



# TONFABS COMMUNIQUE

Volume 4

July 2022

On Wednesday, June 29 2022, the Federation of Victorian Traditional Owner Corporations (the Federation) hosted a four-hour online forum to engage community feedback on the implementation of the Victorian Traditional Owner Native Food and Botanicals Strategy (the TONFABS Strategy).

This was the final of four workshops to be held for this initial stage of the project and was open to all Victorian Traditional Owners (TOs).



Federation of  
Victorian Traditional  
Owner Corporations



Blak Wattle  
—Coaching & Consultancy—



# BACKGROUND

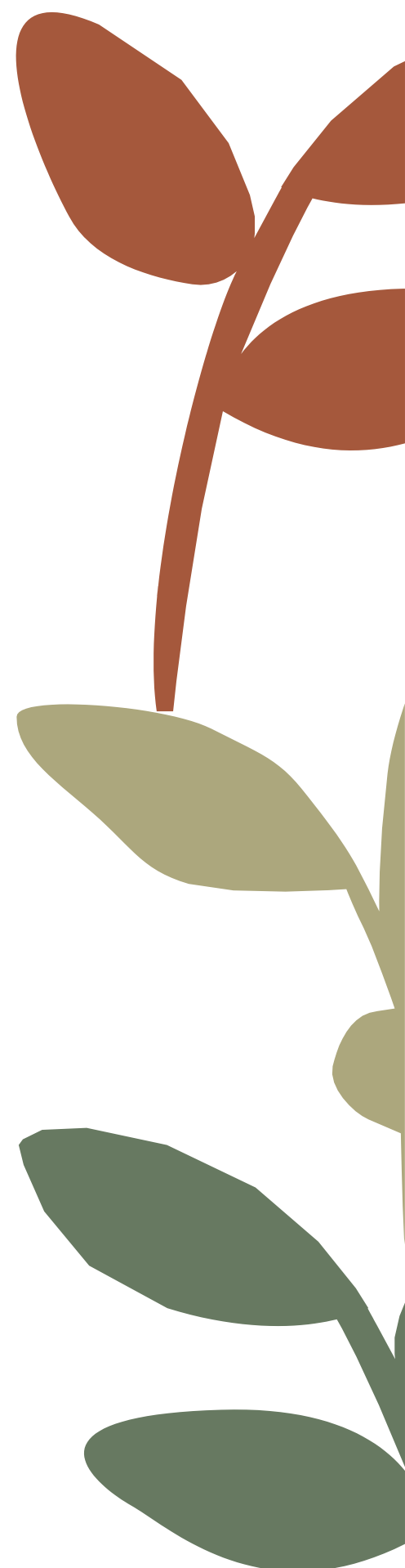
In April 2021, the Federation and Agriculture Victoria launched the TONFABS Strategy which is a bold roadmap to develop a TO led native food and botanicals industry. The Strategy seeks to enshrine the protection of Indigenous Cultural and Intellectual Property (ICIP) through a range of legislative, regulatory, policy, and funding mechanisms.

ICIP refers to “... the rights of Australian First Nations People to their cultural heritage. Heritage comprises all objects, sites, languages, expressions and knowledge, the nature or use of which has been transmitted or continues to be transmitted from generation to generation and pertains to a particular Aboriginal or Torres Strait Islander group or its territory” (TJC 2022). This includes stories and anecdotes. Indigenous commercial law firm Terri Janke and Company (TJC) has been commissioned to develop key stages of work for the implementation of the Strategy, detailed in the Victorian Traditional Owner Native Food and Botanicals Strategy Scoping Paper.

The online workshops invite all Victorian TOs to participate in a Traditional Knowledge Group (TKG) to provide input and feedback on the proposed implementation of the Strategy. This work is also being overseen by the TONFABS Project Control Committee (PCC), with the additional leadership of a proposed co-governance group.

Building upon the previous three sessions, the final TKG workshop sought to garner more detailed feedback on key aspects of the Strategy’s implementation: the Accreditation (Labelling) System, Business Model, Cultural Protocol, and the Access and Benefit Sharing Agreement.

