Bendigo East in 1999. This is Dja Dja Wurrung Country – Djandak. I was born and raised in the region, which the Dja Dja Wurrung have cared for over many thousands of years.<sup>2</sup> Since 1999, I have worked closely with and learned from Traditional Owners and Djaara (the Dja Dja Wurrung Clans Aboriginal Corporation). I have also been privileged to support the work of Bendigo and District Aboriginal Co-operative since my election to Parliament and draw inspiration from their leaders.
12. This statement draws on several examples from my local area, though there are of course many other examples that could also be highlighted from all over Victoria.
13. I became Premier of Victoria on 27 September 2023. As Premier I lead the Government in Parliament, am Chief Minister and Chair of Cabinet.
14. My statement sets out my understanding, as Premier, of the State's impact on First Peoples since the beginning of colonisation and illustrates how that history continues to impact First Peoples today. Of course, my statement is not a complete history – I have tried to identify and set out some of the events that have struck me as I have learned about the history of the dispossession of First Peoples in Victoria. I have then set out the steps we are taking towards a future that is healed and reconciled.
15. My ministerial colleagues have provided more detailed statements relating to their portfolios.
16. I would like to start by touching on the significance of this moment and place.
17. As Premier of Victoria, I come with a purpose, including to re-affirm the Victorian Government's commitment to truth-telling.
18. It is also my duty to listen. To listen when First Peoples tell me how the past continues to shape their present. To listen when First Peoples tell us why attempts to address injustice have fallen short, and about what needs to change to make things better.
19. We cannot move forward as a State until we develop a shared understanding of our State's history that includes the experiences of First Peoples.
20. It is also my duty as Premier to lead action to address ongoing injustices.
21. My Government is committed to delivering both immediate and enduring change, including by carefully listening to this Commission.

## First Peoples in Victoria

22. From time immemorial, First Peoples in Victoria have practised their law and lore, culture, customs and languages, and nurtured and managed Country.
23. Evidence of First Peoples' continuous occupation and culture can be found throughout Victoria. It can be found from Gariwerd (also known as the Grampians mountain range) in the West –

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<sup>1</sup> Terry Garwood, Deputy Secretary, First Peoples – State Relations; Dean Cowie PSM, Executive Director, Traditional Owner Rights & Land Justice; Shen Narayanasamy, Lead Negotiator, Treaty Negotiations & Strategy; Matthew Lloyd, Executive Director, Community Relations & Heritage.

<sup>2</sup> "Giyakiki: Our story," Dja Dja Wurrung Clans Aboriginal Corporation, accessed 21 November 2023, <https://djadjawurrung.com.au/giyakiki-our-story/>.



home to 90 per cent of Victoria's Aboriginal rock art sites – to the Bataluk Cultural Trail in the East, which passes a 170-year-old bark canoe scar tree in Bairnsdale, and in the Buchan Caves, containing artefacts from Aboriginal occupation from 18,000 years ago. And everywhere else in between.

24. Almost 43,000 places and objects of Aboriginal cultural heritage from across Victoria are currently recorded on the Victorian Aboriginal Heritage Register. These are internationally significant examples of the oldest living culture on earth – something that makes me proud to be a Victorian and to lead this State.
25. First Peoples had and continue to have complex land and water management systems, sophisticated economies, and elaborate social and political structures.
26. These systems have been internationally recognised for their ingenuity, such as the UNESCO World Heritage Site, Budj Bim. I remember touring the Budj Bim landscape in 2010 and I heard the stories of the Gunditjmara people. Hearing these stories has helped me learn about how Aboriginal knowledge complements and enriches our understanding of the history of the land and waters in Victoria, and our relationship to them.
27. Living in regional Victoria, I feel a deeper appreciation of and connection to the land where I live having learned more about local Aboriginal culture and history from the Dja Dja Wurrung People.
28. Like many Victorians, I realise that I still have a lot more to learn about our shared history and First Peoples' experiences and cultures.





# Section one – The importance of the Yoorrook Justice Commission

## 1.1 The personal significance of truth-telling

29. I grew up in a school system that did not celebrate First Peoples. I feel a sense of pride and sadness when I watch my young children learn to acknowledge Country in kindergarten and say 'Wominjeka' – pride that young people are growing up to know First Peoples' culture, but sadness that it was not part of my childhood.
30. It was not until I was well into secondary school before I started to learn formally about First Peoples' culture and history. I did not learn about the profound connection First Peoples have to land and water. I did not learn of the massacres of First Peoples, or dispossession. I certainly did not learn about First Peoples' resilience and resistance.
31. It was not until I was elected to Parliament that I met and engaged with the local First Peoples community and Traditional Owner groups, led by Raylene Harradine and Rodney Carter. They showed me the value of community-led action. They asked me to work with them to improve access to land, health and education in the local area. I supported them to access funding, and they showed me the power of community to build infrastructure that prioritises service delivery and builds cultural strength and pride. I believe these services demonstrate the power of self-determination and it is a source of pride for me to work with First Peoples from the Greater Bendigo area to support them.
32. My education continued some years later when I visited Budj Bim. I was driven around the site by a Gunditjmara man in 2010. He showed me the eel traps and the remnants of stone housing that was thousands of years old. He explained the history of the Gunditjmara and their connection to the lands and waters of the area for some 30,000 years. He also explained the significance of the water systems to the Gunditjmara, including Lake Condah and Budj Bim.
33. Budj Bim was stunning. As I drove back, I saw the walls around adjoining property that had been made from the stones taken from the dwellings built at Budj Bim and it filled me with sorrow that so much had been torn down. But the Gunditjmara had a plan, and I saw first-hand what can happen when communities are given the space and support to enact their visions. Of course today, Budj Bim is a UNESCO-listed World Heritage Site. The area is preserved and celebrated, and the wider region benefits from the increased tourism and profile that a major attraction brings.
34. My learning later in life about First Peoples' cultures contrasts quite starkly with the experience of my kids. Compared to my limited education about First Peoples' history and culture, my kids were privileged to attend Bush Kinder on Dja Dja Wurrung Country. Their learning about First Peoples' cultural practices, customs, stories and knowledge has given them a broad understanding of our native bush and flora and our local waterways and land. This continues now they are at primary school. I try to keep up with them as they teach me new words and concepts they are learning. I am continuing to learn.
35. I have watched or been briefed upon the work of the Commission as it has progressed. I have heard about the long-lasting impacts of State policies and legislation on First Peoples, and their determination in advocating for a fair and just future based on self-determination.





36. The Government has been committed to self-determination as the key principle in First Peoples policy since 2015, embedded with the commitment to Treaty in 2016.
37. To me, self-determination is about the transfer of resources and decision-making power from the State to First Peoples. Critically, there must be a shared understanding of self-determination, in which my government demonstrates that it grasps First Peoples' aspirations and the transformation required to achieve them.
38. The Treaty process is the key mechanism to enable self-determination for First Peoples in Victoria. I realise that we have a long way to go before self-determination is realised, and the road to get there will not always be smooth. We continue to work in partnership with the First Peoples' Assembly of Victoria (First Peoples' Assembly), and other Aboriginal organisations, leaders and communities on this journey.

## 1.2 First Peoples' activism and calls for truth-telling

39. First Peoples' advocacy has led to this nation-first truth-telling Commission. Since the 19th century First Peoples have been telling the State their experiences to raise awareness about the impacts of colonisation and bring about change.
40. The State's establishment of the Parliamentary Coranderrk Inquiry in 1881 was an early attempt at truth-telling. Coranderrk residents sent letters, petitions and depositions to the State about the conditions on the reserve and the Central Board's administration.<sup>3</sup>
41. The residents' efforts gained press attention leading to an Inquiry 'with a view to taking [Coranderrk] out of the hands of the Central Board and reorganising it'.<sup>4</sup> The Inquiry held 10 hearings, three on site at Coranderrk where they examined 69 witnesses, of which 22 were resident Aboriginal men, women and children.<sup>5</sup>
42. At a hearing on the reserve on 16 November 1881, Wurundjeri Elder William Barak presented a final submission to the Inquiry, a petition signed by 44 men, women and children from Coranderrk, stating their desire for freedom from the Board:
 

*We want the Board and the Inspector, Captain Page, to be no longer over us. We want only one man here, and that is Mr John Green, and the station to be under the Chief Secretary; then we will show the country that the station could self-support itself.*<sup>6</sup>
43. Coranderrk residents disputed claims about their allotment of clothing, food, wages and access to health care. Resident Thomas Dunnolly presented to the Inquiry on 18 November 1881:
 

*I have seen in the newspaper that Mr. Captain Page said that we get two suits of clothes per year. That is false.*<sup>7</sup>

<sup>3</sup> "The Coranderrk Inquiry," Minutes of Evidence Project, accessed 18 January 2024, <http://www.minutesofevidence.com.au/the-coranderrk-story/>.


<sup>4</sup> Alfred Deakin Member of the Legislative Assembly to the Chief Secretary of Victoria, 1 August 1881, on file 83/6176 Aborigines & Coranderrk Inquiry, VPRS 1226/P0 Supplementary Inward Correspondence, box 4, Chief Secretary's Department, Public Record Office Victoria, <https://prov.vic.gov.au/archive/EF611699-F427-11E9-AE98-1387AB6E63E0>.

<sup>5</sup> 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), iii, [http://www.minutesofevidence.com.au/static/media/uploads/coranderrk\\_moe\\_digitized.pdf](http://www.minutesofevidence.com.au/static/media/uploads/coranderrk_moe_digitized.pdf).

<sup>6</sup> *Ibid.*, 98.

<sup>7</sup> *Ibid.*



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44. Dunnolly wrote that the manager of Coranderrk, Reverend Strickland, had said, 'if there were a hundred words said between here and Healesville, ninety-nine were lies ... and when we tell Mr. Captain Page anything, he don't care about listening to anything said'.<sup>8</sup>
  45. The Coranderrk Inquiry minutes documented that the Central Board, as agent of the State, syphoned off profits and did not reinvest them in Coranderrk's development. Members of the Inquiry stated that the mismanagement of Coranderrk was 'partly due to the incompetency or culpable negligence of the Board and its officers', and recommended the permanent reservation of Coranderrk for Aboriginal use, which was eventually achieved in 1884.<sup>9</sup> However, the implementation of the *Aborigines Protection Act 1886* led to enormous harm against First Peoples, including those at Coranderrk. It forced those who were deemed by the State to be 'half-caste' to leave, separating families, community and people from Country.<sup>10</sup>
  46. Another example of First Peoples-led truth-telling is from the 1930s, when Yorta Yorta man William Cooper, Secretary of the Australian Aborigines' League in Melbourne, travelled Australia collecting signatures and markings from First Peoples for a petition to the Commonwealth Government. He submitted the petition in 1937, with the request that it be sent to King George VI. The petition sought action 'to prevent the extinction of the aboriginal race; to secure better conditions for all; and to afford aboriginal representation in the Federal Parliament'.<sup>11</sup>
  47. The Federal Government's Cabinet Paper in response to the petition recommended that 'no action be taken' as 'it is not seen that any good purpose would be gained by submitting the petition to His Majesty the King'. The original petition was lost or destroyed.<sup>12</sup>
  48. This was an early example of First Peoples seeking self-determination and being rebuffed without being properly heard.
  49. Most recently, First Peoples extended their hands to all Australians through the Uluru Statement from the Heart, calling for Voice, Truth and Treaty. I have heard the pain of First Peoples in Victoria following the outcome of the Commonwealth referendum in October 2023.
  50. The Victorian Government continues to listen to First Peoples' calls for change. Victoria has been on its own path to progressing Voice, Truth and Treaty since 2016. We remain committed to this work.

### 1.3 Establishment of the Commission and purpose

51. The First Peoples' Assembly represents the voices and interests of Traditional Owners and First Peoples across the State in a way that Victoria, and indeed Australia, has never seen before.
52. The *Advancing the Treaty Process with Aboriginal Victorians Act 2018* (Treaty Act) is Australia's first ever Treaty law.

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<sup>8</sup> Ibid.


<sup>9</sup> Ibid, v-vi.

<sup>10</sup> *Aborigines Protection Act 1886* (Vic), [http://classic.austlii.edu.au/au/legis/vic/hist\\_act/tapa1886265/](http://classic.austlii.edu.au/au/legis/vic/hist_act/tapa1886265/).

<sup>11</sup> National Archives of Australia, "William Cooper Petition (Cabinet Paper) 1938," A431, 1949/1591, accessed 5 December 2023, <https://www.naa.gov.au/students-and-teachers/learning-resources/learning-resource-themes/first-australians/politics-and-advocacy/william-cooper-petition-cabinet-paper-1938>.

<sup>12</sup> Ibid.



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53. Consistent with the Treaty Act, the First Peoples' Assembly was established in December 2019 to advance the Treaty process with the Victorian Government.
  54. The First Peoples' Assembly comprises 32 members to reflect the diversity of Aboriginal voices across Victoria. Its structure includes 11 reserved member seats representing each formally recognised Traditional Owner group and 22 general member seats.<sup>13</sup>
  55. In 2020, the First Peoples' Assembly recognised that 'without truth there can be no treaty', and formally called on the Victorian Government to establish a truth and justice process. That same year, the Victorian Government announced a commitment to establish this process to run in parallel with Victoria's Treaty process and designed it with the First Peoples' Assembly.
  56. The Yoorrook Justice Commission was legally established as a Royal Commission in May 2021 with a mandate to inquire into historical and ongoing injustices against First Peoples in Victoria.
  57. Building on truth-telling processes from overseas jurisdictions, the Commission's mandate is far reaching and designed to deepen community understanding of our history, help guide reforms to end injustice, and to support healing. Uniquely, it reports to both the Governor and the First Peoples' Assembly.

