

**FIRST PEOPLES' ASSEMBLY OF VICTORIA**

# **SUBMISSION TO THE YOORROOK JUSTICE COMMISSION**

## **RESPONSE TO THE ISSUES PAPER ON ECONOMIC PROSPERITY**

20 May 2024



# Acknowledgement

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The First Peoples' Assembly of Victoria (the **Assembly**) acknowledges the unceded sovereignty of Traditional Owners of Country throughout Victoria and pays our respects to them, their culture and their Elders past, present and future. Since time immemorial, First Peoples' have practised their laws, customs, and languages, and nurtured Country through their spiritual, cultural, material and economic connections to land, water and resources.

The fight for rights and status has been shaped by First Peoples' ancestors and is the foundation of the journey to self-determination and empowerment. The honouring of First Peoples' ancestors and activation of inherent rights and benefits as sovereign peoples is now continued through Treaty-making.



# Introduction

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The Assembly is the independent and democratically elected body that represents First Peoples in the Treaty process in Victoria. The Assembly welcomes the opportunity to make this submission to the Yoorrook Justice Commission (**Yoorrook**) in response to the Critical Issues paper on Economic Prosperity.

This submission details the Assembly's recommendations to Yoorrook on economic prosperity and reiterates that systemic reform should be achieved through Treaty.

The Assembly acknowledges that Yoorrook will deliver its next report in December 2024 on systemic injustices experienced by First Peoples, including but not limited to economic prosperity and provide findings and recommendations for matters to be included in Treaties.

The foundations for Treaty-making have been agreed upon by the Assembly and the Victorian Government. The Assembly is now preparing to negotiate Statewide Treaty.

Treaty is about putting First Peoples in the driver's seat. It is about empowering First Peoples to reimagine and reshape the systems with which they interact. Treaty will enable First Peoples to decide First Peoples' issues. Treaty can deliver the freedom and power for First Peoples to make decisions about their Communities, culture, and Country.



# Executive Summary

*“Economic prosperity is about securing our future as First Peoples.”*

**Aunty Donna Wright, South-West Member**

The Assembly's submission emphasises the following key points:

- The economic dimension of self-determination is an essential component of full and meaningful self-determination and to ensuring that First Peoples have the power to shape and decide on systems, laws, policies, and programs that impact them.
- The economic injustices that continue to be experienced by First Peoples are inextricably linked to past injustices, colonial practices and Victorian Government acts.
- Lessons from other jurisdictions demonstrate that better economic outcomes are achieved for everyone when First Peoples have greater control and decision-making power over their financial resources.
- The Treaty process in Victoria provides the opportunity for systemic reform and shifting decision-making power from the Victorian Government and into the hands of First Peoples. This will benefit First Peoples as well as all Victorians.
- The Self-Determination Fund is a ready-made vehicle to enable First Peoples economic prosperity and economic self-determination.

The Assembly makes the following findings and recommendations:

The Assembly asks Yoorrook to make findings in relation to:

1. the extent of historical and ongoing economic injustices experienced by First Peoples.
2. the positive and integral role that Aboriginal organisations, Traditional Owner groups and First Peoples' businesses and enterprises play in delivering economic prosperity.

The Assembly asks Yoorrook to recommend that:

1. Issue-specific reform in systems affecting economic prosperity is not enough to address the systemic injustices faced by First Peoples. A 'whole of system' approach to economic prosperity that gives effect to genuine economic self-determination should be negotiated through the Treaty process. Mechanisms that shift decision-making power from Government to First Peoples to give effect to economic self-determination should be negotiated through the Treaty process.
2. The Self-Determination Fund must be adequately resourced to meet its purposes now and into the future. Measures to ensure adequate, sustainable, and ongoing funding to support First Peoples' economic self-determination should be negotiated through the Treaty process.

# 1 Economic dimension of self-determination

The *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)* is the most comprehensive instrument on the inherent rights of Indigenous Peoples.

UNDRIP outlines the four dimensions of self-determination, which provide important context for the work of Assembly and Yoorrook.

**Economic self-determination** empowers and supports First Peoples to make decisions about First Peoples' financial resources. It encompasses the right to freely pursue economic development, which includes the right to develop, maintain and strengthen a distinct economic institution as well as fully participate in the economic life of the state.<sup>1</sup>

**Political self-determination** is particularly significant as it explicitly provides the right to self-government. As the United Nations Special Rapporteur on the Rights of Indigenous Peoples has identified, the right to political self-determination provides First Peoples with the power to organise and direct their lives according to their own values, institutions and mechanisms within the framework of the state of which they are part.<sup>2</sup>

**Social self-determination** provides First Peoples with the right to development. Social self-determination is expanded upon throughout UNDRIP. Article 23 is a particularly significant expression of social self-determination:

*'Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, Indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.'*<sup>3</sup>

**Cultural self-determination** includes language, customs, ceremonies, cultural heritage, spirituality, and sports rights and is expanded upon throughout UNDRIP (articles 11-16, 31, and 34). The UN Committee on Economic, Social and Cultural Rights characterises culture as a broad, inclusive concept encompassing all manifestations of human existence and, among other things, ways of life.<sup>4</sup>

The Assembly considers that these four components of self-determination – political, economic, social and cultural self-determination – should provide the guiding framework for Yoorrook's recommendations on structural reform to strengthen decision-making roles and powers for First Peoples'.