***“If I can leave something behind for the next generation I’ll be pleased, as I remember how hard it was starting out all these years ago. These types of forums help me to look at the sector with a glass half full” TKG member***





# PROCEEDINGS

## ATTENDEES

The final session saw the continued attendance of a core group of Victorian TOs as well as some new faces, providing a diverse spectrum of cultural and commercial expertise.

Discussions were facilitated by Mbarbrum woman and founder of Blak Wattle Coaching and Consulting, Caroline Kell. Representatives from Terri Janke and Company (TJC) attended to present the proposed work stages of the Strategy's implementation. Members of the TONFABS PCC also participated to provide operational information on the project.

## WORKSHOP PROCEEDINGS & INSIGHTS

### *Introductions and overview*

The final session centred on hearing TOs' feedback on TJC's recommendations for the Accreditation (Labelling) System, Business Model, Cultural Protocol, and the Access and Benefit Sharing Agreement. It commenced with an Acknowledgement of Country and culturally informed introductions.

Facilitator Caroline Kell led a group reflection on the meaning of this year's NAIDOC theme 'Get Up! Stand Up! Show Up!'. One participant noted that the theme speaks to the importance of "fighting for your rights as Aboriginal people to be proud".

This conversation set the scene for the rich discussions to follow centering TO self-determination in the native food and botanical industry.

# OPERATIONAL UPDATES

Reece O'Brien, principal advisor of Economic Development at the Federation, provided an update on some of the operational aspects of the project.

As discussed in the previous workshops, the Federation has allocated funding to traditional owner corporations (TOCs) to engage in community implementation projects which align with the TONFABS strategy.

Based on feedback from the TKG, the Federation is exploring the possibility of opening up applications to TO groups not formally recognised under the Aboriginal Heritage Act 2006 (VIC) and will provide an update when available.

Reece then summarised the current funding status for the development of the work program for the 2022/23 financial year.

Whilst more detailed discussions will be held at a later date, TKG members highlighted the importance of the work program focusing on leadership development for both young people and older community members.

Reece also invited the group's feedback on the possibility of remuneration for member participation in future iterations of the TKG. Whilst individual circumstances varied, there was overwhelming support for remuneration to be explored in recognition of member expertise and to ensure equitable engagement. As noted in previous workshops, TKG members will be invited to nominate for positions in the co-governance group.

Further details will be provided by Reece in the coming months and information can be sought by contacting him on 0434 129 603 or [reece.obrien@fvtoc.com.au](mailto:reece.obrien@fvtoc.com.au).

# DEVELOPMENT OF THE ACCREDITATION (LABELLING) SYSTEM

*Yuin paralegal Adam Broughton from TJC presented on the development of the Accreditation (Labelling) System.*

## SYMBOLS AND MARKS

TJC has developed two options for the presentation of symbols that identify accreditation; a sliding scale rating system or a two-tiered system. Feedback gathered from the previous TKG workshops and the Expert Working Group (EWG) has led to the simplification of the sliding scale rating system to be out of 3, rather than the originally proposed 5 markers. Adam reiterated that the lowest rating still requires evidence of compliance with cultural protocols and some access and benefit-sharing, whilst incentivising businesses to strive for the highest label accordance. On the other hand, the two-tiered system more simply distinguishes a TO business from a non-Indigenous player in the sector who is abiding by protocols and benefit-sharing agreements.

TJC recommends the adoption of the sliding scale rating system as it provides greater detail on the extent of collaboration and encourages the industry to strive for the highest compliance. Like so much of this work, members of the TKG reflected on the difficulty of providing feedback without a greater understanding of the details - which are to be developed in the second stage of the project. Whilst noting that the two proposals were useful in framing the conversation, the group felt unable to definitively support one option over the other.

However, the TKG suggested a preference for the two-tier system in the short-term, due to its simplicity and ease of implementation. The TKG further emphasised the importance of successfully executing the aesthetic presentation of the labelling system through easily identifiable markers such as bunya nuts or boomerangs.