## 1.4 The Commission's task and legacy

58. I, as the leader of the Victorian Government, understand the enormity of the Commission's task. Each of you, in your roles as Commissioners, is creating a historic legacy by committing to this process.
59. The process of truth-telling offers a unique opportunity to correct the official historical record of the State by giving First Peoples' experiences the prominence they deserve.
60. The Commission will play a crucial role in building a deeper understanding of the shared history of all Victorians, both within government and the wider community. For all Victorians, it is an opportunity to listen, to learn, and to change. The day that the Bill to create the Treaty framework was introduced was described by Treaty Advancement Commissioner Jill Gallagher AO as:

*a day full of emotion, symbolism, and intergenerational promise. The members of the Working Group and I were invited onto the floor of the Legislative Assembly and spoke to Parliament about the importance of this Bill and the Treaty process. We carried symbols of our communities, brought message sticks, wore ochre on our faces, and Mick Harding, Co-Chair of the Working Group, sang in language. The design and passage of the legislation deeply affected many of our old people who have fought for decades to achieve genuine change, and who have lived through many broken promises of Treaty.<sup>14</sup>*

61. This Commission also has a crucial role to play in supporting Treaty negotiations.
62. This process of truth-telling demonstrates why we need Treaty: the evidence presented to the Commission shows that self-determination, and therefore Treaty, is common sense – if you listen to the people directly affected, you get better outcomes. Treaty is about ensuring that First

<sup>13</sup> Note that Yorta Yorta have chosen not to take up their reserved seat, meaning that the First People's Assembly is currently comprised of 10 reserved members and 22 general members, totalling 32.

<sup>14</sup> Jill Gallagher, 'The Work of the Victorian Treaty Advancement Commission to Bring us Closer to Treaties in Victoria,' in Harry Hobbs, Alison Whittaker & Lindon Coombes (eds), *Treaty-Making 250 Years Later* (Federation Press, 2021), 224-25.





Peoples get a say over their healthcare, their family's housing, their kids' education, and the practice of their culture now and into the future.

63. This is about making sure all Victorians can share in and feel proud of the culture, language and stories of First Peoples.
64. With two pieces of Treaty legislation having passed the Victorian Parliament in 2018 and 2022, the Government's commitment to Treaty is more than a deeply held objective, it is also a legal obligation.
65. The Government looks to the Commission to help guide the path to Treaty and self-determination, as outlined in the Commission's Letters Patent.

## 1.5 The importance of First Peoples' evidence

66. I recognise the strength of Traditional Owners, First Peoples and representatives of Aboriginal Community-Controlled Organisations who have given evidence to this Commission.
67. I have seen some of the evidence given to the Commission by First Peoples and by my Ministerial colleagues. I have found the evidence of dispossession distressing: the effects of colonisation on traditional life, the taking of land, the deliberate killings of First Peoples, the policies and legislation which controlled First Peoples' lives and kept them in poverty.
68. We know the legacy of dispossession and colonisation lives on today in systems such as child protection, where the over-representation of Aboriginal children continues, and which we are determined to change in partnership with First Peoples.
69. I have also seen in the evidence the resilience of First Peoples from colonial times to today. The determination of First Peoples, despite attempts to the contrary, to keep their culture and connection to Country alive. This too is part of the historical record that should be shared with Victorians.
70. I know that giving this evidence can be an immensely difficult and traumatic process for First Peoples and I respect the honesty, strength and determination that witnesses have demonstrated in telling their stories.
71. I particularly acknowledge the pain, anger and sadness that First Peoples have experienced as a result of the impacts of colonisation and Government policies, laws, and practices. Despite the impacts on colonisation – too often devastating for families and communities – I recognise First Peoples' ongoing resilience and strength in maintaining and protecting their connection to community, culture and Country.
72. The Commission has heard directly from Aboriginal people about their desire for self-determination and our Government is committed to strengthening our relationship with the Victorian Aboriginal community. This is critical to achieving meaningful structural reform and creating a new relationship built on trust and understanding.
73. First Peoples' contributions serve as a basis for justice and deepen all Victorians' understanding of the true history of this State.
74. For that, I say thank you with deep personal respect.





## Section two – The State’s record of history

75. This section provides a brief outline of the history of Victoria relating to land use and dispossession, drawing on the State’s historical records.

### 2.1 First Peoples were in Victoria long before British arrival

76. I cannot comment in detail on life prior to colonisation. However, I know that when the British arrived, there were people living in what we now call Victoria, with 35 to 40 cultural/language groups in defined areas of Country, comprised of 300 to 500 clan groups that form the longest continuous living cultural tradition in the world.
77. As demonstrated by the vast catalogue of places and objects on the Victorian Aboriginal Heritage Register, First Peoples were operating complex land and water management systems, economies, knowledge systems, social and cultural structures and political systems that had sustained them and their Country for tens of thousands of years.
78. Around 6,500 years ago, the lava flow from the eruption of Budj Bim (Mount Eccles) created a unique landscape that Gunditjmara people harnessed, and for six millennia they made use of an extensive hydrological engineering system to trap, contain and harvest kooyang (short-finned eels) through a system of channels, weirs and dams.<sup>15</sup>
79. We know from government archaeological surveys in Western Victoria of the evidence of artefacts, rock art, stone houses and tools that confirm the ancient and innovative nature of First Peoples’ technologies and cultures, including ‘large rock arrangements, complex fish traps near Lake Bolac and extensive complexes of stone weirs near Lake Condah’.<sup>16</sup> Our State’s own historical records prove this.
80. I appreciate the problematic nature of the State’s historical records, with observations often infected by ignorance and employing paternalistic, racist and de-humanising language to record the authors’ perceptions of First Peoples.
81. In the 1830s and 1840s, employees of the British Government observed numerous Aboriginal groups across the region and reported to the authorities to build a picture of their numbers, languages, practices, areas of occupation and ways of best ‘protecting’ them from the violence of colonisation.
82. Government surveyor Major Thomas Mitchell travelled extensively throughout the region, documenting his observations of First Peoples’ cultures and working of the land. For example, Mitchell reported from the Grampians in 1836 ‘a vast extent of open downs’ and ‘natives spread over the field, digging for roots’.<sup>17</sup>
83. In 1840, Protector William Thomas described daily life of Boonwurrung when travelling: ‘In the Kulin tribes they seldom travel more than six miles a day. For their migratory movements all are

<sup>15</sup> Commonwealth of Australia, *Australia’s Nomination of Budj Bim Cultural Landscape: World heritage nomination for inscription in the UNESCO World Heritage List* (2017), xv, available at “Budj Bim Cultural Landscape: Documents,” UNESCO, accessed 6 February 2024. <https://whc.unesco.org/en/list/1577/documents/>.

<sup>16</sup> Peter Coutts, Dan Witter, Darren Parsons and Victoria Archaeological Survey, “Impact of European Settlement on Aboriginal Society in Western Victoria,” *Aboriginal Affairs Victoria* (1977), 19.

<sup>17</sup> Thomas Mitchell, quoted in Beth Gott, “Aboriginal Fire Management in South-Eastern Australia: Aims and Frequency,” *Journal of Biogeography*, vol. 32, no. 7 (July 2005), 1204, <https://doi.org/10.1111/j.1365-2699.2004.01233.x>.



employed. Children are getting gum, killing bandicoots, getting grubs; the men hunting and scaling trees for opossums. They are mostly at the encampment an hour before sundown; the women first, who get fire and water'.<sup>18</sup> Thomas described their social rules: 'They are generous among themselves; those who have been fortunate thro' the day will distribute among those who have been unsuccessful – Those who are ill are not expected to tramp the Bush for food. If children are left orphans, those children followed the encampment ... the nearest of kin taking charge of the same – They live in the greatest of harmony among themselves'.<sup>19</sup>

84. In 1841 Chief Protector George Augustus Robinson recorded that 'native women were spread over the plain as far as I could see them, collecting pannin, murnong [yam daisy]'.<sup>20</sup> When travelling near Mount Napier, he recorded: 'The natives are still the undisputed occupants, no white man having been there to dispossess them. The people who occupy the country have fixed residences. At one village were thirteen huts. They are warm and well constructed'.<sup>21</sup>
85. Robinson was astonished at the evidence of continual occupation, commenting in July 1841 about 'ash hills' around Swan Hill – areas of elevation due to successive coals from fires in one place: 'On the elevated ground were some of the largest ash hills I had seen; they must have been the work of generations. One measured 31 yards in length, 29 in width and 2 in height, with hollow cavities for the native bivouacs and camping places'.<sup>22</sup>
86. Robinson was also surprised by the aquaculture works he found at Mount William (Duwul) in Western Victoria: 'an immense piece of ground trenched and banked, resembling the work of civilised man but which on inspection I found to be the work of Aboriginal natives, purposely constructed for catching eels ... These trenches are hundreds of yards in length ... In single measurement there must have been some thousands of yards of this trenching and banking ... The whole of the water from the mountain rivulet is made to pass through this trenching; it is hardly possible for a single fish to escape'.<sup>23</sup>

## 2.2 Terra nullius – the historical injustice underpinning dispossession

87. The first wave of British settlers began to arrive in Victoria in the 1830s without the British Imperial Government's permission. In 1835, a group of investors and businessmen formed the Port Phillip Association and sent John Batman to survey the area around Port Phillip Bay for settlement.<sup>24</sup>

<sup>18</sup> William Thomas, Report, 30 August 1839 to 29 February 1840, Box 11, Aboriginal Protectorate Records, Public Record Office Victoria, cited in M.F. Christie, *Aborigines in Colonial Victoria 1835-86*, (Sydney: Sydney University Press: 1979), 9.

<sup>19</sup> William Thomas, Report, 1 December 1843 to 1 March 1844, Box 12, Aboriginal Protectorate Records, Public Record Office Victoria, cited in M.F. Christie, *Aborigines in Colonial Victoria 1835-86*, (Sydney: Sydney University Press: 1979), 12.

<sup>20</sup> George Augustus Robinson, 24 July 1841. Ian D. Clarke (ed) *The Journals of George Augustus Robinson*, Chief Protector, Port Phillip Protectorate, Vol. 2: 1 October 1840-31 August 1841, (Melbourne: Heritage Matters, 1998), 326.

<sup>21</sup> George Augustus Robinson, 'A report of an expedition to the Aboriginal tribes of the western interior during the months of March, April, May, June, July and August, 1841, by order of His Honor, Charles Joseph La Trobe, Esq., Superintendent of Port Phillip', quoted by A. S. Kenyon, 'The Aboriginal Protectorate of Port Phillip', *Victorian Historical Magazine*, 12, 3 (1928), 149-50.

<sup>22</sup> *Ibid.*

<sup>23</sup> George Augustus Robinson, quoted in Parks Victoria, *Greater Gariwerd Landscape: Management Plan*, November 2021, 29. <https://engage.vic.gov.au/gariwerd-management-plan>.

<sup>24</sup> P. L. Brown, "Batman, John (1801–1839)," Australian Dictionary of Biography, National Centre of Biography, Australian National University, accessed 7 February 2024, <https://adb.anu.edu.au/biography/batman-john-1752/text1947>.



88. Batman claimed to have purchased 600,000 acres from the Aboriginal owners of Port Phillip Bay.<sup>25</sup> His claim was rejected by the colonial authorities in a 26 August 1835 Proclamation by Governor Richard Bourke that declared the British Crown owned the land that would become Victoria and held the sole right to buy and sell land. Copies of Batman's Treaty are held in the State Library of Victoria which are available for members of the public to go and view.
89. Governor Bourke's 1835 Proclamation reads: 'every such treaty, bargain, and contract with the Aboriginal Natives, as aforesaid, for the possession, title, or claim to any Lands lying and being within the limits of the Government of the Colony of New South Wales [...] is void and of no effect against the rights of the Crown; and that all persons who shall be found in possession of any such Lands as aforesaid, without the license or authority of His Majesty's Government, for such purpose, first had and obtained, will be considered as trespassers, and liable to be dealt with in like manner as other intruders upon the vacant lands of the Crown within the said Colony'.<sup>26</sup>
90. The British Secretary of State for War and the Colonies at the time, Lord Glenelg, wrote to Governor Bourke in support of this proclamation, stating: 'I approve of the course which you have hitherto pursued on this subject, and especially of your Proclamation maintaining the right of the Crown to the Soil on which these new Settlements have been effected'.<sup>27</sup>
91. Glenelg went on to state that recognition of First Peoples' ownership over their lands and waters, and their right to negotiate agreements with the settlers, would put First Peoples' welfare at risk: '[I am] anxious that the Aborigines should be placed under a zealous and effective protection, and that their Rights should be studiously defended, I yet believe that we should consult very ill for the real welfare of that helpless and unfortunate Race by recognising in them any right to alienate to private adventurers the Land of the Colony'.<sup>28</sup>
92. In 1836 the Governor of the Colony New South Wales (which initially included Victoria), declared the Port Phillip district open for settlement and made clear that all lands and waters in the colony were 'Crown Lands', for the Crown to alienate as it saw fit.<sup>29</sup> A public proclamation stated: 'His Majesty's Government having authorised the location of settlers on the vacant Crown Lands adjacent to the shores of Port Phillip, under the same Regulations as are now in force, for the alienation of Crown Lands in other parts of New South Wales [...] Arrangements are in progress for effecting the survey and measurement of such parts of the Land near Port

<sup>25</sup> "The Batman deed, Melbourne", 6 June 1835, State Library of Victoria, accessed 13 October 2023.

<https://www.slv.vic.gov.au/batman-deed-melbourne>; "The Batman deed, Geelong", 6 June 1835, State Library of Victoria, accessed 13 October 2023. <https://www.slv.vic.gov.au/batman-deed-geelong>.

<sup>26</sup> Richard Bourke, *Proclamation By His Excellency Major General Sir Richard Bourke, K.C.B. Commanding His Majesty's Forces, Captain General and Governor in Chief of the Territory of New South Wales and its Dependencies, and Vice Admiral of the Same*, 26 August 1835, accessed 6 December 2023, <https://www8.austlii.edu.au/cgi-bin/viewdoc/au/other/IndigLRes/1835/1.html>.

