



**Federation of
Victorian Traditional
Owner Corporations**

14 April 2021

By email only: pllreview@delwp.vic.gov.au

Dear Sir / Madam,

Re: 'Realising the value of Victoria's public land – Renewing Victoria's public land legislation' Consultation Paper

The Federation of Victorian Traditional Owner Corporations (the **Federation**) provides this submission in response to the Consultation Paper – '*Realising the value of Victoria's public land – Renewing Victoria's public land legislation*' (**Consultation Paper**), which proposes to replace three existing Crown Land Acts (the *Crown Land (Reserves) Act 1978*, *Forests Act 1958*, and *Land Act 1958*) with a new Public Land Act.

The Federation note that the First Principles Review Committee (the **Committee**) provided a preliminary submission on the Public Land Act. The Committee made the following recommendations:

No.	Recommendation
1.	That the Public Land Act enables Traditional Owner groups to solely manage Country and that current joint management is improved.
2.	That Traditional Owner groups are able to be recognised as both Category A + B land managers.
3.	That Traditional Owner groups are able to be appointed as a Committee of Management.
4.	That the Public Land Act include an Indigenous Cultural Land Category.
5.	That the Public Land Act formally recognise strategies and management plans, including but not limited to Country Plans.
6.	That the Public Land Act adopt or be compatible with the International Union for Conservation of Nature 'Protected Area' categories
7.	That the Public Land Act and the Traditional Owner Settlement Act 2010 be amended to enable remunerated lease back options for Aboriginal Title.
8.	That the definition of Public Land under the Traditional Owner Settlement Act 2010 be amended to include government or government associated public corporation owned freehold land.

The Federation affirm and resubmit the Committee's original recommendations.



The Federation note that Public Land Act will adopt Recommendation 5 and will *'include a mechanism to formally recognise strategies and plans developed by Traditional Owners'*. The Federation request that as a priority, and consistent with the principle of self-determination, that the Hon. Lily D' Ambrosio endorses the Cultural Landscape Strategy so that Traditional Owners can fully utilise this legislative amendment. The Cultural Landscapes Strategy was funded by the Department of Environment, Land, Water and Planning (**DELWP**) and Parks Victoria (**PV**) to support Traditional Owner rights and interests in managing Country according to their lore and customs. Through partnership in a co-design process, the Federation, DELWP and PV worked in self-determination mode to understand how Traditional Owners wish to express their cultural values, practices, interests, and knowledge associated with planning and management on their respective Country throughout Victoria.

The Federation acknowledge receipt of correspondence from the Hon. Lily D' Ambrosio MP responding to the Committee's preliminary submission on 13 January 2021.

The Federation note that contrary to the correspondence from the Hon. Lily D' Ambrosio MP, DELWP have not re-engaged the Federation or the Committee to advance the Public Land Act.

The Federation acknowledge that DELWP have undertaken engagement with all 11 formally recognised groups, albeit in an inconsistent and ad hoc manner. Despite this engagement, the Federation have been advised by Traditional Owner groups that DELWP have stated that there are no resources available to undertake genuine, meaningful and coordinated engagement with Traditional Owner groups or with Traditional Owners in areas without formal recognition. Irrespective of the veracity of these reports, it is clear that Traditional Owner groups are seeking greater clarity and further commitment from DELWP on the current and ongoing participation process.

DELWP has repeatedly failed to adequately engage with, and consult, Traditional Owners on issues that directly affect them. This approach is inconsistent with DELWP's *Pupangarli Marnmarnenpu – 'Owning Our Future'*, the principle of free, prior, and informed consent (**FPIC**), and the principle of self-determination, the latter of which is the first stated aim of the Public Land Act in the Consultation Paper.

The Federation request a meeting with the Committee, other interested Victorian Traditional Owners and DELWP to discuss how the above recommendations will be incorporated into the Public Land Act and what steps DELWP are taking to ensure that the principles of FPIC and self-determination are being implemented in accordance with their universally understood meaning.

Participation is a Human Right

While participation has the potential to bring benefit to development of policy and projects, the concept of participation is firmly rooted in human rights principles under international law.



Participation is based on the key human rights principle of self-determination. Participation at all stages is grounded in the International Covenant on Civil and Political Rights (**ICCPR**), the International Covenant on Economic, Social and Cultural Rights (**ICESCR**), and the United Nations Declaration on the Rights of Indigenous Peoples (**UNDRIP**), which acknowledge that all peoples have the right to self-determination. UNDRIP also provides that Indigenous peoples have the right to active, free, and meaningful participation and to FPIC in matters which affect their lives and livelihood.

All elements within FPIC are interlinked, and they should not be treated as separate elements. The first three elements (free, prior, and informed) qualify and set the conditions of consent as a decision-making process. In short, consent should be sought before any policy, project or action takes place (*prior*), it should be independently decided upon (*free*), and based on accurate, timely and sufficient information (*informed*) for it to be considered a valid result or outcome of a decision-making process.

Inclusive participation throughout all helps to maintain consent, minimise risks (such as disputes and other forms of conflict), harm to Traditional Owners and their Country, or damage to the reputation of the State, allows the building and maintenance of a trust-based relationship, informs the State how to better target Traditional Owners needs and expectations, and strengthens possibilities for future collaboration.

Where the matters directly affect Traditional Owners, the participation process should be separate to that afforded to the general public. The participation process needs dedicated human and financial resources, and time.

The Federation have repeatedly reminded the Victorian Government, and in particular DELWP, that Traditional Owners are right holders not stakeholders and that additional obligations arise as a result. As noted above, the State have repeatedly failed to adequately engage with and consult Traditional Owners on issues that directly affect them.

The Federation look forward to meeting with DELWP to discuss this further.

Yours sincerely

PAUL PATON
Chief Executive Officer