



# **Federation of Victorian Traditional Owner Corporations**

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**Submission to the State Government of Victoria's Discussion  
Paper**

**Water for Victoria**

13 May 2016

## Introduction

The Federation of Victorian Traditional Owner Corporations (the Federation) welcomes the opportunity to provide a response to the Water for Victoria discussion paper and views it as an important step in the process towards creating a sustainable State Water plan.

The Federation is the peak body representing Traditional Owner Corporations across Victoria. Our corporations represent thousands of individual Traditional Owner members, all of whom depend on water for wellbeing, the ability to care for Country, protect sacred sites and create opportunities for economic development.

Together, the Traditional Owner Corporations that comprise the Federation cover 65% of the land in the State. We have legal rights and interests set out in the *Traditional Owner Settlement Act 2010 (Vic)* and the *Native Title Act 1993 (Cth)* and responsibilities as Registered Aboriginal Parties under the *Aboriginal Heritage Act 2006 (Vic)*.

The Federation was established in 2013 to unite Victorian Traditional Owners and provide a platform for our shared views. Water is our key policy priority and this submission represents the collective achievements we have made in this area over the past few years. It particularly builds on the results of our Water Symposium held at Melbourne University in 2014 which brought together Aboriginal organisations from across Australia, academics and government representatives to share knowledge about sustainable water management and resulted in a summary statement<sup>1</sup> (attached).

## Response to the Discussion Paper

As a scarce resource, the sustainable management of water is vital for Victoria's future. The Federation understands the government's need to balance Aboriginal rights and interests with the competing interests of environmental concerns and the need to safeguard industry and agriculture; in addition to providing for recreational use and managing the expectations of our growing population for better infrastructure and jobs.

The Federation welcomes the government's acknowledgment of the sacred relationship that Traditional Owners have with water and that our limited involvement in decision-making in Victoria's water planning and management framework has led to a lack of protection of Aboriginal water values and a failure to make use of Traditional Ecological Knowledge.<sup>2</sup>

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<sup>1</sup> [www.fvtoc.com.au/country/summarystatement](http://www.fvtoc.com.au/country/summarystatement)

<sup>2</sup> Water for Victoria, p7



Our members view the current strategic direction of the State Water Plan as a tremendous opportunity to start building the knowledge of our two cultures together to find sustainable solutions.

However, the Federation believes there are still substantive changes that need to be made to ensure the State Water Plan meets the cultural and economic development needs of Victorian Aboriginal communities effectively, considering the lengthy time horizon of the document. At present, the discussion paper is couched in passive terms of ‘seeking Traditional Owner advice’, ‘building understanding’ and ‘supporting the appointment of Aboriginal People to key positions’. The Federation seeks to ensure the State Water Plan is not simply an exercise in extended consultation and wasted opportunity by seeking the inclusion of practical actions that recognise Traditional Owners as equal partners in Victoria’s water management and completion of the unfinished business of Aboriginal water rights. This will necessarily include a clear commitment from government to carve out an Aboriginal water entitlement.

## **Importance of recognising Traditional Owners place in Victoria’s shared history**

Victorian Traditional Owners are a living connection to the First People of this State. We are the direct descendants of the people who suffered the harm that arose when Europeans established their society on our ancestral lands and waters. The dispossession prevented our ancestors from protecting our wellbeing and from generating and passing down wealth. We are still suffering the consequences of this economic dispossession today.

The recognition of our rights to land took a significant step forward in 1992 with the decision of the High Court to recognise native title and the passing of the *Native Title Act 1993* (Cth). However, the status of water rights remains largely unresolved. Even the passing of Victoria’s *Traditional Owner Settlement Act 2010* limits our access to and allocation of water resources to traditional uses. This anachronism prevents us from realising our cultural and economic development goals.

Until there is a greater articulation of why Traditional Owners are locked out of the current water market, it will continue to be challenging for other stakeholders and the public to understand our position not just as credible and legitimate stakeholders, but as holders of *rights to water*.

Government needs to lead by example and give effect to its rhetoric of self-determination. The United Nations defines self-determination as the right of all peoples to freely pursue economic, social and cultural development<sup>3</sup> and the Federation calls for government to accept that this

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<sup>3</sup> UN Declaration on the Rights of Indigenous Peoples, Article 3



means the future of Victoria's Traditional Owners is intertwined with the future of all Victorians. Our input is therefore central and necessary to all aspects of political, economic, social and cultural water use.

The Water Plan should be strengthened by explicitly recognising the provision to water that is currently made by the State for Traditional Owner rights to access and use water for cultural purposes. This could form the basis for clarifying how the government will support Traditional Owners to build on the allocation and overcome barriers to entering the market.