<sup>27</sup> Lord Glenelg "Lord Glenelg to Sir Richard Bourke, Despatch No. 142, 13 April 1836," in *Historical Records of Australia, Series 1, Governors' Despatches to and From England. Volume XVIII, July 1835-June 1837* (Sydney: The Library Committee of the Commonwealth Parliament, 1923), 379, <http://nla.gov.au/nla.obj-486791693>.

<sup>28</sup> Ibid.

<sup>29</sup> Richard Bourke, "Sir Richard Bourke to Lord Glenelg, Despatch No. 101, 15 September 1836," in *Historical Records of Australia, Series 1, Governors' Despatches to and From England. Volume XVIII, July 1835-June 1837* (Sydney: The Library Committee of the Commonwealth Parliament, 1923), 540-542, <http://nla.gov.au/nla.obj-486791693>.



Phillip as it may be expedient to dispose of, in the first instance, but until the same have been completed, of which due Notice will be given, no applications for purchase can be entertained'.<sup>30</sup>

93. An 1837 British parliamentary select committee report concluded the 'state' of Australia's First Peoples was 'barbarous' and 'so entirely destitute [...] of the rudest forms of civil polity, that their claims, whether as sovereigns or proprietors of the soil, have been utterly disregarded'.<sup>31</sup>
94. In 1889, the Government's ownership of Victoria was confirmed by the highest Imperial court. The Privy Council determined that the Colony of New South Wales 'consisted of a tract of territory practically unoccupied, without settled inhabitants or settled law, at the time when it was peacefully annexed to the British dominions'.<sup>32</sup>
95. This statement was taken as establishing that, in 1788, New South Wales was uninhabited. This was factually incorrect but legally the decision operated to deny recognition of previous Aboriginal custodianship of the lands until the High Court's 1992 decision in *Mabo and Others v Queensland (No. 2)*.<sup>33</sup>

## 2.3 The State's role in killings and massacres

96. Many Victorians may be unaware of the violence associated with Victoria's settlement by the British.
97. I am aware that many historians have written about frontier violence, and I am also aware of the national research project at the University of Newcastle that has recorded 49 instances of violence documented in Victorian written records in the mid-nineteenth century.<sup>34</sup> I encourage all Victorians to access the project website and, as I have done, inform themselves of the violence associated with Victoria's settlement. I am also aware that there may have been many more instances of violence towards First Peoples that were not recorded in writing because they were not witnessed by authorities and people were unwilling to speak about them.
98. Using the information from this national project, I will note some examples of frontier violence against First Peoples, including instances in which personnel employed by or at the direction of colonial authorities played a direct role in the killing of First Peoples. I do this to demonstrate that I am aware of this history of violence in Victoria. I recognise that the Commission's work offers an opportunity to further dispel the silence around frontier violence.
99. I recognise that the frontier period from the 1830s to the early 1850s was a period of conflict in which violence was widespread. This included First Peoples' resistance to settler encroachments on their land, in the form of taking sheep and sometimes killing settlers, as well as settlers and colonial authorities killing First Peoples. As the University of Newcastle project

<sup>30</sup> Alexander McLeay (His Excellency's Command) in The Sydney Gazette and New South Wales Advertiser "Port Phillip, Colonial Secretary's Office, 9 September 1836," 13 September 1836, <https://trove.nla.gov.au/newspaper/article/2206605>.

<sup>31</sup> 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), 103.

<sup>32</sup> *Cooper v Stuart* (1889) 14 App Case 286, Privy Council, accessed 29 November 2023, [http://www.bailii.org/uk/cases/UKPC/1889/1889\\_16.html](http://www.bailii.org/uk/cases/UKPC/1889/1889_16.html).

<sup>33</sup> *Mabo and Others v. Queensland (No. 2)* (1992) 175 CLR.

<sup>34</sup> "Colonial Frontier Massacres in Australia, 1788-1930 – Introduction," University of Newcastle, accessed 15 January 2024. <https://c21ch.newcastle.edu.au/colonialmassacres/introduction.php>.



shows, the loss of life among First Peoples was disproportionate as settlers were armed with guns and on horseback.<sup>35</sup> Overall, many more First Peoples were killed than settlers.<sup>36</sup>

100. Aboriginal Protectors, who were employed by the British Government to protect First Peoples from settler violence and starvation, were often involved in reporting instances of violence to the attention of the police and the courts. For example, in February 1842, six colonisers from Caramut Station shot and killed six Aboriginal people while they were sleeping with their families.<sup>37</sup> Some survivors sought refuge at the nearby Mount Rouse Aboriginal station and reported the event to the Aboriginal Protector Charles Sievwright. The Protector found the dead bodies of three women, one of whom was pregnant, a child, and a wounded woman who later died of her injuries.
101. Six men were arrested, charged and brought to trial. The jury found the men not guilty.<sup>38</sup>
102. I am aware from the University of Newcastle project that the Mounted Police and Native Police killed many Aboriginal people in response to settler complaints that they had stolen settler-owned sheep. Native Police were a contingent of Aboriginal men, including men from Victoria, led by British commander Captain Dana.
103. In 1843 at Victoria Range, the killing of Aboriginal people by settlers and Native Police was recorded in the Port Phillip Gazette: 'Captain Dana's troop fired simultaneously upon the savages four or five times, seven or eight of whom were shot dead on the spot, and many wounded; the remainder retreated to the scrub and it is supposed about twenty of their number have been shot in the affray ... About eighty sheep out of the number that had escaped being slaughtered, were driven back to the owner.' The settlers were 'in perfect ecstasies' that 'real service has been done for them'.<sup>39</sup>
104. At Fitzroy River the Native Police shot and killed 10 Aboriginal people while searching for lost sheep.<sup>40</sup>
105. Near Portland at Crawford River in 1843, Native Police were 'in pursuit' of Aboriginal people in relation to alleged stealing of sheep and were reported to have shot 'at least nine'.<sup>41</sup>
106. In another instance in July 1846, the highest authority in the colony, Superintendent Charles La Trobe, sanctioned surveyor George Smythe's punitive expedition in Aire River Estuary, Cape Otway. Between eight and 20 people were killed, including women and children.<sup>42</sup>

<sup>35</sup> "Colonial Frontier Massacres in Australia, 1788-1930 – Statistics," University of Newcastle, accessed 15 January 2024. <https://c21ch.newcastle.edu.au/colonialmassacres/statistics.php>.

<sup>36</sup> The University of Newcastle project estimated 1045 Aboriginal victims of frontier violence and eight settler victims. Ibid.

<sup>37</sup> "Colonial Frontier Massacres in Australia, 1788-1930," University of Newcastle, accessed 15 January 2024. <https://c21ch.newcastle.edu.au/colonialmassacres/detail.php?r=532>.

<sup>38</sup> *Port Phillip Gazette*, 2 August 1843, <http://nla.gov.au/nla.news-article225011583>. "Colonial Frontier Massacres in Australia, 1788-1930," University of Newcastle, accessed 15 January 2024. <https://c21ch.newcastle.edu.au/colonialmassacres/detail.php?r=532>.

<sup>39</sup> *Port Phillip Gazette*, 26 August 1843, 2. "Colonial Frontier Massacres in Australia, 1788-1930," University of Newcastle, accessed 15 January 2024. <https://c21ch.newcastle.edu.au/colonialmassacres/detail.php?r=542>.

<sup>40</sup> "Colonial Frontier Massacres in Australia, 1788-1930," University of Newcastle, accessed 5 October 2023. <https://c21ch.newcastle.edu.au/colonialmassacres/detail.php?r=543>.

<sup>41</sup> "Colonial Frontier Massacres in Australia, 1788-1930," University of Newcastle, accessed 15 January 2024. <https://c21ch.newcastle.edu.au/colonialmassacres/detail.php?r=544>.

<sup>42</sup> "Colonial Frontier Massacres in Australia, 1788-1930," University of Newcastle, accessed 15 January 2024. <https://c21ch.newcastle.edu.au/colonialmassacres/detail.php?r=743>.





107. On Dja Dja Wurrung country in the Greater Bendigo area there are many documented events of conflict between settlers and First Peoples between 1838 and 1842, some of which involved State agents such as mounted police.<sup>43</sup> Protectors stationed in the area at the Loddon reserve were explicitly directed to investigate and report violence against First Peoples.<sup>44</sup>
108. One example from the Greater Bendigo region is in 1839 – Mounted Police were sent to Captain Charles Hutton's station on the Campaspe plains to assist him to recover sheep. A group consisting of Mounted Border Police, settlers, overseers and stockmen shot at First Peoples. The police reported a death toll of six, but Hutton privately said 40 were killed.<sup>45</sup> It was reported that this was a planned reprisal for the alleged theft of sheep and killing of a hutkeeper and shepherd.<sup>46</sup>
109. These stories are difficult to hear. They are a vivid representation of the devastating impact of colonisation on First Peoples – and the way violence was needlessly and callously inflicted against men, women and children. Proper recognition of the violence that took place in the battle for control over Victoria is one of many steps towards truth-telling that we must take.

## 2.4 The State's actions to protect First Peoples from the harms of colonisation and the failure of this undertaking

110. I acknowledge that representatives of the State of Victoria made undertakings throughout the 19th and 20th centuries to protect First Peoples from the harms of colonisation, but that they failed to do so.
111. It can be difficult for Australians today to imagine how different life was at the time of first contact between Europeans and First Peoples. The early colonial concept of 'protection' was developed prior to the formal establishment of institutions and enactment of laws in Victoria. Even if they had only good intentions, the small number of government-appointed 'protectors' of First Peoples were never equipped to adequately carry out their task, given the enormous amount of territory they were asked to administer, and the lawlessness of the time.
112. In 1836 Captain William Lonsdale was appointed as police magistrate for Port Phillip. This included responsibility for the 'protection of Aborigines'.<sup>47</sup> The next year, the British Parliament, concerned with reports of violence against First Peoples in the colonies, produced a report concluding that during British colonisation, '[e]very law of humanity and injustice has been forgotten and disregarded' in the treatment of 'uncivilised fellow men' and recommended: 'the

<sup>43</sup> The involvement of mounted police in violence is supported by Depositions of George Brunswick Smyth, 6 January 1840, Dennis Leary, 6 January 1840, Edward Beach, 6 January 1840, Charles Hutton, 8 January 1840, and James Cosgrove, 24 January 1840, New South Wales State Records, NRS 905, Item 4/2511; and Henry Monro to Frederick Brunswick Russell, 26 January 1840, *Historical Records of Victoria*, vol. 2B (Melbourne: Victorian Government Printing Office, 1983) 685-86.

<sup>44</sup> La Trobe to Robinson, 31 December 1839, *Historical Records of Victoria*, vol. 2B (Melbourne: Victorian Government Printing Office, 1983) pp. 678-79.

<sup>45</sup> "Colonial Frontier Massacres in Australia, 1788-1930," University of Newcastle, accessed 15 January 2024. <https://c21ch.newcastle.edu.au/colonialmassacres/detail.php?r=508>.

<sup>46</sup> *Ibid.*

<sup>47</sup> James Bonwick, "Port Phillip Settlement" (London: Sampson, Low, Marston, Searle & Rivington; 1883), 422; Colonial Secretary, "Colonial Secretary to Lonsdale, 13 September 1836," in *Historical Records of Victoria*, vol. 2B (Melbourne: Victorian Government Printing Office, 1983), 42.





adoption of immediate measures for their protection and preservation' including in Australian colonies.<sup>48</sup> In response, the Port Phillip Protectorate was established to protect First Peoples.

### The Port Phillip Protectorate

113. In 1839, Chief Protector George Augustus Robinson came from Van Diemen's Land (Tasmania) to Victoria to oversee four Assistant Protectors who had sailed from England. The Chief Protector was instructed to establish Protectorate stations and to 'attach himself as closely and constantly as possible to the Aboriginal tribes who may be found in the District for which he may be appointed; attending them if practicable in their movement from one place to another, until they can be induced to assume more settled habits of life'.<sup>49</sup>
114. At this time Aboriginal people were defending their land from settler encroachment. As killings and massacres during this period demonstrate, the Protectorate system could not protect Aboriginal people living outside stations.<sup>50</sup> In his summary of the Protectorate in 1848, Governor La Trobe promoted a system of coercion onto stations: 'vigorous coercion has never been tried. Its employment is not consistent with the spirit of the age. But I am sure that if anything would retard the decline of the Aboriginal races of his colony and give promise of moral and physical improvement, it would be the employment of such coercion'.<sup>51</sup>
115. La Trobe said of Aboriginal children: 'nothing short of an actual and total separation from their parents, and natural associates, and Education, at a distance from the parents and beyond the influence of the habits and example of their tribe would hold out a reasonable hope of their ultimate civilisation'.<sup>52</sup>
116. Views such as these informed often racist and paternalistic policies, the effect of which are felt to this day.

### The Victorian Aboriginal Reserve system

117. Two decades later, in 1858, after the initial Protectorate stations were closed, a Victorian Parliamentary Committee was tasked with inquiring into 'the present condition of the Aborigines of this Colony, and the best means of alleviating their absolute wants'.<sup>53</sup>
118. The Committee was led by a former Member of the Victorian Legislative Council who believed that 'higher' races had a duty of care for 'inferior' races.<sup>54</sup>

<sup>48</sup> Aborigines Protection Society, *Report of the Parliamentary Select Committee on Aboriginal Tribes, (British Settlements)* (London: William Ball, Aldine Chambers, Paternoster Row, and Hatchard & Son Piccadilly, 1837), xi.

<sup>49</sup> Lord Glenelg, "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, 1838," Public Record Office Victoria, VPRS 4409, Unit 1, <https://prov.vic.gov.au/archive/VPRS4409>. Also found in Michael Cannon, ed., *Historical Records of Victoria: Foundation Series, Volume 2B, Aborigines and Protectors 1838-1839*, 374-75.

<sup>50</sup> "Colonial Frontier Massacres in Australia, 1788-1930 – Introduction," University of Newcastle, accessed 18 December 2023, <https://c21ch.newcastle.edu.au/colonialmassacres/introduction.php>.

