

Nation-building Resource Pool Information Management Protocol

Background

Nation-building Resource Pool

The Nation-building Resource Pool provides flexible funding to Traditional Owners to resource nation-building and treaty readiness activities.

The Nation-building Resource Pool is part of the Traditional Owner Nation-building Package (**the Package**). The Package aims to enable Traditional Owners across Victoria to engage in nation-building activities, progress formal recognition and prepare for treaty negotiations. The Package is delivered by:

- The Federation of Victorian Traditional Owner Corporations (**Federation**) (administration of the Resource Pool)
- First Nations Legal & Research Services (**First Nations**) (Traditional Owner mapping and formal recognition support)
- Traditional Owner Relationships and Heritage, First Peoples – State Relations, Department of Premier and Cabinet (**First Peoples – State Relations**) (Strong Roots for Our Futures Program (**Strong Roots**) and Engagement Officers)

Information management protocol

This protocol sets out how Traditional Owner knowledge and information will be protected and managed by the Federation, First Nations and First Peoples – State Relations in relation to the Nation-building Resource Pool including, in particular, information that may relate to formal recognition processes or future treaty negotiations.

The protocol comprises the following sections: rationale for and commitment to information management; how information will be managed; the roles and responsibilities of each partner organisation; and partnership governance.

This protocol has been prepared for Traditional Owners by the Federation, First Nations and First Peoples – State Relations. The protocol may be reviewed and amended from time to time, provided amendments do not reduce protections provided by the protocol.

Rationale

Victorian Traditional Owners maintain that their sovereignty has never been ceded and have long fought for land justice outcomes, including treaty. Traditional Owner groups have achieved, and are involved in current processes for, formal recognition of their rights under the *Native Title Act 1993* (Cth), *Traditional Owner Settlement Act 2010* (Vic) and *Aboriginal Heritage Act 2006* (Vic). Some of these processes involve negotiations with the Victorian Government and may be undertaken with legal and research support from First Nations.

In 2018 the Victorian Parliament passed the *Advancing the Treaty Process with Aboriginal Victorians Act 2018* (Vic) (Treaty Act) committing the government to the treaty process. In 2019, the First Peoples' Assembly of Victoria (Assembly) was established as the elected voice for Aboriginal peoples and communities. Traditional Owners are currently involved in the development of elements to support future treaty negotiations through the Assembly, and are preparing for future treaty negotiations.

Commitment

Traditional Owners have a right to control their information and knowledge and have their information and knowledge protected and respected. The Federation, First Nations and First Peoples – State Relations will manage information, including information that may be used in current or future formal recognition or treaty processes, in such a way as to protect this right, in accordance with their legal obligations.

How will Traditional Owner information be managed?

Traditional Owners will disclose information to the partner organisations in the course of accessing the Resource Pool. This may include personal information and information related to formal recognition or treaty processes.

Approach

In relation to the Resource Pool, the Federation, First Nations and First Peoples – State Relations will:

- Communicate clearly with Traditional Owners about how information will be managed
- Always gain Traditional Owner consent to use or share information that is not public information, unless otherwise authorised by this Protocol
- Only ask Traditional Owners and the other partner organisations to provide information necessary for the implementation of the Resource Pool
- Only share information with staff members of the Federation, First Nations and First Peoples – State Relations who need to know this as part of their daily work, in order to provide services or resources to Traditional Owners, or in order to comply with their legal obligations
- Only share information with the Secretary, Minister, Cabinet or other parts of government if compelled to do so by law or to comply with principles of government accountability (for example the Minister is required to be updated on expenditure from the Nation-building Resource Pool)
- Protect confidential, personal and sensitive information consistently with this Protocol
- Act with an awareness that certain information will be ‘treaty sensitive information’, being information that could affect the outcomes of treaty negotiations including:
 - information that relates to the content of the treaty elements required under the Treaty Act
 - substantive issues which are likely to be the subject of future treaty negotiations between Traditional Owners and the State
 - a Traditional Owner group’s particular aspirations for what may be included in a future treaty that they may be a party to
 - other information that a Traditional Owner group deems to be treaty sensitive, such as relating to the Assembly’s internal operations, the internal operations of a Traditional Owner group, or the Traditional Owner group’s relationship to, or participation in, the work of the Assembly.

All staff involved in the delivery of the Resource Pool, including the Assessment Committee and Steering Committee, will receive training in:

- implementation of this protocol (this training will be delivered by the Federation, First Nations and First Peoples – State Relations), and
- the treaty process and information that may be sensitive in current or future treaty processes.