The Federation is being sought out by big businesses and scientific organisations, including the CSIRO, for our knowledge and input into matters including climate change and innovation. We ask that, for the benefit of all Victorians, our input is sought across the breadth of the State Water Plan and not relegated to traditional concerns.

### *Recommendations:*

- We seek to contribute to all aspects of sustainable water management and ask that throughout the State Water Plan Traditional Owners are explicitly referenced in lists of stakeholders so that we are not confined to consulting on traditional cultural values.
- We request that in the final plan our history is properly recognised and the legacy of economic dispossession is explicitly acknowledged as a foundation for the establishment of an Aboriginal entitlement to water, in accordance with the Victorian Charter of Human Rights and Responsibilities which recognises that we hold 'distinct cultural rights and *must not be denied* the right to maintain our spiritual, material and **economic** relationship with the land and waters'<sup>4</sup>
- The Water Plan must clearly state the provisions that are being made for cultural purposes

## **Cultural and Economic Development Opportunities**

The State Water Plan proposes to shape the strategic direction of water management for decades to come. While we wholeheartedly welcome the government's commitment to 'exploring opportunities for achieving shared benefits' we need a firm and ambitious commitment in this area to prevent another generation of Aboriginal Victorians being locked out of the market. Now is not the time for incremental change. The State Water Plan needs to recognise and commit to reform that will address the unfinished business of economic injustice

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<sup>4</sup> Victorian Charter of Human Rights and Responsibilities Act 2006, Section 19



that is being allowed to perpetuate due to the deficiencies in current legislation that limit our access to water to purely traditional purposes.

We seek to establish a Traditional Owner Water Fund in Victoria managed by a state-wide representative Traditional Owner Water Holder.

As Traditional Owners, our community expectations are to use, develop and control water resources on and under our Country for economic purposes:

- to support and generate Aboriginal businesses that depend on water allocations; and
- to generate economic development opportunities through the trading of water resources on the market

The Federation notes on page 128 of the State Water Plan that the Government is committing to improve efficiency by spending millions of dollars to upgrade water grid infrastructure. While these projects will pay dividends to private investors and the environment, Traditional Owners are repeatedly told that there is no possibility of securing a percentage of public water infrastructure budget to buy back water from the consumptive pool to create economic flows (following the model of the Murray Darling Basin Commonwealth buy back scheme) or having cultural externalities included in the Environment Contribution levy to generate funds for water buy-back.

The State Water Plan currently lacks a stand-alone reform driver that describes the government's commitment to creating the financial environment necessary to enable Traditional Owners access to the water market. The Federation's view is that this could be achieved in collaboration with existing entitlement holders, stakeholders and business by examining ways that rules, tax incentives and penalties can combine for the equitable benefit of all interests.

We note that the National Farmers Federation's position is supportive of Indigenous commercial use, on the condition that it is acquired by Government from willing sellers for this purpose without attenuating the reliability of water entitlements or using planned water.<sup>5</sup> We understand that this is the State Government's position too.

We believe an Aboriginal entitlement in water can be achieved if Traditional Owners are given access to:

- any retired water licenses
- new or unassigned surplus water that may come from updated modelling or identification of new aquifers

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<sup>5</sup> National Farmers Federation Submission to COAG Water Planning and Management Policy, section 7 Indigenous Water



- water captured in water-saving efforts or stormwater harvesting
- surplus water from flood events
- existing willing sellers, including through means of economic incentives; and/or
- existing unallocated water reserves (as indicated on page 9 of the State Plan).

The Federation proposes that this water be held by a Traditional Owner Water Fund in Victoria, managed by a State-wide representative Traditional Owner Water Holder. The fund would be used to trade water through market-based mechanisms and used to create a strategic water reserve. With Traditional Owner governance, the fund would allow water to be a central resource for all Traditional Owners, circumventing the issue of whose Country the water is derived from.

Unless the historic legacy of our economic issue is addressed, the State Water Plan will be another missed opportunity for Victoria's Traditional Owners to fulfil our cultural obligations, prevent further generational disadvantage, and gain equality of opportunity and outcomes with non-Aboriginal Victorians.

***Recommendations:***

- We seek a dedicated statutory allocation of water which is additional to and separate from environmental water and provided to Traditional Owners at no cost in consideration of the economic dispossession we have suffered.
- We seek the establishment of a Traditional Owner Water Holder modelled on the Victorian Environmental Water Holder to be governed by a self-determined trust of Victorian Traditional Owners.

*The Federation of Victorian Traditional Owner Corporations agrees to the publication of this submission and to being cited in any reports that may result from this consultation process.*

**Further Information:**

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