<sup>51</sup> Charles Joseph La Trobe, "La Trobe to Colonial Secretary, 18 November 1848," in N.S.W. Select Committee on the Aborigines and Protectorate (1849), appendix p.9, quoted in Michael Christie, *Aborigines of Colonial Victoria, 1835-86*. (Sydney: Sydney University Press, 1979) 134.

<sup>52</sup> Ibid.

<sup>53</sup> Select Committee Upon Protection to the Aborigines, *Report from the Select Committee of the Legislative Council on the Aborigines*, Victorian Parliamentary Papers, (Melbourne: Government Printer, 1859), iii, [https://ajatsis.gov.au/sites/default/files/docs/digitised\\_collections/remove/92768.pdf](https://ajatsis.gov.au/sites/default/files/docs/digitised_collections/remove/92768.pdf).

<sup>54</sup> Public Records Office Victoria and National Archives of Australia, *walata-tyamateetj: A guide to Government Records about Aboriginal People in Victoria*, 2014, 13, <https://prov.vic.gov.au/walata-tyamateetj-research-guide>.



119. The Committee reported population decline since the colonisation of Victoria of 'six to seven thousand Aborigines distributed over its area. So great has been the mortality amongst them, however, that so far as can be ascertained, there are not more than a few hundreds remaining, who are in a state of abject want, with the exception of the Yarra and Western Port Tribes, under the immediate charge of the Guardian of the Aborigines and a few who settled on or near the old Aboriginal station at Mount Franklin'.<sup>55</sup>
120. The Committee recognised that 'great injustice has been perpetrated upon the Aborigines – that, when the Government of the Colony found it necessary to take from them their hunting grounds and their means of living, proper provision should have been made for them'.<sup>56</sup>
121. It further concluded that, 'with the exception of the Protectorate, which was an emanation of the Imperial Government, and which seemed to have only been partially successful, little or nothing has been done for the black denizens of the country'.<sup>57</sup>
122. The 1858 Committee recommended establishing reserves on First Peoples' traditional hunting grounds as the only option that would induce them to settle on the reserves and recommended that 'ample supplies of provisions and blankets should be provided for these establishments until they could be made self-supporting'.<sup>58</sup>
123. Acting on the Committee's recommendation, in 1860 Victoria became the first jurisdiction in Australia to establish a state-run Aboriginal reserve system.<sup>59</sup> The Central Board Appointed to Watch Over the Interests of the Aborigines (Central Board) was created to administer the system.<sup>60</sup>
124. Regulations issued in 1871 listed the six stations the reserve system was organised around: Coranderrk, Lake Wellington (Ramahyuck), Lake Tyers, Lake Condah, Framlingham and Lake Hindmarsh.<sup>61</sup> Reserve sites were mostly chosen for their isolation from settlers, and the undesirability of the land to settlers, despite the efforts of First Peoples to choose sites that were significant to them and favourable for farming.<sup>62</sup>
125. The failings of the reserve system to provide for and protect Aboriginal peoples' welfare was laid bare in the 1881 Coranderrk Parliamentary Inquiry that recorded:

<sup>55</sup> Select Committee Upon Protection to the Aborigines, *Report from the Select Committee of the Legislative Council on the Aborigines*, Victorian Parliamentary Papers, iii, (Melbourne; Government Printer, 1859), [https://aiatsis.gov.au/sites/default/files/docs/digitised\\_collections/remove/92768.pdf](https://aiatsis.gov.au/sites/default/files/docs/digitised_collections/remove/92768.pdf).

<sup>56</sup> *Ibid.*, iv.

<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid.*, v.

<sup>59</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 17 May 1860, 1169, (Mr. Snodgrass), <https://www.parliament.vic.gov.au/4b01e2/globalassets/hansard-historical-documents/sessional/1860/18600508-18600608-hansard-combined2.pdf>.

<sup>60</sup> Commonwealth of Australia, *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (Sydney: Human Rights and Equal Opportunity Commission, 1997), 50, [https://humanrights.gov.au/sites/default/files/content/pdf/social\\_justice/bringing\\_them\\_home\\_report.pdf](https://humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf).

<sup>61</sup> Victoria Government, Government Gazette, no. 15, "Regulations and Orders," 24 February 1871, 338, <https://gazette.slv.vic.gov.au/images/1871/V/general/15.pdf>.

<sup>62</sup> 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-xi, [https://aiatsis.gov.au/sites/default/files/docs/digitised\\_collections/remove/92914.pdf](https://aiatsis.gov.au/sites/default/files/docs/digitised_collections/remove/92914.pdf).



- *heartless indifference manifested by the Central Board and its officers toward the sick and dying natives, whose sufferings compelled them to seek the refuge of the Melbourne Hospital.*
- *the only food there for the Blacks was dry bread and tea, excepting in two huts, where there was some wallaby and native bear.*
- *The natives allege that they were irregularly and inadequately supplied with clothing, and to this allegation no rebuttal was possible, owing to the distribution taking place without regard to any system of check or proof as to whom the stores were given, or by whom distributed. This mode of procedure appears liable to great abuse. The evidence on this point is most conclusive.*<sup>63</sup>

### **The Aborigines Protection Act 1869**

126. The *Aborigines Protection Act 1869* (1869 Act) gave the Central Board, renamed the 'Board for the Protection of Aborigines', extraordinary powers to control First Peoples' lives.<sup>64</sup>
127. When introducing the Bill to Parliament, the then Minister of Justice stated that, 'if the board is enabled to act in *loco parentis* [as a parent] to the aborigines, I think that a great deal of good will be done'.<sup>65</sup> According to the Minister of Justice, the aim of the Bill was to provide the Central Board with greater legal powers 'to watch over the adult aboriginals throughout the colony – to prevent them wandering about among grog-shops, and, in fact, becoming waifs and strays'.<sup>66</sup> The Board's role was to confine Aboriginal people to the reserves, segregating them from the settler population.
128. Under the 1869 Act, the Governor was empowered to issue regulations directing the Board's powers:
- (I) *For prescribing the place where any aboriginal or any tribe of aborigines shall reside.*
  - (II) *For prescribing the terms on which contracts for and on behalf of aboriginals may be made with Europeans, and upon which certificates may be granted to aboriginals who may be able and willing to earn a living by their own exertions.*
  - (III) *For apportioning amongst aboriginals the earnings of aboriginals under any contract, or where aboriginals are located on a reserve, the net produce of the labor of such aboriginals.*
  - (IV) *For the distribution and expenditure of moneys granted by Parliament for the benefit of aboriginals.*
  - (V) *For the care custody and education of the children of aboriginals.*<sup>67</sup>
129. Accordingly, the Governor issued such regulations in 1871. Regulations imposed upon First Peoples included the invalidating of contracts with 'any aboriginal for any service or employment for a longer period than three months' without approval of the Board, and authorisation to 'order

<sup>63</sup> 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: Government Printer, 1882) v, [http://www.minutesofevidence.com.au/static/media/uploads/coranderrk\\_moe\\_digitized.pdf](http://www.minutesofevidence.com.au/static/media/uploads/coranderrk_moe_digitized.pdf).

<sup>64</sup> *Aborigines Protection Act 1869* (Vic), [http://classic.austlii.edu.au/au/legis/vic/hist\\_act/aatpftpamotanov757/](http://classic.austlii.edu.au/au/legis/vic/hist_act/aatpftpamotanov757/).

<sup>65</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 19 August 1869, 1726, (Mr. Casey, Minister of Justice), <https://www.parliament.vic.gov.au/4b01e2/globalassets/hansard-historical-documents/sessional/1869/18690817-18690902-hansard-combined2.pdf>.

<sup>66</sup> *Ibid.*

<sup>67</sup> *Aborigines Protection Act 1869* (Vic), section 2, [http://classic.austlii.edu.au/au/legis/vic/hist\\_act/aatpftpamotanov757/](http://classic.austlii.edu.au/au/legis/vic/hist_act/aatpftpamotanov757/).



the removal of any aboriginal child neglected by its parents, or left unprotected, to any of the [specified] places of residence [...] or to an industrial or reformatory school'.<sup>68</sup>

130. A Board member told an 1877 Royal Commission on Aborigines: 'I have gone on the idea from the beginning that those natives are children, and in anything I have recommended I have inferred that they would be treated as children – made to go to those places and kept there – and if I am asked my advice, I recommend that this should be done: that the blacks should, when necessary, be coerced just as we coerce children and lunatics who cannot take care of themselves. If they are not coerced, they cannot be preserved from extinction'.<sup>69</sup>
131. The ignorance and arrogance in submissions of this kind is shocking.

### **The Aborigines Protection Act 1886 and the closure of Reserves**

132. The *Aborigines Protection Act 1886* (1886 Act), which became commonly known as the 'Half-Caste Act', gave the Board power to expel from reserves and withhold rations from Aboriginal people of 'mixed aboriginal blood' offensively described as 'half-caste'.<sup>70</sup> The 1886 Act gave powers to make regulations 'for prescribing the conditions on which half-caste infants may be licensed or apprenticed to any person or persons. For the transfer of any half-caste child being an orphan to the care of the Department for neglected children or any institutions within the said colony for orphan children'.<sup>71</sup>
133. In response to the significant decline in the size of the reserve populations from the removal of children and expulsion of Aboriginal people considered 'half-caste', the State reclaimed reserve land for settler use. For example, in 1893, 2,400 acres of the Coranderrk Reserve land was cancelled and transferred to the Lands Department under the *Crown Lands Reserves Act 1893*.<sup>72</sup>
134. Reserve populations declined because of the State's continued redefinitions of Aboriginality and restrictions on Aboriginal people with European ancestry in subsequent legislation. This continued to be used by the State to justify closing the reserves, despite staunch opposition from Aboriginal people who called the reserves home.
135. The year after the 1886 Act had been enacted the Board reported: 'No sooner was the Act passed than the Board set itself to carry out its provisions, which were carefully explained to all the half-castes to whom the law applied, and already the Board has made a fair beginning of a policy which is the beginning of the end, and which, in the course of a few years, will leave only a few pure blacks under the care of Government'.<sup>73</sup>
136. The Board's reserve closures began with the removal of staff from Framlingham in 1890, followed by Lake Hindmarsh (Ebenezer) in 1904, Ramahyuck in 1908, Lake Condah in 1918,

<sup>68</sup> Victoria Government Gazette, no. 15, 24 February 1871, 338, <https://gazette.slv.vic.gov.au/images/1871/V/general/15.pdf>.

<sup>69</sup> 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), 78, [https://aiatsis.gov.au/sites/default/files/docs/digitised\\_collections/remove/92914.pdf](https://aiatsis.gov.au/sites/default/files/docs/digitised_collections/remove/92914.pdf).

<sup>70</sup> *Aborigines Protection Act 1886* (Vic), sections 6 and 8, [https://www.austlii.edu.au/au/legis/vic/hist\\_act/tapa1886265.pdf](https://www.austlii.edu.au/au/legis/vic/hist_act/tapa1886265.pdf).

<sup>71</sup> *Ibid*, section 8.

<sup>72</sup> *Crown Lands Reserves Act 1893* (Vic), [https://classic.austlii.edu.au/au/legis/vic/hist\\_act/clra1893219/](https://classic.austlii.edu.au/au/legis/vic/hist_act/clra1893219/).

<sup>73</sup> Board for the Protection of the Aborigines in the Colony of Victoria, *Twenty-third Report*, 4 (Melbourne, Government Printer, 1887), [https://aiatsis.gov.au/sites/default/files/docs/digitised\\_collections/remove/24915.pdf](https://aiatsis.gov.au/sites/default/files/docs/digitised_collections/remove/24915.pdf).



and Coranderrk in 1924. The process was completed in 1970, with Lake Tyers and Framlingham handed over as Trusts to particular residents of those former Reserves.<sup>74</sup>

137. People forced off the Reserves were given very little means of supporting themselves, having lived their whole lives on Reserves without the ability to amass belongings, or wealth, being paid only in rations or in low wages and housed in Government housing.<sup>75</sup>
138. This resulted in many former residents experiencing extreme hardship and in 1910, the 1886 Act was amended to let some Aboriginal people return to the remaining reserve land by removing the distinction between 'half-caste' and 'full-blood' Aboriginal people.<sup>76</sup>
139. Further Aborigines Acts in 1915 and 1928 consolidated previous legislation while repealing some regulations. The 1915 Act reinstated the distinction between 'half-caste' and 'full-blood' Aboriginal people, and consequently denied the rights to residence and support on stations of some First Peoples.<sup>77</sup>
140. In 1937 the Victorian Government attended Australia's first Native Welfare Conference as an 'onlooker'. At the Conference, the Victorian delegate stated that 'the problems relating to aborigines are not acute in Victoria. We have, comparatively speaking, only a handful of full-blooded blacks in our State. We have a larger number of half castes, about 500 altogether. The Government of Victoria has always made substantial provision for the aborigines within the State'.<sup>78</sup>
141. It is important to note here that First Peoples' traditional lands often cut across colonial and state boundaries, meaning that many ended up in missions and reserves in New South Wales and South Australia. The imposed borders did not reflect or align with Traditional Owner conceptions of the boundaries of their own Country, and First Peoples moved between jurisdictions to avoid the impact of colonial policies and control.
142. An example of this is the Cummeragunja Walk Off, a mass protest in 1939 at Cummeragunja Station in southern NSW, where about 200 Yorta Yorta people walked off the station and crossed the Murray River into northern Victoria to protest against poor living conditions and management of the station. The strike lasted for nine months before the mission manager was transferred. Some Yorta Yorta people returned to the station while many preferred to remain in Victoria, especially at what was called The Flats, camping in humpies and makeshift housing between Mooroopna and Shepparton.<sup>79</sup>

### Poverty and assimilation into the 1960s

143. Following the passage of the *Aborigines Act 1957*, State policies towards First Peoples shifted to active assimilation. This involved several interventions to shift Aboriginal people from living

<sup>74</sup> The Board closed Framlingham as a government-funded station in 1890, however due to the residents' campaign to retain the reserve the Government agreed to temporarily reserve 500 acres of the old reserve site and hand the rest over for an agricultural college. Some residents were provided with permission to remain and to receive government rations depending on the regulations of the protection acts. Board for the Protection of Aborigines meeting, 5 November 1890, cited in Jan Critchett, *The History of Framlingham and Lake Condah Stations* (University of Melbourne: Masters Thesis, 1980), 171.