In addition to the general approach confirmed above, specific steps will be taken in relation to the following kinds of Traditional Owner information:

Personal information

Staff may record the name and contact information of Traditional Owners for the purpose of discussing the Resource Pool so they are able to be contacted for follow up. Staff will not pass on personal details without discussing this with the owner of this information first and gaining their consent.

Any personal information that is provided will be handled in accordance with the *Privacy and Data Protection Act 2014* (Vic) and other applicable laws, which in practice may affect the operation of this legislation.

Applications to the Nation-building Resource Pool

Traditional Owner groups will submit applications for the Nation-building Resource Pool to the Federation.

Who will have access to applications?

The Federation will provide Resource Pool applications to the other partners (First Nations and First Peoples – State Relations) for the purpose of assessing applications, administering activities funded under the Nation-building Resource Pool or to otherwise comply with their legal obligations.

For the purpose of assessing and making decisions about applications, Resource Pool applications will be provided to Federation staff administering the Resource Pool, Assessment Committee and Steering Committee members.

What additional protections are available for information in applications?

Traditional Owners may identify information either in or supporting their application that is sensitive (including treaty sensitive information) and that requires special management measures, in addition to those set out in this Protocol, to protect their rights (for example, in current or future formal recognition or treaty processes). Traditional Owners should discuss these additional measures with the Federation and agree an approach for managing such information. Information management measures may include: not submitting sensitive information, identifying a limited number of people who can access that information or having the information redacted from the version of the application provided to the Assessment Committee and Steering Committee.

Applicants should note that applications are assessed by the Steering Committee on the basis of the information available to them and must be able to demonstrate that they meet all assessment criteria in order to be successful.

What information will be made public about funded activities?

The Federation, First Nations and First Peoples – State Relations may publicly name Traditional Owner groups that are receiving or have received support through the Resource Pool, and the type of support they have received to ensure transparency of access to program resources. Successful grant recipients will also be asked to provide a short (1-2 sentence) description of the funded project for publicity purposes and are expected to provide reasonable assistance to promote Resource Pool projects. However, no information about the specific activities that will be undertaken or the purpose of the funding will be disclosed without the consent of the Traditional Owner groups involved, unless such disclosure is required by law.

Individual Grant Agreements between the Federation and each funding recipient will contain clauses protecting information collected through funded activities.

How will conflicts of interest be managed?

To manage actual, potential or perceived conflicts of interest, all Federation staff carrying out eligibility assessment and quality assurance checks and all Assessment Committee and Steering Committee members will be required to complete a conflict of interest declaration. This requires relevant staff and committee members not to participate in discussion or decision-making where they have a financial or personal interest in the relevant decision. Where a conflict of interest is declared by a member of the Steering Committee, the decision-making will be undertaken by a nominated delegate of that organisation who does not have a conflict of interest.

Monitoring and Reporting

The Federation and First Nations, through funding agreements with First Peoples – State Relations, have committed to reporting back to Traditional Owners regularly on the implementation and delivery of their respective components of the Package. These processes will involve general, de-identified data and information and will otherwise follow the approach to Traditional Owner information management set out above.

Roles and responsibilities of partner organisations

Traditional Owner Relationships and Heritage, First Peoples – State Relations, Department of Premier & Cabinet

First Peoples – State Relations, Department of Premier and Cabinet is responsible for work in the areas of cultural rights, self-determination, treaty and truth – an extensive program of priority work with First Peoples. Traditional Owner Relationships and Heritage is a division of First Peoples – State Relations, with responsibility for delivery of two components of the Package: (i) engagement officers; and (ii) foundational support.

Traditional Owner Relationships and Heritage is a member of the Steering Committee which determines applications for funding from the Nation-building Resource Pool.

Traditional Owner Relationships and Heritage delivers the Strong Roots program which provides foundational support to Traditional Owners of the regions where there is not yet a formally recognised Traditional Owner Group: (i) Mid North West; (ii) Central North; (iii) North East; and (iv) Far East Gippsland (Regions). Strong Roots was co-designed with Traditional Owners of the Regions and launched in February 2020. Strong Roots has recently come into the Package for two key reasons: as the mechanism through which funding, previously available through the Resource Pool, is now distributed in the Regions; and to enable effective coordination with formal recognition processes.