## TRADEMARKS

Next, Adam provided an overview of the options available to legally protect the Accreditation (Labelling) System through either standard or certification trade marks. TJC recommended that utilising standard trade marks to initially protect the TONFABS labels is beneficial, with the view to eventually progress to certification trade marks.

This option seeks to streamline the process by minimising upfront costs and time required to protect the label, whilst allowing flexibility to develop the accreditation criteria. Members of the TKG felt comfortable with the recommendations of TJC given the importance of ensuring the Strategy's long-term viability.

## OWNERSHIP AND DECISION MAKING

TJC proposes that a TONFABS entity be established to assume ownership of the trade marks and be responsible for administering the Accreditation (Labelling) System, managing licensing arrangements, and regulating compliance to the Cultural Protocol.

It will be supported by two independent TO-led subcommittees - the Advisory Committee, responsible for the application of the system; and the Appeals Committee, tasked with ensuring transparency and consistency in accreditation determinations. Adam presented on TJC's recommendation that initially, the Federation and/or Agriculture Victoria administers the Accreditation System in the short-term, until appropriate recognition and take-up by consumers and the Victorian native food and botanicals industry has been established. This will allow flexibility and promote long-term viability. TJC proposes that whilst the Federation owns any registered trade marks in the short term, ownership should be transferred to the TONFABS entity once it is established.

The majority of the TKG supported the establishment of the Accreditation (Labelling) System under the initial auspices of the Federation and/or Agriculture Victoria. Members discussed the role of Agriculture Victoria and the need to balance their commitment to the project with the ultimate goals of self-determination.

It was also noted that the Federation should consider in their communications strategy the need for equitable representation from TO groups not formally recognised and therefore ineligible for Federation membership. Participants also demonstrated interest in a greater exploration of the scope and details of this proposal in future iterations of the TKG workshops.

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# DEVELOPMENT OF THE ACCREDITATION (LABELLING) SYSTEM

## COSTS AND FEES

Given the administration costs involved in the operation of the TONFABS entity, sub-committees and trade mark registration, the viability of this Accreditation (Labelling) System relies on the provision of licence fees. Adam provided an overview of TJC's recommendation that both non-TO businesses and TOCs are charged a fee for the use of the labels, whilst TO businesses and sole traders are charged a discounted fee.

Two options were presented for the determination of such fees, with the first calculated based on the size and profits of the applicant business. This takes into account the concerns raised in previous TKG sessions surrounding the barriers to smaller groups starting out in the industry. The second option would be a fee determined by the level of accredited label obtained; with the lowest fees charged for the highest rating achieved. This would incentivise greater compliance with the Cultural Protocol and Access and Benefit Sharing Agreement.

Members of the TKG discussed issues of accessibility and equity, particularly for TO and sole trader businesses. Concerns were raised about the possibility for non-TO applicants to exploit the system through subsidiary companies, underscoring the importance of enshrining integrity and intent in the access and benefit sharing agreements. Participants identified the need to develop tools to support TO applicants to ensure they are not intimidated by the bureaucratic requirements of the Accreditation System. TJC also clarified that the Accreditation (Labelling) System likely would not apply to not-for-profit initiatives such as community gardens, however, such groups would be free to reference the best-practice Cultural Protocol for broader community awareness. Further details and discussion are needed to determine the TKG's preference for the two proposals for licensing fees.



## DEVELOPMENT OF THE BUSINESS MODEL

Adam then turned the discussion toward the development of the TONFABS Entity and Business Model report. Given TKG support for the entity to be initially auspiced by the Federation and/or Agriculture Victoria, TJC provided a high-level summary to be further detailed at a later stage. He presented three business structures determined to be most relevant to the TONFABS entity: a company limited by guarantee, a proprietary limited company, and a non-distributing cooperative. Whilst all have their respective limitations and opportunities, TJC recommends that the entity takes the form of a company limited by guarantee. Run by a board of directors, this structure would allow for the application for charitable status whilst limiting the liability of members.