<sup>75</sup> Victoria, *Parliamentary Debates*, 15 December 1886, 2912-13 (Alfred Deakin).

<sup>76</sup> *Aborigines Act 1910* (Vic), [https://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/vic/hist\\_act/aa1910110/index.html](https://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/vic/hist_act/aa1910110/index.html).

<sup>77</sup> *Aborigines Act 1915* (Vic), [https://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/vic/hist\\_act/aa1915110/index.html](https://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/vic/hist_act/aa1915110/index.html).

<sup>78</sup> Commonwealth of Australia, *Aboriginal Welfare: Initial Conference of Commonwealth and State Aboriginal Authorities*, (Canberra: Commonwealth of Australia, 1937), 5, <http://nla.gov.au/nla.obj-52771316>.

<sup>79</sup> Museums of History NSW, "Cummeragunja Walk Off," accessed 5 March 2024, <https://mhnsw.au/stories/general/cummeragunja-walk-off/>.



on the fringes of society – in humpies, slums and near old reserve sites – into towns in public housing. This was a result of the 1957 McLean Report into the impacts of the State's *Aborigines Act 1928*.

144. The McLean Report documented Aboriginal peoples' poverty, lack of access to health care, sanitation and education.<sup>80</sup>
145. The resultant attempts to improve First Peoples' living conditions through assimilation policies did not extend to providing opportunities to share in Victoria's wealth. Colonisation, dispossession of Country and generations of economic exclusion have left a legacy of housing poverty for First Peoples in Victoria and denied them the foundations for home ownership,<sup>81</sup> particularly the opportunity to accumulate intergenerational wealth.
146. The goal of assimilation was used as continued justification for the forced removal of Aboriginal children from their families. Children were separated from their Country, community, culture and language – losing core connections to their identity – and often placed in institutions, where they suffered abuse and neglect.
147. As noted in the Human Rights and Equal Opportunity Commission's 1997 report into Aboriginal child removal, *Bringing Them Home*, 'implicit in the assimilation policy was the idea current among non-Indigenous people that there was nothing of value in Indigenous culture'.<sup>82</sup> That idea was ignorant, and so dangerously wrong.

## 2.5 Unequal treatment of First Peoples and withholding of wealth and prosperity

148. Though the language of protection and assimilation was meant to imply well-intentioned policies towards First Peoples, the system of protectorates, missions and reserves fundamentally operated as a means to exclude First Peoples from the social, economic and political life of Victoria. But exclusion was practised in a variety of other ways, some of which I outline below.

### Economic exclusion and unfair labour practices

149. Gold was discovered in central Victoria in 1851. This was the same year that the Colony of Victoria was created when the Imperial Government agreed to its separation from New South Wales.
150. First Peoples were pushed off their Country by the massive population influx that followed the discovery of gold. Victoria's population increased five-fold in seven years and by 1858, half of Australia's population resided in the Colony of Victoria.<sup>83</sup>

<sup>80</sup> Charles McLean, *Report Upon the Operation of the Aborigines Act 1928 and the Regulations and Orders Made Thereunder*, (Melbourne: Government Printer, 1956-57), <http://nla.gov.au/nla.obj-55291491>.

<sup>81</sup> Aboriginal Housing Victoria, *The Victorian Aboriginal Housing and Homelessness Framework* (Fitzroy North: Aboriginal Housing Victoria, 2020), 21, [https://vahhf.org.au/wp-content/uploads/2023/09/victorian-aboriginal-housing-and-homelessness-framework-complete\\_26\\_02\\_20-2.pdf](https://vahhf.org.au/wp-content/uploads/2023/09/victorian-aboriginal-housing-and-homelessness-framework-complete_26_02_20-2.pdf).

<sup>82</sup> Commonwealth of Australia, *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (Sydney: Human Rights and Equal Opportunity Commission, 1997), 27, [https://humanrights.gov.au/sites/default/files/content/pdf/social\\_justice/bringing\\_them\\_home\\_report.pdf](https://humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf).

<sup>83</sup> "Victoria's Historic Population Growth: European Settlement to Present 1836–2011," Department of Transport and Planning, accessed 5 December 2023, [https://www.planning.vic.gov.au/\\_data/assets/word\\_doc/0027/29295/accessible-version-of-Victorias-historic-population-growth.docx](https://www.planning.vic.gov.au/_data/assets/word_doc/0027/29295/accessible-version-of-Victorias-historic-population-growth.docx).





151. By 1860, Victoria's mining industry had made it one of the wealthiest colonies in the world.<sup>84</sup> Many of Victoria's major public institutions were built within a few short years of the gold rush, including Pentridge Prison (1851), the University of Melbourne (1853), the National Museum of Victoria (1854), Parliament House (1855) and the Melbourne Public Library (1855).
152. The Victorian Government also invested heavily in transport, roads, rail and ports.<sup>85</sup>
153. Despite Victoria's wealth following the discovery of gold, little went to First Peoples. First Peoples frequently worked for no wages, or for a fraction of settlers' wages on non-Aboriginal owned farms and properties.<sup>86</sup> The State endorsed exploitative and unjust labour practices such as unpaid farm and domestic labour on reserves or settlers' properties, and unpaid labour in contexts of incarceration such as children's homes and under domestic service contracts in settlers' homes, regulated by the Protection Board.<sup>87</sup> The State also withheld pay from Aboriginal soldiers, on the advice of the Board that this would be in their best interests.<sup>88</sup>
154. It was not until 1975 that rights to equal pay were enshrined in federal legislation.<sup>89</sup> While Victoria enacted the *Equal Opportunity Act* in 1977, workplace rights on the basis of race were not protected until 1984.<sup>90</sup>
155. Even so, neither those statutory protections nor other initiatives since that time have been successful in addressing the economic disadvantage experienced by too many First Peoples, entrenched from the earliest times following colonisation. For example, in 2021, data showed that, on average, First Peoples in Victoria earned around 19 cents less per dollar than non-Aboriginal Victorians<sup>91</sup> and levels of home ownership remain below average for First Peoples in Victoria.<sup>92</sup> This inequality is unacceptable.

### Political exclusion

156. Aboriginal men held voting rights by default as male British subjects from 1857, and Aboriginal women were included when women won the right to vote in Victoria in 1908.<sup>93</sup>

<sup>84</sup> "History of Gold Mining in Victoria," Resources Victoria: Geology and Exploration, accessed 13 December 2023, <https://resources.vic.gov.au/geology-exploration/minerals/metals/gold/gold-mining-in-victoria>.

<sup>85</sup> "Timeline of the Port of Melbourne," Victorian Ports Melbourne, accessed 16 November 2023, <https://www.vicports.vic.gov.au/about-us/port-history/Pages/timeline.aspx>; "Roads," eMelbourne: The City Past and Present, University of Melbourne, July 2008, <https://www.emelbourne.net.au/biogs/EM01255b.htm>; Peter Mares, "Can We Afford to Get our Cities Back on the Rails?," *Grattan Institute*, 11 December 2012, Figure 2, <https://grattan.edu.au/news/can-we-afford-to-get-our-cities-back-on-the-rails/>.

<sup>86</sup> 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), 20, 30, 35, 38, 47, [https://aiatsis.gov.au/sites/default/files/docs/digitised\\_collections/remove/92914.pdf](https://aiatsis.gov.au/sites/default/files/docs/digitised_collections/remove/92914.pdf).

<sup>87</sup> First-hand accounts document the state's denial of Aboriginal peoples' wages and freedom of movement, coerced employment and enslavement in settler homes. See: Elizabeth Nelson, Sandra Smith and Patricia Grimshaw (eds), *Letters from Aboriginal Women of Victoria, 1867-1926*, (History Department, University of Melbourne, 2002), <https://rest.neptune-prod.its.unimelb.edu.au/server/api/core/bitstreams/291b664a-de02-52e8-bcf3-cca3193553d9/content>.

<sup>88</sup> Public Records Office Victoria, VPRS 1694, Unit 7, Bundle 1.

<sup>89</sup> *Racial Discrimination Act 1975* (Cth), Schedule, Part 1, Article 5, <https://www.legislation.gov.au/C2004A00274/latest/text>.

<sup>90</sup> *Equal Opportunity Act 1984* (Vic), section 21, [https://www.austlii.edu.au/au/legis/vic/hist\\_act/eoa1984250.pdf](https://www.austlii.edu.au/au/legis/vic/hist_act/eoa1984250.pdf).

<sup>91</sup> State of Victoria, *Victorian Government Aboriginal Affairs Report 2022*, 89, [https://content.vic.gov.au/sites/default/files/2023-07/FINAL\\_Victorian-Government-Aboriginal-Affairs-Report-2022.pdf](https://content.vic.gov.au/sites/default/files/2023-07/FINAL_Victorian-Government-Aboriginal-Affairs-Report-2022.pdf).

<sup>92</sup> Mana-na woom-tyeen maar-takoort ('Every Aboriginal Person has a Home'). The Victorian Aboriginal Housing and Homelessness Framework, 52 (DFFH.0015.0001.1315).

<sup>93</sup> The *Commonwealth Franchise Act 1902* (Cth) gave women full suffrage, however, 'it was limited to women of European background. People of Aboriginal, Torres Strait Islander, African, Asian or Pacific Islander (excluding New Zealand) heritage





157. However, people in receipt of government charity (including Aboriginal people living on reserves) were ineligible to enrol to vote. The *Electoral Act 1865* stated 'No elector's right shall be issued to any person who shall at the time be receiving relief as an inmate of any eleemosynary charitable institution'.<sup>94</sup>
158. The first election of a member of Victoria's parliament who identified as Aboriginal – Cyril Kennedy – did not occur until 1979, 123 years after the Victorian Parliament was established.<sup>95</sup> Cyril Kennedy's brother, David Kennedy, also served in the Victorian Parliament, and before that the Commonwealth Parliament as the Member for Bendigo. David Kennedy was an immense support to me when I ran for Parliament in 1999 and has remained an important mentor throughout my career.
159. The Victorian Parliament has had only four parliamentarians who identified as First Peoples in its 167-year history.<sup>96</sup> Sheena Watt MP, Legislative Council, is our current Parliament's only First Peoples member.

### First Peoples' exclusion from the Soldier Settlement Schemes

160. The Australian War Memorial estimates that 90 Aboriginal people served in World War One from Victoria and 150 Aboriginal people served in World War Two.
161. First Peoples enrolled in World War One despite the *Federal Defence Act 1910* exempting them from service on the basis that they were 'persons who are not substantially of European origin or descent'.<sup>97</sup>
162. Following both wars, Soldier Settlement Schemes were established to support returned soldiers to reintegrate into the civilian economy through the provision of farmland. Delivery of the schemes was split between the Commonwealth and State governments.<sup>98</sup>
163. I understand that Johnny Lovett, Gunditjmara/Boandik man, gave evidence to the Commission in April 2022 about the military service of his father and uncles, and their lack of access to soldier settler land after World War Two. This was at the time when the reserve land at Lake

were not eligible.' "Commonwealth Franchise Act 1902," National Archives of Australia, accessed 8 December 2023, <https://www.naa.gov.au/learn/learning-resources/learning-resource-themes/society-and-culture/gender-and-sexuality/commonwealth-franchise-act-1902>. Women in Victoria won the right to vote in 1908, however, 'Aboriginal and Torres Strait Islander women had to wait until 1962 to gain the same right at a state and federal levels.' See "Women in Parliament," Parliament of Victoria, accessed 8 December 2023, <https://new.parliament.vic.gov.au/about/history-and-heritage/people-who-shaped-parliament/women>.

<sup>94</sup> *Electoral Act 1865* (Vic), section 20, [http://classic.austlii.edu.au/au/legis/vic/hist\\_act/tea1865133/](http://classic.austlii.edu.au/au/legis/vic/hist_act/tea1865133/).

<sup>95</sup> "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](https://www.aph.gov.au/About_Parliament/Parliamentary_departments/Parliamentary_Library/pubs/rp/rp2021/Quick_Guides/IndigenousParliamentarians2021).

<sup>96</sup> 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](https://www.aph.gov.au/About_Parliament/Parliamentary_departments/Parliamentary_Library/pubs/rp/rp2021/Quick_Guides/IndigenousParliamentarians2021).

<sup>97</sup> *Defence Act 1910* (Cth), section 7(h), [http://classic.austlii.edu.au/au/legis/cth/num\\_act/da191037191083/](http://classic.austlii.edu.au/au/legis/cth/num_act/da191037191083/).

<sup>98</sup> Due to limited, and at times contradictory, publicly available historical documents surrounding the responsibilities of the States and Commonwealth for the World War One scheme, it is difficult to determine with certainty the discharge of responsibilities. Historically, there has also been disagreement between the Commonwealth and State Premiers over who held responsibility for this scheme. The World War Two scheme was funded and administered by the Commonwealth, but delivered in Victoria by a newly established Soldier Settlement Commission.



Condah – where they had lived with their families – was divided and given to non-Aboriginal returned soldiers.