Traditional Owner Relationships and Heritage is not involved in treaty negotiations between the State of Victoria and the Assembly. Treaty Negotiations and Strategy in First Peoples – State Relations is responsible for leading, coordinating and facilitating the Victorian Government’s approach to the treaty process. Treaty Negotiations and Strategy and Traditional Owner Relationships and Heritage are both part of First Peoples – State Relations within the Department of Premier and Cabinet and both report to the Minister for Aboriginal Affairs.

The Department has processes to support the management of sensitive information. First Peoples – State Relations has in place procedures to prevent or limit the disclosure and sharing of information provided by Traditional Owners through the Resource Pool. Specifically, Traditional Owner Relationships and Heritage will not disclose this information to the Treaty Negotiations and Strategy Branch. Traditional Owner Relationships and Heritage will only disclose this information to the Secretary, Minister, Cabinet or other parts of government, with Traditional Owner consent, if compelled to do so by law or to comply with principles of government accountability (for example the Minister is required to be updated on expenditure from the Nation-building Resource Pool).

First Peoples – State Relations is not involved in formal recognition processes. The Victorian Aboriginal Heritage Council is responsible for appointment of Registered Aboriginal Parties under the *Aboriginal Heritage Act 2006* (Vic) and the Department of Justice and Community Safety leads negotiations between the State of Victoria and Traditional Owner groups under the *Traditional Owner Settlement Act 2010* (Vic) and *Native Title Act 1993* (Cth).

Particular legal obligations of First Peoples – State Relations with respect to information

The *Privacy and Data Protection Act 2014* (Vic) imposes obligations on government with respect to the collection, use and disclosure and treatment of personal information. Other laws which also apply to information held by government include the *Freedom of Information Act 1982* (Vic), which allows members of the public to access information held by public sector agencies. Although an exemption may apply to prevent disclosure in a particular instance, the outcome of an application cannot be guaranteed in advance, and any available exemptions will depend on the particular document involved. Further, once information is received by Traditional Owner Relationships and Heritage it will likely become a public record subject to the *Public Records Act 1973* (Vic) and must be retained in accordance with that Act.

For information about the broader collection, use, and disclosure of personal information by the Department of Premier and Cabinet, please email contact@dpc.vic.gov.au.

First Nations Legal & Research Services

First Nations is a not for profit organisation which is funded to perform the functions of a native title representative body, as set out in the *Native Title Act 1993* (Cth), in Victoria. First Nations provides assistance to Traditional Owner groups in relation to the research and preparation of native title claims and other native title proceedings and in relation to processes and negotiations under the *Traditional Owner Settlement Act 2010* (Cth). First Nations’ resources are allocated according to an Operational Plan and requests for assistance are assessed based on First Nations’ [Guidelines for First Nations Assistance to Native Title Groups](#).

First Nations also works with Traditional Owner Corporations who hold rights and interests for Victorian Traditional Owners and undertakes other work in line with its organisational objectives.

The Package provides additional funding for First Nations to:

- undertake research with Traditional Owner groups currently without formal recognition and collaboratively identify and map their social organisation and structures, and
- provide legal advice and meeting support for Traditional Owner groups pursuing formal recognition through the *Native Title Act 1993* (Vic), the *Traditional Owner Settlement Act 2010* (Vic) and under certain circumstances, the *Aboriginal Heritage Act 2006* (Vic).

First Nations is a member of the Steering Committee, which determines applications for funding from the Nation-building Resource Pool.

Federation of Victorian Traditional Owner Corporations

The Federation is the Victorian state-wide body that convenes and advocates for the rights and interests of Traditional Owners while progressing wider social, economic, environmental and cultural objectives. The Federation supports the progress of agreement making and participation in decision making to enhance the authority of Traditional Owner Corporations on behalf of their communities.

The Federation's purpose is to facilitate and amplify Traditional Owner voices to self-determine their futures and to build on and strengthen collective interests and opportunities. Federation members are Traditional Owner Corporations recognised by government as holding rights and interests over Country for their community. The Federation works with its members and other Traditional Owner groups across Victoria.

The Federation is responsible for the delivery of the Nation-building Resource Pool component of the Package. The Federation is a member of the Steering Committee which determines applications for funding from the Nation-building Resource Pool.

Resource Pool governance

The Federation, First Nations and First Peoples – State Relations will work together to deliver the Resource Pool through the following governance mechanisms:

- a Steering Committee comprising executives of the Federation, First Nations and First Peoples – State Relations to make decisions about allocation of funding from the Nation-building Resource Pool
- an Assessment Committee comprising managers of the Federation, First Nations and First Peoples – State Relations to provide advice and recommendations to the Steering Committee.

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