



18 February 2021

Cultural Governance Committee  
First Peoples Assembly of Victoria  
116 Cardigan Street  
CARLTON, VIC 3053

By email to: [Policy@firstpeoplesvic.org](mailto:Policy@firstpeoplesvic.org)

Dear Cultural Governance Committee members,

**Re: Proposed model for Additional pathways to reserve system**

We refer to the 'Proposed model for Additional pathways to reserve system', received by email on 2 February 2021 (**Proposed Model**), along with the submission we previously made on additional forms of recognition, dated 26 October 2020 (**Federation Submission**).

We write now to provide feedback on the Proposed Model, prior to it been considered by the chamber of the First Peoples Assembly of Victoria (**Assembly**) at its upcoming meeting.

The Federation of Victorian Traditional Owner Corporations (**Federation**) does not support the adoption of the Proposed Model, on the basis that we consider that it will ultimately be counter-productive, will continue to exclude groups without formal recognition from making a meaningful contribution to the Treaty process, and overlooks more efficient methods. We expand upon these concerns under the heading 'General comments' below.

Notwithstanding these problems, under the heading 'Specific comments' we address individual aspects of the Proposed Model. Noting that the Proposed Model follows existing recognition processes very closely, we anticipate that it will function adequately, although will not overcome any of the existing issues with current recognition processes, and will likely encounter the same problems and delays. Nevertheless, we make some recommendations which we hope may improve the model in the event it is adopted by the Assembly.

**General comments**

The primary position in the Federation Submission was that rather than develop a fourth recognition process for Victorian Traditional Owners:

1. The Assembly should adopt an interim appointment method to immediately appoint Reserved Members for areas without formal recognition;



2. This method should operate by calling a meeting of all Traditional Owners for a specified area, and asking them to appoint an Interim Reserved Member at the meeting; and
3. The Assembly should advocate for additional resources so as to allow each Traditional Owner group without formal recognition to achieve recognition through existing processes as quickly as possible.

The rationale of this this approach is that because negotiations have already commenced, it is now time critical that representatives for any areas without formal recognition be appointed if they are to make any meaningful contribution to the process. The above approach would also avoid the Assembly becoming bogged down in the intricacies of a new recognition process, and potentially becoming diverted from its main role. It would also ensure that all Traditional Owner groups are ultimately recognised under the same processes, meaning there will be no difference in recognition status between groups when it comes to settling the Treaty Thresholds.

Noting that the Assembly has not adopted this approach we remain concerned that the overall effect of the Proposed Model will be that:

- 1. Groups currently without formal recognition will continue to be locked out, and unable to make a meaningful contribution to the Treaty process.***

Should the Proposed Model be adopted by the Assembly it will presumably take at least six months and perhaps up to twelve months to fully institute the process, following which groups can begin formulating applications. By their very nature recognition processes are complex and time consuming. Under the existing recognition processes (which the Proposed Model appears to follow closely) it will take a group seeking recognition several years to complete the process. There is nothing in the Proposed Model to indicate that it will reduce these timeframes.

Given that the Assembly has now commenced negotiations with the State, it would seem likely that most of the major components of a new Treaty process will be resolved before any group is given access to a reserved seat under the Proposed Model.

- 2. Assembly resources will be diverted from its central purpose of achieving a just Treaty process for Victoria.***

The administration of a recognition process is a resource intensive exercise. At the very least it will require an internal team dedicated to assisting and guiding applicants. Given that applicants will be without resources, and some may be inexperienced in the formal requirements for this type of process, they are likely to rely heavily on Assembly staff with respect to administrative and organisational matters. The Assembly will also need to engage relevant professional expertise in anthropology and history so the Board and Chamber can be fully advised in assessing applications.

PO Box 431 North Melbourne VIC 3051

(03) 9321 5388

[info@fvoc.com.au](mailto:info@fvoc.com.au)

[www.fvotoc.com.au](http://www.fvotoc.com.au)

ABN: 40 164 514 121



This will essentially replicate staff currently engaged by First Nations Legal and Research Services, the Victorian Aboriginal Heritage Council, and the Native Title Unit of the Department of Justice and Community Safety. While there is value in re-establishing such processes within a self-determined structure such as the Assembly, we suggest it would be better done once the Treaty Negotiation Framework is settled, and there is specified funding to do so. By implementing these processes now, the Assembly is diverting its time and resources from its central aim, and as we state above, will still be unlikely to extend recognition within a timeframe that will be useful for the currently excluded groups.

***3. The Assembly will be required to adjudicate disputes, alienating it from parts of the Traditional Owner community.***

In addition to the deployment of staff, the Assembly members will also need to dedicate a substantial amount of time to assessing and debating applications that have the potential to be highly contentious within the Traditional Owner community.