164. I acknowledge that non-Aboriginal people were the beneficiaries of the sale of Aboriginal reserve land at Lake Condah and Coranderrk and only small pieces of land were retained for First Peoples including the cemeteries on these reserve sites.
165. Despite First Peoples in Victoria serving in every overseas armed conflict since Federation, only two Aboriginal men in Victoria are known to have been granted land under the Soldier Settlement Schemes: WWI soldiers Private Percy Pepper and Private George McDonald.<sup>99</sup>

## 2.6 State's initial approach to native title

166. The passage of the Commonwealth's *Native Title Act* in 1993 provided an opportunity for Victoria to consider how land justice could be delivered in this State.
167. When the Yorta Yorta filed their native title claim in the Federal Court in 1994, this was part of a long history of campaigning by Yorta Yorta people for rights and recognition on Country.
168. However, the State denied the existence of any native title over the claimed lands. The State submitted to the Federal Court that 'the original laws and customs of the Bangerang ancestors have disappeared with the passage of time'.<sup>100</sup> It positioned itself as the exclusive custodian of Crown land and the defender of non-Aboriginal interests it had issued over this land, claiming that 'the rights and interests contended for by the [Yorta Yorta were] incompatible with public purposes'<sup>101</sup> and 'public recreation'<sup>102</sup>, and adhering to the historical 'concept of the Crown having "absolute property"<sup>103</sup>.
169. In 1998 Justice Olney decided that native title had been extinguished. The Yorta Yorta appealed to the Full Court of the Federal Court, arguing that Justice Olney's decision had incorrectly applied a 'frozen in time' concept and did not give proper recognition to the capacity of traditional laws and customs to adapt to changed circumstances. The State did not support that view.<sup>104</sup>
170. In 2002, the High Court rejected the Yorta Yorta Peoples appeal. I acknowledge that this rejection caused significant distress for the Yorta Yorta.<sup>105</sup> The result led to calls from Traditional Owners for better ways to achieve land justice outcomes in Victoria.<sup>106</sup> This issue is addressed further below.

<sup>99</sup> "On the Land: The Soldier Settlement Scheme", Old Treasury Building, accessed 15 January 2024, <https://www.oldtreasurybuilding.org.au/lost-jobs/on-the-land/soldier-settlement-scheme/>.

<sup>100</sup> State of Victoria, Summary of Submissions by the State of Victoria in Relation to Native Title Issues, Federal Court, 1995, 21.

<sup>101</sup> State of Victoria, Submissions in Reply on Extinguishment Issues on behalf of the State of Victoria (2), Federal Court, 1995, 12.

<sup>102</sup> *Ibid*, 65.

<sup>103</sup> *Ibid*, 94.

<sup>104</sup> *Members of the Yorta Yorta Aboriginal Community v State of Victoria [2001] FCA 45* (Black CJ, Branson & Katz JJ), 3, <https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2001/2001fca0045>.

<sup>105</sup> Principal claimant Wayne Atkinson claimed the decision strengthened 'the sense of betrayal that has been created in the post-Mabo era'. Wayne Atkinson, "'Not One Iota' of land justice: Reflections on the Yorta Yorta native title claim, 1994-2001", *Indigenous Law Bulletin*, 12 (2001), <http://classic.austlii.edu.au/au/journals/IndigLawB/2001/12.html>.

<sup>106</sup> Statement from delegates of Traditional Owner Groups of Victoria, 17 February 2005, <http://www.landjustice.com.au/document/Communique-Statewide-Meeting-17-18Feb05.pdf>.



## 2.7 Historical injustice caused today's inequity

171. This Commission has heard many accounts of how our core institutions of government – Parliament, the court system, police and other agents of the State – were all used to dispossess and exclude First Peoples from the new colonial economies, wealth and political structures.
172. I acknowledge the role of the State in contributing to First Peoples' marginalisation – for the inequity in outcomes (sometimes called 'the gap') that exists today between Aboriginal and non-Aboriginal people. This inequity did not suddenly appear when governments began talking about it in recent times. It was caused by the deliberate institutional exclusion of First Peoples.
173. In 2020, all Commonwealth, State and Territory governments signed the landmark National Agreement on Closing the Gap (National Agreement) in partnership with the Coalition of Aboriginal and Torres Strait Islander Peak Organisations (the Coalition of Peaks) and the Australian Local Government Association. This was a belated official response to the reality of disadvantage that First Peoples have experienced for many decades.
174. The objective of the National Agreement is to 'enable Aboriginal and Torres Strait Islander people and governments to work together to overcome the inequality experienced by Aboriginal and Torres Strait Islander people, and achieve life outcomes equal to all Australians'.<sup>107</sup>
175. Recent reports, and evidence before this Commission, show that government efforts to close the gap have met with mixed success, but have so far failed to reach their aims. For example, we have failed to reduce the rates of First Peoples children in out-of-home care, with Victoria's rates being much worse than the national average.<sup>108</sup>
176. I acknowledge that structural racism exists and the State must work to address this through self-determination. I recognise, in this Government's commitment to self-determination and Treaty, that better outcomes are achieved when First Peoples are empowered to take control of their own affairs.

<sup>107</sup> Department of the Prime Minister and Cabinet, "National Agreement on Closing the Gap," accessed 14 February 2024, <https://www.closingthegap.gov.au/national-agreement>.

<sup>108</sup> In 2022, the rate of Aboriginal and Torres Strait Islander children aged 0-17 years in out-of-home care was 56.8 per 1000 children across Australia, compared to 102.2 per 1000 children in Victoria. State of Victoria, *Victorian Government Aboriginal Affairs Report 2022*, 32, [https://content.vic.gov.au/sites/default/files/2023-07/FINAL\\_Victorian-Government-Aboriginal-Affairs-Report-2022.pdf](https://content.vic.gov.au/sites/default/files/2023-07/FINAL_Victorian-Government-Aboriginal-Affairs-Report-2022.pdf) (DPC.0009.0009.0798).



## Section three – Responding to the State’s history

### 3.1 Personal response to the State’s history

177. In setting out some of the shameful parts of our history, I recognise that this history is not just intellectual, it has real and lasting impacts that are felt to this day.
178. As the Attorney-General has said, laws do not exist in a vacuum. Instead, they are framed and informed by the cultural, social and historical context within which they are developed. The majority of the laws and policies I have mentioned in this statement failed to consider the views and hopes of First Peoples – and as such, many have negatively impacted Aboriginal people, their families and communities.
179. I cannot imagine the depth of pain that these laws and policies caused. They controlled the lives of First Peoples. They separated children from their parents and community. They prevented First Peoples from practicing their language, lore, and culture, dislocating people from their Country. The laws and policies, often employed in the name of protecting First Peoples, have instead led to profound loss and intergenerational trauma among First Peoples’ communities.
180. Yet, as I have noted, First Peoples in Victoria continue to maintain, revive, and practice their culture, language and customs. They have a long history of advocating for, and achieving, change. They continue to assert their cultural and human rights.
181. While I cannot change the past, the Commission’s work and the record it will create will finally set the record straight about Victoria’s shared history and the systemic injustice faced by First Peoples in Victoria. No longer will we have an inaccurate picture to teach our children. Schools are currently required to embed learning on Aboriginal and Torres Strait Islander histories and cultures across all curriculum areas and I am committed to all Victorian students having an appreciation of our shared history.
182. Through the Commission’s work, we can learn our shared history and work together to a fairer and more just future through the process of Treaty.

### 3.2 State efforts to address land injustice

183. The gravity of the task of delivering land justice is something I have considered more deeply since becoming the Premier of Victoria.
184. It was Traditional Owners from across Victoria – as part of a Victorian Traditional Owner Land Justice Group – who proposed a vision for Traditional Owner land justice. In 2005, this group issued a statement of land justice aspirations to the Victorian Government, seeking a new and comprehensive approach to land justice that would avoid some of the challenges of the Federal Court native title process.
185. This group of Traditional Owners, together with the Victorian Government, laid the foundations for the Victorian *Traditional Owner Settlement Act 2010* (TOS Act), which passed with bipartisan support. The operation of the TOS Act has not been without its challenges. However, the passage of this legislation represents a moment where I think Traditional Owners and government worked together in good faith to progress the aspirations put forward by Traditional Owners at this time.



186. The statement of land justice aspirations also sought a new devolved Aboriginal cultural heritage regime, under which 'incorporated bodies of Traditional Owners would control and administer Aboriginal cultural heritage in their country'.<sup>109</sup> Following further consultation between the Government and Victorian Traditional Owners, this aspiration was addressed with the passage of the *Aboriginal Heritage Act 2006* (AHA).
187. I recognise that the members of the Victorian Traditional Owner Land Justice Group, as well as the First Peoples' Assembly and other groups and individuals today, are the inheritors of an unbroken thread of Aboriginal resistance, activism and campaigning in Victoria that dates to the beginnings of European colonisation. I acknowledge that despite the positive outcomes for some Traditional Owner groups under the TOS Act and AHA, comprehensive outcomes have taken too long, and some feel left behind by the process.
188. In partnership with Traditional Owners, the Victorian Government has been seeking to address such concerns through the First Principles Review (Review) of the TOS Act, which commenced in 2020. The Government's response to the Review was provided to the First Peoples' Assembly and the Federation of Victorian Traditional Owner Corporations in December 2023. I acknowledge the frustration of Traditional Owners about the delay in receiving this response. The Minister for Treaty and First Peoples speaks to the Review in more detail in her witness statement.

#### **An example of progress – Dja Dja Wurrung**

189. I am encouraged by the benefits of recognition that I have seen, first-hand, in my electorate. Dja Dja Wurrung reached a Recognition and Settlement Agreement with the Victorian Government in 2013 under the TOS Act.<sup>110</sup>
190. I attended the 2013 commencement ceremony and last year, attended a community celebration to reflect on the Agreement's substantial benefits for the group and the wider Bendigo community. The Agreement brought with it the return of culturally significant lands in freehold title; joint management of six parks and reserves under Aboriginal Title; ongoing procedural rights and compensation in relation to future uses of public lands; access, use and management of natural resources; and funding to compensate for acts done prior to 2013 and for corporate operations.<sup>111</sup>
191. The Agreement recognises, strengthens, protects, and promotes Dja Dja Wurrung culture, traditional practices and the unique relationship of Djaara People to Djandak, for the benefit of all Victorians, now and into the future.
192. I am pleased to see that in my electorate, it has led to the language, knowledge, and culture of the Dja Dja Wurrung People becoming more visible and embraced.

<sup>109</sup> "Statement," Victorian Traditional Owners Land Justice Group, accessed 22 February 2024, 2. <http://www.landjustice.com.au/document/Communique-Statewide-Meeting-17-18Feb05.pdf>.

<sup>110</sup> "Dja Dja Wurrung settlement," State of Victoria: Department of Justice and Community Safety, accessed 21 November 2023. <https://www.justice.vic.gov.au/your-rights/native-title/dja-dja-wurrung-settlement>.

<sup>111</sup> State of Victoria and Dja Dja Wurrung Clans Aboriginal Corporation, *Recognition and Settlement Agreement - Volume 1 of 2* (Melbourne, State of Victoria, 2013), 7, 9, 13, 16. <https://www.justice.vic.gov.au/your-rights/native-title/dja-dja-wurrung-settlement-commences>; "Fact Sheet: Dja Dja Wurrung recognition and settlement agreement", State of Victoria: Department of Justice and Community Safety, accessed 21 November 2023. <https://www.justice.vic.gov.au/your-rights/native-title/dja-dja-wurrung-settlement-commences>.



193. This is much to the credit of Djaara who advocates for the rights and aspirations of the Dja Dja Wurrung People, and supports their social, cultural, and economic development. Since its establishment in 2004, Djaara has gone from strength to strength – negotiating the Agreement with the State, growing from a small organisation to one employing more than 200 people, and running three enterprises that benefit the wider community, support economic development and improve land management in the region.
194. Djaara has created community spaces that provide opportunities for locals and visitors to the region to come together and engage with, understand, and celebrate the traditional culture and history of the Country they are on.
195. Djaara transformed the Bendigo town centre by arranging for the redesign of the Bendigo welcome sign by Dja Wurrung/Boonwurrung artist Racquel Kerr.<sup>112</sup> Visitors can use the space to learn about the cultural significance of place, Country and culture tied to the creator spirit Bunjil. When Djaara unveiled this sign in November 2023, it ran a drop-in marquee near the sign in Rosalind Park for community members to talk with staff about the work of the Corporation and its enterprises.<sup>113</sup>
196. Djaara also worked with the Victorian Government to design Galkangu, Bendigo's new GovHub, and the new Bendigo Law Court buildings.<sup>114</sup> This brought Dja Dja Wurrung art, language, knowledge, environmental and community values into the buildings' architecture, landscaping and spaces. These features affirm Dja Dja Wurrung's rights as Traditional Owners and their responsibilities for the care and governance of Country and society. Cultural heritage work is managed by the corporation and the culture of Dja Dja Wurrung is kept alive and promoted. These buildings are a reminder of the continuing and thriving First Peoples' culture of this region. They create spaces that are calming, connected to Country, educational and environmentally responsible for the whole community to benefit from.
197. Djaara worked with local government and State Government to achieve the recent renaming of 'Jim Crow Creek' as Larni Barramal Yaluk, meaning 'home of the emu'.<sup>115</sup> This removed a name imbued with racial stereotypes and reflects the importance of the emu as a totemic species for Dja Dja Wurrung, providing an opportunity for non-Aboriginal people to walk this Country and imagine the landscape imbued with the meaning it has always had for Dja Dja Wurrung.
198. In partnership with Parks Victoria, Djaara has upgraded visitor sites at Lalgambuk (Mount Franklin), which is one of six parks and reserves that Djaara jointly manages with Parks Victoria to provide shared outcomes for all community.<sup>116</sup> Djaara is also leading upgrade works for

<sup>112</sup> Jared Cross, "'DJAARA-fied' Welcome Sign Brings Dja Dja Wurrung to Forefront of Regional Centre" *National Indigenous Times*, 2 November 2023, accessed 14 February 2024, <https://nit.com.au/02-11-2023/8446/djaara-fied-welcome-sign-brings-dja-dja-wurrung-culture-to-forefront-of-regional-centre>.

<sup>113</sup> Dja Dja Wurrung Clans Aboriginal Corporation, Celebrations Highlight an Extraordinary Decade of Progress, Media Release, 27 November 2023, accessed 14 February 2024, <https://gg-wordpress-offload.s3.ap-southeast-2.amazonaws.com/djadawurrung.com.au/wp-content/uploads/2023/11/30100902/20231124-DJAARA-MEDIA-STATEMENT-Celebrations-highlight-a-decade-of-extraordinary-progress.pdf>.