<sup>1</sup> See Articles 3,5,17,20, 21,23, 32 and 36 of the *United Nations Declaration on the Rights of Indigenous Peoples*, (13 September 2007).

<sup>2</sup> Article 4 of UNDRIP is a particularly significant expression of political self-determination. It is further expanded in articles 5, 18,20 and 34.

<sup>3</sup> *United Nations Declaration on the Rights of Indigenous Peoples*, (13 September 2007).

<sup>4</sup> United Nations, Economic and Social Council, *General Comment No. 25 (2020)(on science and economic, social and cultural rights, E/c.12/GC/25* (30 April 2020).



## 2 Economic barriers faced by First Peoples

"At a fundamental structural level, Indigenous Australians have less opportunity to determine and control their economic destiny than other Australians."<sup>5</sup>

### National Context

Structural barriers within Government frameworks continue to limit First Peoples' economic potential, essentially capping progress and overlooking First Peoples' led pathways to empowerment. First Peoples continue to face barriers to their economic prosperity more than non-Aboriginal people, with First Peoples experiencing:

- significantly lower rates of employment
- significantly lower rates of economic participation
- lower rates of full-time employment, and
- lower rates of employment in higher-paid and higher-skilled roles.<sup>6</sup>

Progress towards the *National Agreement on Closing the Gap's* Target 8 – to increase the proportion of Aboriginal and Torres Strait Islander people aged 25-64 employed to 62% - is on track to be met. However, the target and reporting fail to fully capture the true nature of the disparity in employment between First Peoples and non-Aboriginal people and the lack of progress being made to bridge the economic divide.

Since 1978, when labour force data was first recorded, Australian employment rates have only dipped below 62% once during the 1983 recession. For perspective, during the COVID pandemic, when several major industries were unable to work, 69.5% of the population remained in employment. These historical moments are considered significant economic crises that have resulted in significant government policy responses to stimulate the economy.

The *2024 Closing the Gap Report* identifies nominal improvements over the last five reportable years, with a rise in employment rates among Aboriginal and Torres Strait Islander people aged 25-64 from 51.0% in 2016 to 55.7% in 2021<sup>7</sup>.

Currently, 77.7% of non-Aboriginal people between 25 and 64 are employed. This represents a gap of 22% between the employment rates of First Peoples and non-Aboriginal people and. The gap between employment rates of non-Aboriginal peoples and First Peoples has only decreased by 2.9% since 1991.

The Productivity Commission's *Review of the National Agreement on Closing the Gap Study Report* found that persistent barriers to progressing reforms to Close the Gap are due to the lack of power-

<sup>5</sup> Australian National University, 'Building better economic outcomes for Indigenous Australians' (2022), accessed 20 March 2024, <<https://www.anu.edu.au/news/all-news/building-better-economic-outcomes-for-indigenous-australians>>.

<sup>6</sup> Department of Jobs, Precincts and Regions, 'Yuma Yirramboi – Victorian Aboriginal Employment and Economic Strategy' (2022), 14.

<sup>7</sup> Closing the Gap, *National Agreement on Closing the Gap*, accessed 20 March 2024, <<https://www.pc.gov.au/closing-the-gap-data/dashboard/se/outcome-area15>>.

sharing and the government's failure to realise and act on the reality that First Peoples know what is best for their communities.<sup>8</sup>

The Closing the Gap data and the Productivity Commission's review affirms that gains are set within a context that fails to facilitate full economic participation or embrace the cultural distinctiveness of First Peoples.

*"Once you have money, once you have inherited wealth; your family own a home, once you can go to the bank and get a loan... Once you've got that wealth, there's all sorts of opportunities to generate more wealth."*

*"Across generations and generations, our families have not had that opportunity to generate wealth. That's why there is that disparity because we haven't had the chance to generate wealth. Therefore, wealth begets wealth from that."*

**Rueben Berg, Co-Chair**

### Victorian Context

The Victorian Government's commitment to self-determination, as expressed through the *Victorian Aboriginal Affairs Framework 2018-2023*, the *Victorian Closing the Gap Implementation Plan 2021-2023*, and the *Yuma Yirramboi Strategy (Invest in Tomorrow) 2022*, has not been enough to deliver economic self-determination for First Peoples in Victoria.