In a region as heavily and brutally colonised as Victoria there is ample ground for dispute as to the accuracy and significance of historical records, and recognition processes have frequently become the focus of significant and often bitter disputes. In several cases these disputes have led to protracted litigation and ongoing community conflict. By adopting the Proposed Model, the Assembly places, itself at the centre of these disputes, and will be called upon to adjudicate and resolve questions of Traditional Ownership. That is, while it may eventually elevate some claims to Traditional Ownership, it will also reject others, leading to deep hurt, distrust and suspicion among disaffected groups.

Rather than acting as a unifying force for Traditional Owners in the struggle for Treaty, the Proposed Model has the potential to alienate the Assembly from parts of the Traditional Owner community, at the very moment it needs to build consensus for its wider and historic purpose.

***4. Replicating existing formal recognition processes does not add anything new, or provide any additional benefit to Traditional Owners.***

It is clear that the overall structure of the Proposed Model closely mirrors existing recognition structures. We acknowledge that to a large extent we consider this replication of existing structures as unavoidable. This is because any model of formal recognition is essentially asking the same questions, and pursuing the same aim: to ensure that the right Traditional Owners are identified, there is no exclusion of group members, and the group has open and transparent governance arrangements. On that basis it would seem inevitable that such processes will adopt very similar methods.



However, in the context of the Treaty process and the current status of negotiations, it is not clear that establishing yet another recognition process, the fourth available in Victoria, provides any distinguishable benefit for Traditional Owner groups.

As stated above, we acknowledge the value in reclaiming formal recognition within a self-determined space that is wholly designed and controlled by Aboriginal people. However, the Proposed Model does not really achieve this. As Paragraphs 10.1 to 10.3 makes clear, recognition under this process will be overridden by all other pre-existing recognition structures. Further Paragraphs 11.1 to 11.3 state that recognition under this process does not entitle a group to negotiate a Treaty.

On that basis it is difficult to determine what is the point of this new process? It seems that the only role of groups recognised will be to appoint a reserved seat holder. As we have already pointed out, the complexity of the Proposed Model indicates this will not occur in the next twelve to twenty-four months, meaning the newly appointed reserved seat holder will be too late to influence the course of negotiations. Taking all of the above on balance, we cannot determine that the Proposed Model would provide any real or tangible benefit to Traditional Owners, but would contribute the detrimental effects we have outlined.

### **Specific comments**

While the Federation does not support the adoption of the Proposed Model we now turn to examine individual components of the model and make recommendations for improvement.

#### **1. Group Membership**

Paragraph 2.2 of the Proposed Model requires that an applicant group must contain a minimum of 80 members.

The majority of Traditional Owners in Victoria enjoy descent from two or more nations or clans. Although some choose to identify with only one nation or clan, others actively identify with some or all lines of descent. While this is a matter for individual Traditional Owners, and their various nations and clans, the Assembly should be mindful that issues could arise if new applicant groups are populated by the same membership (in whole or in part) but constituted as different nations or clans, each seeking control of individual reserved seats.

For that reason, we recommend that:

#### **Recommendation 1:** The Proposed Model should be amended so that:

- The group membership of each applicant will be assessed for correlation with membership of other recognised groups and applicants.



- In the event that a significant portion of an applicant's members are also members of another applicant or another recognised group (**Correlated Group Members**), then the applicants will be asked to explain the correlation, and if possible, how they may limit the impact of the correlation.
- If the Board forms the view that (i) the correlation is not sufficiently explained, or; (ii) the Correlated Group Members could disproportionately influence the appointment of reserved seat holders, it may reject the application.
- In the event that the Board refers the application to the Chamber, the Chamber will be fully informed in relation to all steps taken above and provided with the names of all Correlated Group Members.

## **2. Unrecognised areas between RAP boundaries**

Paragraph 5.1 to 5.3 of the Proposed Model prevents applications from groups that are already represented by an existing reserved seat. However, it does not expressly refer to those areas between existing RAPs that are not currently subject to any recognition, but are the subject of ongoing border discussion between neighbouring groups (**Border Discussions**).