<sup>114</sup> Jaclyn Symes, Attorney-General, "Bunjil The Eagle Flying High At The Bendigo Law Courts," 6 October 2023, <https://www.premier.vic.gov.au/bunjil-eagle-flying-high-bendigo-law-courts>; Hon Daniel Andrews, Premier of Victoria, "Name, Design To Distinguish Galkangu – Bendigo's Gov Hub". <https://www.premier.vic.gov.au/name-design-distinguish-galkangu-bendigos-gov-hub>.

<sup>115</sup> "Creek renamed Larni Barramal Yaluk," Hepburn Shire Council, accessed 21 November 2023, <https://participate.hepburn.vic.gov.au/proposed-renaming-jim-crow-creek>.

<sup>116</sup> Dja Dja Wurrung Clans Corporation, Dja Dja Wurrung celebrated in Lalgambuk visitor site, , Media Release, 11 August 2023, <https://djadawurrung.com.au/dja-dja-wurrung-celebrated-in-lalgambuk-visitor-site/>.





improved facilities to the visitor hub at Guyura (Kooyoora State Park) in collaboration with the State.<sup>117</sup>

199. The community will also soon benefit from a new purpose-built Dja Dja Wurrung Corporate and Community Centre.<sup>118</sup> This Centre is under construction with the support of the Victorian Government and will provide spaces for learning and awareness of the survival and culture of the Dja Dja Wurrung People. It will also be a venue for arts and cultural events, and a multipurpose space that can be used by the wider public in Bendigo.
200. I believe that the recognition of Dja Dja Wurrung as the Traditional Owners has enabled a new focus on the built and natural environments of Bendigo and the wider region – benefitting all Victorians who live and visit this region.
201. Beyond creating these spaces for community to connect with and learn from culture and storytelling, the community also benefits from Djaara's land management practices, environmental advocacy and expertise. The Aboriginal Title granted by the Agreement has been central to enabling Djaara's management of Country.
202. Djaara is healing Country and helping to protect local communities from bushfire, reducing weeds and promoting the resurgence of native species in national parks through the revitalisation of cultural fire management, Djandak Wi (Country Fire).<sup>119</sup> This is supported by the Cultural Fire Grants program of the Victorian Government. Djaara also assisted in restoring Country in the Wombat Forest following the June 2021 storms.
203. In 2022, Djaara launched its Renewable Energy Strategy, Nyauwi Mutjeka (To Keep the Sun), a historic renewable energy strategy and solar-battery project, reducing energy bills and emissions while advancing self-determination and economic independence.<sup>120</sup> The development of the Dja Dja Wurrung Renewable Energy Strategy was funded through the Victorian Government's Traditional Owner Renewable Energy Program. This program made funding available for Registered Aboriginal Parties (RAPs) to support Traditional Owner Corporations in designing and implementing their renewable energy plans. To date, nine RAPs have received funding for a range of renewable energy community projects.
204. Djaara is also benefitting the local community with its water management expertise and advocacy for water health in the region. In June 2023, Djaara's enterprise, Djandak released their water strategy, Dhelkunyangu Gatjin ('working together to heal water').<sup>121</sup> Through Dhelkunyangu Gatjin, Djaara is working with water authorities and the community to apply 60,000 years of knowledge and Culture to water management. The Djaara Gatjin (Djarra Water)

<sup>117</sup> Dja Dja Wurrung Clans Corporation, Work to begin on visitor hub upgrade at Guyura (Kooyoora State Park), Media Release, 6 June 2023, <https://djadjawurrung.com.au/wp-content/uploads/2023/06/20230606-Media-Release-Work-to-begin-on-visitor-hub-upgrade-at-Guyura.pdf>.

<sup>118</sup> Dja Dja Wurrung Clans Corporation, "Dja Dja Wurrung Corporate and Community Centre", accessed 15 February 2023, <https://djadjawurrung.com.au/projects/dja-dja-wurrung-corporate-and-community-centre/>.

<sup>119</sup> "Djandak Wi - Traditional Burning Returns," Forest Fire Management Victoria, accessed 21 November 2023, <https://www.ffm.vic.gov.au/bushfire-management-facts/videos/djandak-wi-traditional-burning-returns>.

<sup>120</sup> Dja Dja Wurrung Clans Corporation, DJAARA launches Renewable Energy Strategy to heal Country, Media Release, 21 September 2022, <https://djadjawurrung.com.au/djaara-launches-renewable-energy-strategy-to-heal-country/> (DEEC.9002.0002.6363).

<sup>121</sup> Dja Dja Wurrung Clans Corporation, *Dhelkunyangu Gatjin Working together to heal water Djaara Gatjin Strategy* (Bendigo: Dja Dja Wurrung Clans Aboriginal Corporation, 2023), <https://djandak.com.au/wp-content/uploads/2023/11/Dhelkunyangu-Gatjin-Working-together-to-heal-water-Gatjin-Strategy.pdf> (DEEC.9010.0003.3739).



Strategy provides a pathway for government water agencies to improve water management and heal Country.

205. The foregoing shows the benefits which flow when government works with, and empowers, First Peoples in their Countries. Not just representation in the landscape but rights and recognition; a path to self-determination. Djaara's achievements and contributions to the community and environment in Djandak prove that First Peoples' self-determination benefits us all.
206. I am heartened by other signs of progress in Victoria, including the increased prominence and awareness of First Peoples' cultural land practices. These include:
- a. The use of fire in land management. I understand that fire is central to caring for Country, and that burning is a cultural responsibility. The Victorian *Traditional Owner Cultural Fire Strategy*, launched in 2019, responds to the 'significant and detrimental changes to biodiversity' and the 'increased risk to life and property from wildfire', caused by the suppression of cultural burn practices.<sup>122</sup> Victorians have sadly experienced great loss of life and destruction caused by wildfires, and would have suffered even more if it were not for the dedication of Victorian and other fire-fighting agencies. I recognise that by supporting Traditional Owners to heal country and fulfil their rights and obligations to care for Country, all Victorians benefit.
  - b. The formal recognition through legislation of the Wurundjeri Traditional Owners' connection to the Birrarung Marr (Yarra River) in 2017. I recall when Wurundjeri Traditional Owners spoke to Parliament in language at the first reading of the Bill, speaking of their connection to it, and their call to 'keep the Birrarung alive'. The Birrarung Council acts as the formal voice of the river – to protect it and the surrounding environment for all our benefit and enjoyment. The Council is a formal partnership between the State and Traditional Owners.<sup>123</sup>

### **Progress towards more even outcomes**

207. Like the Dja Dja Wurrung in my local area, there are three other Traditional Owner groups in Victoria with Recognition and Settlement Agreements: Gunaikurnai, Taungurung and Wotjobaluk, Jaadawa, Jadawadjali, Wergaia and Jupagulk People of the Wotobaluk Nations. These agreements – while at different stages – are providing significant opportunities and benefits for Traditional Owners and the broader community in those local areas.
208. However, I acknowledge that more needs to be done to deliver land justice for Traditional Owners in Victoria. I also acknowledge that achieving land justice outcomes in Victoria for many Traditional Owners has been slow and uneven.
209. The Gunditjmara, Gunaikurnai, Wotjobaluk Nations, and Eastern Maar Traditional Owner groups have native title determinations.
210. Eleven Traditional Owner groups (inclusive of the groups mentioned earlier) have recognition for cultural heritage purposes.

<sup>122</sup> State of Victoria, *The Victorian Traditional Owner Cultural Fire Strategy* (Melbourne: State of Victoria, 2019), 4. <https://www.ffm.vic.gov.au/fuel-management-report-2018-19/statewide-achievements/cultural-fire-strategy> (DELW.0001.0001.0397).

<sup>123</sup> Victorian Parliament, Legislative Assembly, 22 June 2017, 2017-19 (Address by Wurundjeri Elders).



211. Yet other Traditional Owners in far east Gippsland, north-east Victoria and in north-west Murray River regions are yet to be formally recognised by any means.<sup>124</sup> And most Traditional Owner groups in this State do not have significant areas of land on which to practise their culture, conduct their business, earn commercial returns, or offer housing and services to incentivise people to live on their Country.
212. We know that outcomes under the TOS Act have not met the aspirations of all First Peoples and change is needed in recognising the rights of Traditional Owners to their Country. We have a process for this to occur with the First Principles Review, and with our journey to Treaty. While recognising rights in land will always involve a careful balancing of different interests for Victorians who use land in different ways, I look forward to considering practical remedies to address ongoing land injustice.

### 3.3 State apologies and their importance

213. To move forward as a society, and to mend wrongs and heal wounds, the State needs to publicly reckon with its role in perpetrating injustice. It takes more than just admitting the historical facts, though they are important.
214. Apologising provides space for healing and creates hope that together, the State and First Peoples can reconcile with their past. It provides the opportunity to transform the relationship and rebuild it in the service to all Victorians.
215. In 1997, then Premier Jeff Kennett apologised to First Peoples on behalf of the Parliament and all Victorians ‘for the past policies under which Aboriginal children were removed from their families’.<sup>125</sup>
216. More recently, apologies have been made by my colleagues to the Commission:
- The Chief Commissioner for Police said that: ‘as a result of systemic racism, racist attitudes and discriminatory actions of police have gone undetected, unchecked, unpunished, or without appropriate sanctions and have caused significant harm across generations of Aboriginal families. For all this I genuinely, and formally, apologise, as Chief Commissioner and on behalf of Victoria Police. I am sincerely sorry that this has occurred to Aboriginal people. It should not have happened’.<sup>126</sup>
  - The Minister for Child Protection said: ‘I take this opportunity as Minister to apologise formally and unreservedly for the harm caused by historic removal of First Peoples children from their families, their communities and their Country. For the harm caused by historic practices that infringed on the rights of families and children to live free from violence, abuse, racism, deprivation and discrimination. And for the harm caused by historic practices that

<sup>124</sup> “Agreements with Traditional Owners,” Department of Energy, Environment and Climate Action, accessed 21 November 2023. <https://www.forestsandreserves.vic.gov.au/joint-management/agreements-with-traditional-owners>; “Aboriginal cultural heritage,” First Peoples – State Victoria, accessed 21 November 2023. <https://www.firstpeoplesrelations.vic.gov.au/aboriginal-cultural-heritage>.

<sup>125</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 17 September 1997, 107, (Mr. Kennett), <https://hansard.parliament.vic.gov.au/images/stories/volume-hansard/Hansard%2053%20LA%20V436%20Sep-Oct1997.pdf>.

<sup>126</sup> Yoorrook Justice Commission, “Opening Comments of the Chief Commissioner of Police Shane Patton APM,” 8 May 2023, 3, <https://yoorrookjusticecommission.org.au/wp-content/uploads/2023/05/VPOL.0004.9999.pdf>.



infringed on the rights of families and children to practise their culture safely and happily. On behalf of the State of Victoria, I say sorry'.<sup>127</sup>

- The Attorney-General said: 'I want to particularly acknowledge and express deep sorrow for the Aboriginal people who have died in custody and, on behalf of the Victorian Government, unreservedly apologise for the ongoing pain and sadness that this has caused to their families and community'.<sup>128</sup>

217. It is right that these apologies have been made. I am grateful to this Commission for providing the forum for these apologies to be offered to the community that has been directly affected by these wrongs.
218. I am prepared to make a formal apology at an appropriate time in the future following the conclusion of the Commission's truth and fact-finding mandate, release of the Commission's final report and through negotiations with the First Peoples' Assembly, who will consult with the Victorian Aboriginal community on the form of this apology.

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<sup>127</sup> Yoorrook Justice Commission, "Opening Statement of the Hon. Lizzie Blandthorn, Minister for Child Protection and Family Services," 12 May 2023, 4-5, [https://yoorrookjusticecommission.org.au/wp-content/uploads/2023/05/\(DFFH.0008.9999.0001\).pdf](https://yoorrookjusticecommission.org.au/wp-content/uploads/2023/05/(DFFH.0008.9999.0001).pdf).

<sup>128</sup> Yoorrook Justice Commission, "Witness Statement of the Hon. Jaclyn Symes, Attorney-General," 5 May 2023, 2, [https://yoorrookjusticecommission.org.au/wp-content/uploads/2023/03/AG-Statement-DJCS.0015.0001.0066\\_R.pdf](https://yoorrookjusticecommission.org.au/wp-content/uploads/2023/03/AG-Statement-DJCS.0015.0001.0066_R.pdf) (DJCS.0015.0001.0066).




## Section four – Where to from here

### 4.1 The journey to Treaty in Victoria

219. The Victorian Government has been on the path to Truth and Treaty with First Peoples for the last eight years. We started on this journey because we know that when you listen to people, you get better outcomes. To me this is common sense, and it is what Treaty is all about.
220. We know this is especially the case when you listen to First Peoples, who have cared for this Country for thousands of years – sustaining cultures, knowledge systems, families and the natural environment, all evident in the Aboriginal cultural heritage that remains across Victoria today. We recognise and understand the strength, determination and rights of First Peoples, and the truth that when First Peoples thrive, we all do.
221. The Victorian Government made the commitment to Treaty because First Peoples told us, and we could see ourselves, that until we recognised how inequity was created, and transform the relationship between the State and First Peoples, we could not improve equality between First Peoples and all others who call Victoria home.
222. In this way, the Commission has a crucial role in supporting Treaty. This truth-telling process is showing the State's true history – how when Victoria was colonised almost 200 years ago, First Peoples were excluded from social and economic life, the impacts of which continue to be felt today – and that is what we mean when we talk about inequity between the life experiences of Aboriginal and non-Aboriginal Victorians.
223. Of course, part of the reason that the State's efforts to 'close the gap' have been met with mixed success over recent decades is due to a lack of listening to First Peoples. First Peoples have said for decades that Treaty is essential to ensuring true self-determination for a better future for them, their families, and all Victorians.
224. Treaty is about making sure First Peoples get a say over their healthcare, their family's housing, their kids' education, and the practice of their culture, now and into the future.
225. The essential point of Treaty has been recognised by the Productivity Commission, which recently reviewed the National Agreement on Closing the Gap. The Productivity Commission found that, 'despite some pockets of good practice, progress in implementing the Agreement's Priority Reforms has, for the most part, been weak and reflects tweaks to, or actions overlaid onto, business-as-usual-approaches'.<sup>129</sup>
226. The Productivity Commission urged governments to change their approaches by engaging in shared decision-making with First Peoples, and commended Victoria's Treaty process as an example of this. In working towards Treaty, the Victorian Government has recognised that business-as-usual has failed First Peoples – it does not sufficiently tackle underlying issues and does not address injustices.