The *Yuma Yirramboi Strategy* acknowledges that its development occurred during the negotiations between the Assembly and the Victorian Government on the elements in the Treaty process, even noting that *"it is anticipated these negotiations will lead to the recognition of inherent rights and drive reforms to accelerate the growth of Aboriginal wealth creation and establish new institutional and legislative settings to support prosperity for Aboriginal Victorians across the six pillars of the strategy."*<sup>9</sup> While the strategy outlines actions to support economic prosperity for First Peoples in Victoria, it lacks an implementation plan or any concrete steps to support First Peoples in working towards economic independence before a Treaty is negotiated. Therefore, the suggestion is that the Victorian Government is delaying better outcomes for First Peoples until treaty negotiations begin, leaving those currently experiencing economic difficulties behind.

The *Victorian Government Aboriginal Affairs Report 2022 (VAAF Report)* identifies some slight improvements towards achieving economic prosperity in Victoria. For instance, there has been a steady increase in participation in the workforce for women, young people and people with a disability since 2016.<sup>10</sup> However, like the *Closing the Gap Report*, the data is presented in a way that accentuates advancements.

<sup>8</sup> Australian Government Productivity Commission, 'Review of the National Agreement on Closing the Gap Study report Volume 1' (2024), 3.

<sup>9</sup> Department of Jobs, Precincts and Regions, 'Yuma Yirramboi – Victorian Aboriginal Employment and Economic Strategy' (2022), 8.

<sup>10</sup> Victoria State Government, 'Victorian Government Aboriginal Affairs Report 2022' (2022), accessed 12 April 2024, [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).

The Assembly's previous submissions to the Yoorrook Justice Commission demonstrate the interconnectedness of economic prosperity with other social justice issues.

The Assembly's previous submission on:

- **Criminal Justice and Child Protection** noted that the fundamental causes for the over-representation of First Peoples in the criminal justice and child protection systems is the disadvantaged and unequal position of First Peoples in society, including but not limited to economic disadvantage.
- **Land Injustice** noted the correlation between economic prosperity and land justice.
- **Education, Health and Housing** noted the correlation between economic prosperity and positive social outcomes.

For further information on the connection between economic prosperity and other social issues please refer to the Assembly's previous submissions.

### 3 Lessons from other jurisdictions

The international case studies identified below demonstrate that when First Peoples have greater control and decision-making power over their financial resources, better economic outcomes are achieved for everyone. Capacity, wealth, and prosperity must be defined broadly, flexibly, and holistically by what First Peoples in Victoria want for themselves and future generations.

#### Case Study – Māori Economy

In 2018, the Māori economy reached a valuation of \$68.7 billion, marking a 60% growth since 2013.<sup>11</sup> This economy includes the work of Māori as both workers and business owners, as well as the assets of iwi (tribes), collectives, trusts, and incorporations. The Waitangi Treaty has served as a tool to mitigate the marginalisation of Māori, and consequently, their economic progress has been advanced through the frameworks established by the Treaty. New Zealand's example shows economic prosperity is crucial for progress. Self-sufficiency and collective activity are the way forward to address the misalignment between the success of Indigenous groups and the persisting poverty of households.<sup>12</sup>

<sup>11</sup> Chapman Tripp, 'Māori economy soars to \$68b, a growth of 60% in five years' (2021), accessed 4 April 2024, <https://chapmantripp.com/trends-insights/maori-economy-soars-to-68b-a-growth-of-60-in-five-years/>.

<sup>12</sup> M Gray and B Hunter, 'The comparative wellbeing of the New Zealand Māori and Indigenous Australian populations since 2000' in *Routledge Handbook of Indigenous Wellbeing* (2019, Routledge) 122.



### Case Study – Native American Economy in the Self-Determination Era

In the late 1980s, U.S. federal policies of tribal self-determination through self-government were introduced. The overall result has seen an unprecedented surge in economic development and tribal government capacity building. Hundreds of tribes across the lower 48 states now routinely serve their citizens with the full array of governmental functions and services expected from non-Indian state and local governments in the U.S. and increasing numbers of tribes are becoming the economic engines of their regions:

- Since 1989, real (i.e., inflation-adjusted) per capita income of the average Native American resident of an American Indian reservation in the lower 48 states has risen 61.4%. The comparable figure for the average American in the U.S. is 17%.<sup>13</sup>
- Under tribal self-government, the proportion of families with children living in poverty on reservations has been cut from 47.3% in 1989 to 23.5% today.<sup>14</sup>

## 4 Structural reform is needed through Treaty

As identified in previous Assembly submissions to Yoorrook, issue-specific reform is not enough to address the systemic injustices faced by First Peoples.