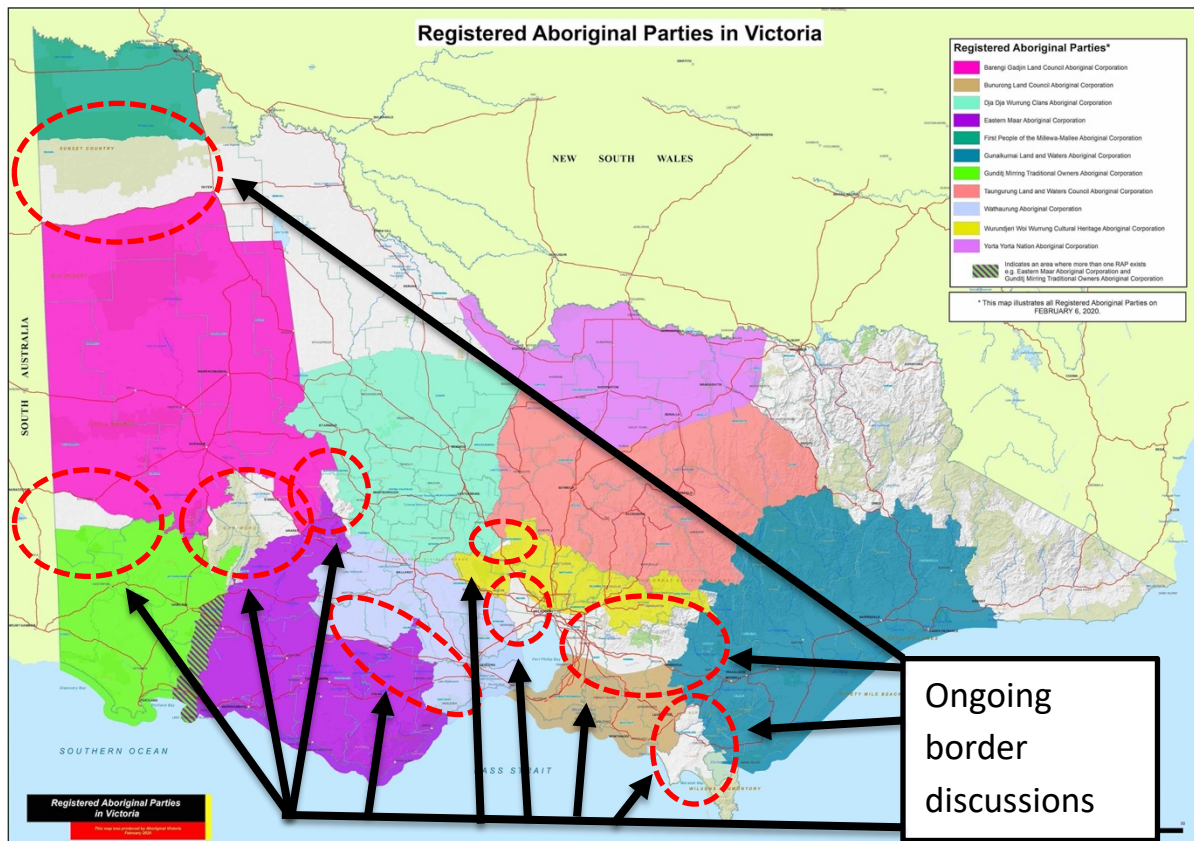
At *Figure 1* we reproduce a map prepared by the Victorian Aboriginal Heritage Council (**VAHC**) showing each Registered Aboriginal Party (**RAP**) within Victoria, with each recognised area highlighted in a different colour. We have also tried to highlight each area currently subject to ongoing Border Discussions.

We recommend that:

**Recommendation 2:** The Assembly contact and consult with each RAP so as to identify all ongoing Border Discussions.

**Recommendation 3:** That once identified, all areas subject to Border Discussions be expressly excluded from the Proposed Model process.

Figure 1: VAHC Registered Aboriginal Parties Map – marked to show Areas without formal recognition



### 3. Public Notification & Objection Process

As currently drafted the Proposed Model does not include any public notification or objection process. This would seem essential to any fair and transparent process and should be included. The wider Traditional Owner community should be notified, and given an opportunity to assess, and if necessary object, to each application.

**Recommendation 4:** Each application be publicly notified, with a map displaying the claimed area published on the Assembly website, the Age, Koori Mail and local papers circulated within the claimed area. A full group description along with the names of all members should also be published on the Assembly website.

**Recommendation 5:** Victorian Traditional Owners should have a period of not less than 60 days from the date the notice of the application is published to make submissions with



respect the application. The applicant should be provided with all submissions, and provided a further period (of not less than 30 days) to provide any response.

**Recommendation 6:** The Board should be provided copies of all submissions and replies to submissions in respect to an application, and should consider:

- If all issues raised by the submissions have been sufficiently resolved, and if so, refer the application to the Chamber for decisions.
- If all issues have not been sufficiently resolved then whether the parties should be allowed to make further comment, or provided resources so as to facilitate mediation.

#### **4. Resourcing**

The Proposed Model makes no provision for resourcing applicants. It would seem apparent that groups currently without formal recognition are without resources, and likely to be inexperienced in meeting the requirements of a formal application process. Accordingly, they will need to be supported by the provision of funding as well as access to independent legal, historical and anthropological advice.

While applicants may be able to draw support from other sources (for instance the Nation Building Support Package and / or First Nations Legal and Research Services) there are currently no dedicated resources in assisting groups through the Proposed Model. As such, prior to adopting the Proposed Model the Assembly should develop, and publicly release a proposed approach to resourcing applicants.

**Recommendation 6:** The Assembly should develop an approach to resourcing applicants, and should publicly release this proposal before endorsing the Proposed Model.

#### **5. Submission from First Nations Legal and Research Services**

We have had the opportunity to review the submission prepared by First Nations Legal and Research Services with respect to the Proposed Model, and note that we agree and endorse its contents.



Finally, we thank the Assembly for this further opportunity to comment on the Proposed Model. Please do not hesitate to contact this office if you require any further information or detail on the positions set out above.

Yours sincerely



**Paul Paton**  
**CEO**