<sup>129</sup> Australian Government, Productivity Commission Review of the National Agreement on Closing the Gap – Study Report, Volume 1, 2024, 3, <https://www.pc.gov.au/inquiries/completed/closing-the-gap-review/report/closing-the-gap-review-report.pdf>.



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227. In 2018 the Victorian Government enshrined the State's commitment to pursuing Treaty in law with the passing of the Treaty Act – Australia's first treaty legislation.<sup>130</sup> The Treaty Act sets out a pathway to treaty negotiations.
228. The Treaty Act represented a key step on the path to Treaty, healing and a transformed 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, transparency and accountability.<sup>131</sup>
229. Victoria has made steady and sensible progress on Treaty since 2016. We now have two First Peoples-led bodies – the First Peoples' Assembly of Victoria and the Treaty Authority – with the authority to ensure that Treaty is an enduring part of the State of Victoria for generations to come.
230. The Assembly is into its second term as Victoria's first representative democratic body for First Peoples. The First Peoples' Assembly of Victoria is expected to be recognised as the First Peoples' Representative Body under the Treaty Negotiation Framework (DPC.0009.0007.0073), meaning it will represent First Peoples in the negotiation of State-wide Treaty.
231. The Treaty Authority, as required under the Treaty Act and Treaty Authority Act, will act in effect as an independent umpire – facilitating negotiations between the State and Aboriginal negotiating parties and resolving disputes between parties.
232. The Treaty Negotiation Framework (DPC.0009.0007.0073) sets out the requirements and obligations for Treaty negotiations. The Self-Determination Fund, which under the Treaty Act must support First Peoples' Treaty negotiating parties and empower First Peoples to build capacity, wealth and prosperity, is already supporting Traditional Owners across Victoria to prepare for forthcoming Treaty negotiations.
233. The Treaty work undertaken thus far has laid a strong foundation upon which a transformed future will be built. The Treaty process has begun to establish a new relationship between the State and First Peoples based on truth, trust, mutual respect and equality. In doing this, Victoria has shown the rest of the nation what is possible if you listen and act with purpose.
234. For our State, Treaty can offer significant benefits to all Victorians.
235. Overseas experience shows that there are significant social and economic benefits which come from treaty-making. Treaties that respect Indigenous self-determination have been shown to be necessary for economic development and improved social outcomes; benefitting not only First Peoples but the community as a whole.
236. In the Canadian province of British Columbia, treaties with individual First Nations governments have been shown to not only bring about socio-economic benefits, but also bring a net economic benefit to First Nations, British Columbia and Canada more broadly.<sup>132</sup> Treaty implementation has unlocked the potential of the First Nations economy, 'ranging from enabling access to financing to foster First Nations businesses; and investment in local and regional

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<sup>130</sup> *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>.

<sup>131</sup> *Ibid*, Part 3.

<sup>132</sup> Deloitte, *Socio-economic Benefits of Modern Treaties in BC*, October 2016, 2-10, <https://bctreaty.ca/wp-content/uploads/2017/03/Deloitte-BCTC-FinalReport.pdf>.



infrastructure, housing, and commercial activity and development benefiting both First Nations and non-First Nations communities'.<sup>133</sup>

237. In New Zealand, a 2018 report sponsored by the Reserve Bank of New Zealand noted that the Māori economy 'has become an increasingly important contributor to the wider economy of Aotearoa',<sup>134</sup> with an estimated 2018 asset base of \$68.7 billion, compared with \$42.6 billion in 2013.
238. In the United States, long-running research by Harvard's Kennedy School found that when Indigenous peoples have decision-making power 'they consistently out-perform external decision makers on matters as diverse as governmental form, natural resource management, economic development, health care, and social service provision'.<sup>135</sup>
239. Similarly, Treaty in Victoria can enable Victorians to harness traditional knowledge and create new opportunities, businesses and jobs in tourism, cultural industries and sustainable land and water management. When people have access to employment and economic opportunities, they have greater choice and control in their lives.
240. Treaty offers the opportunity to scale up and expand upon the successes of cultural sites such as Budj Bim, a UNESCO World Heritage listed site for its Outstanding Universal Value. Victoria has many sites with high Aboriginal cultural values that the Victorian Government promotes with Traditional Owners to share a greater understanding and appreciation of our rich cultural heritage. Treaty offers this opportunity to encourage tourism and regional development across the entire State while recognising and respecting the cultural and spiritual significance of such places. Treaty, by avoiding a one-size-fits-all approach, will help remove barriers to this kind of practical and sustainable development.
241. The clear evidence before us is that incremental reform is not the answer. This approach was tried for more than 200 years and failed to remove disadvantage and improve the lives of First Peoples. Treaty is unfinished business that will lead to a transformed relationship between the First Peoples and the State.
242. We know that the Treaty process will not be quick. It will involve compromise and take time to negotiate agreements that reflect the diverse needs and priorities of First Peoples across Victoria. While the road ahead may be challenging, I am committed to leading the Victorian Government on this journey.
243. I have been a member of the Victorian Parliament for almost a quarter of a century. During this time, I have been proud to be part of many significant reforms that have strengthened the social and economic fabric of Victoria. Treaty is one of them. I look forward to more Victorians becoming engaged and inspired by this history-making process and this generation-defining opportunity.

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<sup>133</sup> Deloitte, Socio-economic Benefits of Modern Treaties in BC, October 2016, v, <https://bctreaty.ca/wp-content/uploads/2017/03/Deloitte-BCTC-FinalReport.pdf>.

<sup>134</sup> Business and Economic Research Limited, Te Ōhanga Māori 2018 - The Māori Economy (2018, Reserve Bank of New Zealand, 1, <https://berl.co.nz/sites/default/files/2021-01/Te%20%C5%8Changa%20M%C4%81ori%202018.pdf>.

<sup>135</sup> Harvard Kennedy School, Project on Indigenous Governance and Development, <https://indigenousgov.hks.harvard.edu/about>.



## 4.2 Other actions and commitments alongside Treaty

244. While recognising the fundamental importance of the Treaty process, I acknowledge that we need to keep focusing on the changes and improvements that we can make right now.
245. Across all parts of government, we have a sustained focus on identifying and responding to the unique needs of First Peoples, whether it be in education, healthcare or the justice system.
246. At the time of finalising this statement, the Government's response to the *Yoorrook for Justice* report remains under consideration and will be released shortly. In the meantime, the Government will continue to progress existing reforms to improve First Peoples' lives across all aspects of government, including in the child protection and family service systems,<sup>136</sup> and continuing to implement the health-led response to public drunkenness.<sup>137</sup>
247. Over the past 20 years, First Peoples and the State of Victoria have progressed a number of initiatives of importance, including:
- a. The first recognition of native title in Victoria in 2005, followed by a response to First Peoples' calls for a form of State land recognition regime with the introduction of the *Traditional Owner Settlement Act 2010*;
  - b. The introduction of the *Aboriginal Heritage Act 2006* to provide legal protection for cultural heritage;
  - c. The development of a range of self-determination reform plans across government, produced in collaboration with First Peoples, including the *Marrung Aboriginal Education Plan* (DJCS.0003.0001.2449), which supports a curriculum that elevates First Peoples' perspectives and ensures strong educational outcomes for Aboriginal Victorians; and
  - d. The *Balit Murrup Aboriginal social and emotional wellbeing framework (2017–2027)*, which embeds self-determination in reforms to improve the social wellbeing and mental health of First Peoples.
248. I recognise that each of these are examples of steps that need to be consistently reviewed and monitored to see if they are operating in the way that was intended.
249. The Government also remains steadfast in our resolve to implement our commitments under the Victorian Aboriginal Affairs Framework, the National Agreement on Closing the Gap and the Victorian Closing the Gap Implementation Plan (DPC.0009.0009.0302), in line with the Productivity Commission's recommendation that decision-making power needs to be shared with First Peoples. This includes taking steps in 2024 to implement key reforms and time-critical commitments in the National Agreement, as discussed at the meeting of Joint Council on Closing the Gap in Melbourne in November 2023.<sup>138</sup>

<sup>136</sup> Hon. Luke Donellan, Minister for Child Protection, "Transforming The System For Our Most Vulnerable Kids," 20 May 2021. <https://www.premier.vic.gov.au/transforming-system-our-most-vulnerable-kids>.

<sup>137</sup> "Public intoxication reform," Department of Health, accessed 21 November 2023. <https://www.health.vic.gov.au/alcohol-and-drugs/public-intoxication-reform>.

<sup>138</sup> "Eleventh meeting of the Joint Council on Closing the Gap Communique," Department of Prime Minister and Cabinet, 24 November 2023. <https://ministers.pmc.gov.au/burney/2023/eleventh-meeting-joint-council-closing-gap-communique>.





250. In 2024, the Victorian Government is working on key initiatives with Ngaweeyan Maar-oo, the Koorie Caucus of the Closing the Gap Partnership Forum – Victoria’s formal implementation partner on the National Agreement, on Closing the Gap, including:
- a. Establishing a Place-Based Partnership and Community Data Project in Gippsland. This includes working with Ngaweeyan Maar-oo and the Victorian Aboriginal Child Care Agency (as the Partnership Forum’s children and families sector representative) to scope a proposal in partnership with local communities, key sector representatives and government.
  - b. Completing a second Victorian Expenditure Review in 2024, building on lessons learned from the two-phased Expenditure Review in 2023, and identifying opportunities to reprioritise funding to increase the proportion of services delivered by ACCOs.
  - c. Expending the sector strengthening funding allocated in the 2020-21 State Budget on self-determined proposals for ACCO sector strengthening in the priority sectors of health, early childhood care and development, disability, and housing.
  - d. Accelerating progress on an independent mechanism for institutional oversight led by First Peoples for the benefit of First Peoples. State-wide Treaty negotiations, commencing in 2024, is one pathway to identify, develop or strengthen existing mechanisms.
  - e. Ensuring a clear plan towards agreeing an inland waters target (Target 15c).
  - f. Strengthening whole-of-government accountability mechanisms for Closing the Gap implementation, recognising that implementing Victoria’s Closing the Gap commitments is the responsibility of every Victorian Government department and agency.
251. The Government will progress reforms to support Indigenous Data Sovereignty, including legislative reform this year to ensure that First Peoples’ evidence to the Commission will be managed on terms set by the Commission. Treaty negotiations will also include data sovereignty as a potential matter for negotiation.
252. Once established as small grassroots organisations to address a gap in how met Aboriginal health needs, Aboriginal Community-Controlled Health Organisations now form a comprehensive network that serve First Peoples and inform and deliver Victorian health reforms. Likewise, Aboriginal Community-Controlled Organisations have led the way on education reform. The Self-Determination in Education Reform Aboriginal Partnership Group has been driving conversations with communities, students, carers and administrators to make our schools culturally safe for First Peoples.
253. This work has been driven by First Peoples and Aboriginal Community-Controlled Organisations, who have partnered with the State to improve outcomes across several policy areas, including housing, justice, health and the environment. But despite the goodwill and partnership work that has been occurring for decades, socio-economic outcomes are not improving quickly enough for First Peoples in Victoria. This shows us that transformative reform is necessary that resets the relationship between the State and First Peoples, driven by the principle of self-determination through Treaty.
254. Treaty is the mechanism for this transformative change and the Government is committed to working in partnership with First Peoples, including the First Peoples’ Assembly, who have been elected to directly represent their communities. The Government is committed to walk alongside Aboriginal Victorians for sustained, meaningful and lasting outcomes. While I recognise that there is much more work to be done, I believe that, led by First Peoples, we are well placed to continue to take meaningful action.



## Concluding remarks

255. My thanks again to the Commissioners for the opportunity to provide this witness statement. The work you are leading is helping to uncover, and in many instances rewrite, our State's story. I am grateful to you.
256. While the final work of the Commission will be the definitive source, even the act of participating in this process has revealed parts of our history I never knew.
257. While I learnt some during my formal education, and then more broadly in public life, the depth of devastation experienced by First Peoples was not something I had ever truly grappled with.
258. The violence. The murder. The brutality.
259. The families cleaved apart. Robbed of their culture and their connection to Country.
260. The scale of cruelty and callousness inflicted upon men, women and children. As former Prime Minister Paul Keating put it, 'our failure to imagine these things being done to us'.
261. Just as galling, that so much of it was done in 'our name', in the name of progress.
262. I also learnt more about the strength and survival of First Peoples in Victoria.
263. Their refusal to allow their histories, traditions, languages and lore to be erased. Their determination to ensure their children and grandchildren share in the oldest continuous cultures in the world.
264. Just as I have learnt this story, I want every Victorian to learn this story.
265. And I believe there is a genuine desire. Families, like my own, who have seen their children learn about it at school – and wished they too had that chance.
266. Victorians who want to know the truth of our state's story – and be part of writing its next chapter.
267. Because that is the essential importance of truth. Only by honestly reckoning with our past can we reach for a better future.
268. As anyone who has read the accounts or heard the stories will know – this cannot be a flash in the pan or just a moment in time. We must continue to listen and learn from First Peoples.
269. There is plenty of work ahead of us – ensuring the Commission's efforts lead to tangible outcomes. That its telling of our history is understood and learned.
270. That we leave a lasting legacy.
271. Finally, I want to thank the First Peoples of Victoria. For your courage in the face of historical and ongoing injustice. For your leadership of and generosity towards this truth-telling process.
272. And for your immeasurable contributions to our State. Thank you.



**Hon Jacinta Allan MP**  
Member for Bendigo East  
Premier

18/03/2024