To give effect to the full dimensions of self-determination, a ‘whole of system’ approach to economic prosperity is required. The Treaty process is the appropriate vehicle to activate genuine self-determination – to make transformational changes to shift decision-making power to Victoria’s First Peoples so that they make the decisions about the systems that impact their communities. This is what we call ‘structural reform’.

<sup>13</sup> J Kalt, ‘American Indian Self-Determination Through Self-Government: the only policy that has ever worked’ (2022), accessed 4 April 2024,

[https://ash.harvard.edu/sites/hwpi.harvard.edu/files/ash/files/native\\_children\\_commission\\_hearing\\_12-15-22\\_kalt\\_statement\\_vfin2.pdf?m=1671056068](https://ash.harvard.edu/sites/hwpi.harvard.edu/files/ash/files/native_children_commission_hearing_12-15-22_kalt_statement_vfin2.pdf?m=1671056068)

<sup>14</sup> J Kalt, ‘American Indian Self-Determination Through Self-Government: the only policy that has ever worked’ (2022), accessed 4 April

2024, [https://ash.harvard.edu/sites/hwpi.harvard.edu/files/ash/files/native\\_children\\_commission\\_hearing\\_12-15-22\\_kalt\\_statement\\_vfin2.pdf?m=1671056068](https://ash.harvard.edu/sites/hwpi.harvard.edu/files/ash/files/native_children_commission_hearing_12-15-22_kalt_statement_vfin2.pdf?m=1671056068)

## 5 Self-Determination Fund

*“We need the Self-Determination Fund to be really strong, so that we, as a Community, can leverage our own assets to support ourselves and to generate self-sufficiency. By having access to wealth, we can generate more wealth for our communities. That’s what I think is really critical.”*

**Rueben Berg, Assembly Co-Chair**

The Self-Determination Fund, established by agreement between the Assembly and the Victorian Government, is a ready-made vehicle for economic prosperity and to advance the full dimensions of self-determination.

The Minister for Treaty and First Peoples, Natalie Hutchins, acknowledged the importance of self-determination for First Peoples to achieve better economic outcomes by stating the following when the Self-Determination Fund was being legislated through the *Advancing the Treaty Process with Aboriginal Victorians Act 2018 (Treaty Act)*:

*“The purpose of a Self-Determination Fund is to support Aboriginal Victorians to participate in the treaty process on an equal footing with the state, and to provide an independent resource base that supports Aboriginal Victorians to freely pursue self-determination and be empowered to build capacity, wealth and prosperity.*

*The Self-Determination Fund responds to growing local and international evidence that better social and economic outcomes are achieved when Aboriginal people are able to exercise their right to self-determination. It also acknowledges that Aboriginal Victorians hold the knowledge and expertise to make the best decisions for themselves, their families and their communities.*

*The Self-Determination Fund will be critical to enabling Aboriginal Victorians to realise self-determination and creating a level playing field in the treaty process.”<sup>15</sup>*

The Self-Determination Fund’s two purposes are to:

1. support First Peoples to have equal standing with the Victorian Government in Treaty negotiations, and
2. provide a financial resource, independent from the Victorian Government, that empowers First Peoples to build capacity, wealth, and prosperity.

As part of the Assembly’s negotiations with the Victorian Government to establish the Self-Determination Fund, the Victorian Government has provided initial, partial funding to support the Self-Determination Fund’s first purpose – support for Traditional Owners to start planning and exploring aspirations for their Traditional Owner Treaty.

<sup>15</sup> Parliament of Victoria, Parliamentary Debates (Hansard), *Legislative Assembly: Fifty-Eighth Parliament, First Session*, (28 March 2018), accessed 18 April 2024 < [Assembly Daily Extract Wednesday 28 March 2018 from Book 4.pdf](https://www.parliament.vic.gov.au/assembly-daily-extract-wednesday-28-march-2018-from-book-4.pdf) ([parliament.vic.gov.au](https://www.parliament.vic.gov.au))>.

This initial investment in the Self-Determination Fund has already enabled self-determination in action. In November 2023, the Self-Determination Fund released Funding Guidelines for the early phases of Purpose 1. The funding process is designed to be fair, culturally strong and safe, and to respect the right to self-determination of those seeking support.

With greater investment, the Self-Determination Fund has enormous potential to support First Peoples' wealth and prosperity for current and future generations, including to facilitate First Peoples' engagement with the economy.

Measures to ensure adequate, sustainable, and ongoing funding to support First Peoples' economic self-determination – including investment in the Self-Determination Fund – should be negotiated through the Treaty process.