TKG members reflected on this presentation providing “good food for thought”, whilst noting the need for further details to be worked through at the co-governance level. One participant acknowledged the need to balance TO leadership with skills-based talent from First Nations people who abide by protocols yet are living off Country. This takes into account the often competing pressures placed on TOs to manage their cultural, social, and administrative responsibilities.

## DEVELOPMENT OF CULTURAL PROTOCOLS TEMPLATE

Next, Wamba Wamba, Dja Dja Wurrung, and Yorta Yorta solicitor Neane Carter from TJC presented the three components of the Cultural Protocol template. Part A - Purpose and Principles sets out the intention of the document under the TONFABS principles of Culture, Country, Community, and Commercial. These four themes inform the Protocols detailed in Part B which were examined in greater detail in TKG workshops #2 and #3. Neane then turned the group’s attention to the seven sections of Part C - Best Practice Guides. These guides will serve as instruments for TOs, TOCs, and non-Indigenous actors to best engage with the Cultural Protocol depending on the scope of work.

TKG members engaged in a rich discussion on TJC’s development of the Cultural Protocol. One participant spoke of the importance of the wording “community” to denote the reciprocal arrangements and protocol between TO groups that have continued post-invasion. This led to further conversations about the importance of unity amongst mobs, alongside the rebuilding of individual nations. One factor raised was the divide between formally recognised and unrecognised groups. This issue has informed the rationale behind the decision for the Cultural Protocol to be made freely available, allowing TO groups to tailor the framework to their specific place-based context. Finally, TKG members identified the broader influence these protocols could have in fostering understanding amongst the government, public and private sectors of their responsibilities of doing business on sovereign land. These reflections underscore the incredible work of TJC in developing a body of work that is responsive to TO needs and desires.

***“I LOVE THE WORD COMMUNITY AS IT INCLUDES EVERYONE LIVING ON COUNTRY. REGARDLESS OF WHAT PART OF THE WORLD YOU’RE FROM, YOU BECOME COMMUNITY - WE HAVE A RESPONSIBILITY TO CARE FOR ALL”***  
**TKG MEMBER**



# DEVELOPMENT OF THE ACCESS AND BENEFIT SHARING AGREEMENT

*“An effective partnership must be one built on equity and clear and transparent language and understanding” - TKG member*

Building on the previous TKG workshops, Neane then presented on the development of the Access and Benefit Sharing Agreement (ABS Agreement) template. The document is grounded in four key themes - rights/voice of Country, empowerment of community, protection of IP and ICIP, and benefit sharing. Workshop participants reviewed a draft flowchart that provides a template process in developing a comprehensive agreement that cements the free, prior and informed consent of TO knowledge and resources.

TKG members identified the need for straightforward and agile frameworks which balance the need for safeguards with the allowance of flexibility. Given the historic and ongoing misappropriation of knowledge, some participants highlighted the importance of rigorous ‘checks and balances’ to ensure partner businesses fully deliver on the negotiated ABS Agreement. Suggestions included the development of partnership agreements weighted toward self-determination to promote equity for TOs.

Another recommendation centred on the provision of examples for the characteristics of good partnerships. TJC affirmed that these considerations have been noted and will be detailed further in the second stage of the TONFABS Strategy implementation process. One TKG member reflected on their own development of a research partnership and how the template would compliment and enhance their agreement details. This speaks to the quality of work undertaken by TJC and the depth of feedback provided by TKG members.



## NEXT STEPS

This was the final of four workshops in this first iteration of the implementation of the TONFABS Strategy. In the coming months, the Federation will invite members of the TKG to nominate as members of the co-governance group which will oversee the operational side of the project's implementation. More information can be sought by contacting Reece O'Brien on 0434 129 603 or [reece.obrien@fvoc.com.au](mailto:reece.obrien@fvoc.com.au).

In August, the next stage of the TONFABS Strategy will begin to further develop the work program. The invaluable expertise of the TKG will again be sought to ensure TOs remain front and centre in the transformation of the industry.

## REFERENCES

Terri Janke and Company 2022, Victorian Traditional Owner Native Food and Botanicals Strategy Scoping Paper, Terri Janke and Company, Lawyers and Consultants, Sydney.

