



24 November 2020

Hon. Lily D 'Ambrosio  
Minister for Energy, Environment and Climate Change  
State Government of Victoria  
Level 16  
8 Nicholson Street  
East Melbourne, VIC 3002

By email to: [lily.dambrosio@parliament.vic.gov.au](mailto:lily.dambrosio@parliament.vic.gov.au)

Dear Minister,

### **Review of the Public Land Act**

The First Principles Review Committee (**Committee**) was formed to contribute to the First Principle Review, and to provide insight into Traditional Owner views and opinions with respect to issues arising in negotiations under the *Traditional Owner Settlement Act 2010* (**Settlement Act**). The Settlement Act provides for out-of-court settlement of native title and allows for the Victorian Government to recognise Traditional Owners and certain rights in Crown land.

Traditional Owners have rights, interests, and responsibilities to care for Country that stem from their own traditional laws, customs and systems of governance. As such, the Committee believes that it is pertinent to submit preliminary comments on the proposed elements of a Public Land Act to ensure that Traditional Owners rights and interests are enhanced and embedded in the Public Land Act.

We welcome the opportunity to contribute to the development of a Public Land Act and to the modernising of the *National Parks Act 1975*. On this basis we make the following preliminary comments. Our preliminary comments are not comprehensive in scope, nor do our preliminary comments address all issues relevant to Traditional Owners. Rather, our preliminary comments focus on the issues of particular interest to the Committee.

To this end, we make the following submissions and recommendations.

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## Federation of Victorian Traditional Owner Corporations

Proposed Elements
<b>1. Public Land Management</b> <ul style="list-style-type: none"><li>- Sole Management</li><li>- Land Managers</li><li>- Committee of Management</li></ul>
<b>2. Public Land Categories</b> <ul style="list-style-type: none"><li>- Indigenous Cultural Land Category</li></ul>
<b>3. Management Tools</b> <ul style="list-style-type: none"><li>- Recognition of Management Plans</li><li>- Compatibility with IUCN</li></ul>
<b>4. Tenure and Authority</b> <ul style="list-style-type: none"><li>- Lease back of Aboriginal Title</li></ul>
<b>5. Other Recommendations</b> <ul style="list-style-type: none"><li>- Redefine Public Land</li></ul>

### 1. Public Land Management

#### Sole Management and Improved Joint Management

It is recommended that the Public Land Act enables Traditional Owners to solely manage Country. The Committee also recommends that joint management be improved and enhanced to enable an equitable partnership between Traditional Owners and the State.

DELWP has recognised sole management as a potential option for Traditional Owner groups under the Public Land Act. The Committee notes that currently there is very limited scope for sole management on Crown land. The Committee requests additional information on sole management opportunities under the Public Land Act.



## **Land Managers**

It is recommended that Traditional Owner Corporations can be, at their election, land managers under the Public Land Act. Traditional Owner Corporations, under the *Native Title Act 1992 (NTA)* and or *Traditional Owner Settlement Act 2010 (TOS Act)*, are uniquely positioned to carry out this role. They have strong corporate and cultural governance structures in place to guide decision making and have specialised knowledge about managing Country.

The State recognises the increasing capability and capacity of Traditional Owners to manage public land. Traditional Owners should be 'Category A' land managers who will have greater autonomy over the issuing of tenures such as leases and licences, be able to delegate management power, and have less ministerial oversight of the day-to-day management of the land. Additionally, the Public Land Act should also allow Traditional Owners to support other Land Managers for specified functions, or specified sections of a management area.

## **Committees of Management**

It is recommended that Traditional Owner Corporations be added to the list of possible Committee of Management appointments under the Public Land Act. Further, it is recommended that Traditional Owner Corporations should have a 'first right of refusal' to be the Committee of Management where the reserve in question falls within their Country. As noted in the previous recommendation, Traditional Owner Corporations are particularly well positioned to carry out this role.

## **2. Public Land Categories**

### **Indigenous Cultural Land Category**

It is recommended that the Public Land Act include an Indigenous Cultural Land Category. An Indigenous Cultural Land Category has a sufficiently distinct character from other historic or cultural purposes, and therefore warrants being treated separately.



A Cultural Land Category could be established over an area of land containing important Indigenous cultural heritage or values ranging from large areas with several cultural themes to small reserves with on theme. The Cultural Land Category purpose could:

- Maintain, control, protect and develop Indigenous cultural heritage places, traditional knowledge, and cultural expression.
- Strengthen distinctive spiritual relationship with Country.
- Protect and conserve the natural environment including biodiversity
- Provide opportunities for recreation or educational associated with appreciation of the Indigenous cultural heritage or values where appropriate.
- Provide for sustainable, low-intensity use of natural resources where not incompatible with the purposes above.

There should be a concerted effort to align the Indigenous Cultural Land Category with other similar pieces of legislation to strengthen existing protection mechanisms.

For example, certain provisions of the *Aboriginal Heritage Act 2006 (AHA)* may align with an Indigenous Cultural Land Category. For example, under section 103 of the AHA, ongoing protection declarations are available to provide protection to an Aboriginal place or object.

### **3. Management tools**

#### **Recognition of Management Plans**

It is recommended that the Public Land Act formally recognise management plans, including but not limited to Whole Country Management Plans (**Country Plan**) and sub-strategies.

Currently, Victorian legislation provides for creation of certain management plans. These include Joint Management Plans and Cultural Heritage Management Plans.

Under section 82PA of the Conservation, Forests and Lands Act 1987 (**CFLA**) Traditional Owner Land Management Board (**TOLMB**) must prepare a management plan for jointly managed lands. The objective of the TOLMB is to enable the knowledge and culture of the Traditional Owner group of



the appointed land to be recognised in the management of the land. It appears that the primary mechanism to achieve this objective is the implementation of the Joint Management Plan.

Under section 45 of the AHA, Traditional Owners can prepare a cultural management plan even when a Cultural Heritage Management Plan is not required under the Act. A Cultural Heritage Management Plan must involve an assessment of the area to determine the nature of any Aboriginal cultural heritage present in the area, the results of that assessment and conditions to be complied with before, during and after certain activities that manage and protect the Aboriginal cultural heritage identified.

These legislated mechanisms for management allow for certain Traditional Owner aspirations to be captured. However, neither the Joint Management Plan nor Cultural Heritage Management Plan captures Traditional Owner aspirations over the entirety of Country, or Crown land. For Traditional Owners Corporations, Country Plans are the foundational document for Traditional Owner Corporations that sets out their aspirations and goals with respect to managing Country. A Country Plan is document that is prepared and approved by Traditional Owner Corporations, under self-determination principles. Country Plans have been established by a number of Traditional Owner Corporations, including: Dja Dja Wurrung, Gunaikurnai, Eastern Maar and Taungurung. These Country Plans set out amongst other things how Traditional Owner Corporations wish to work with other stakeholders to manage Country and form the strategic basis for sole and joint management planning on Aboriginal Title lands. The Public Land Act should contain a mechanism for Country Plans to be recognised.

### **Compatibility with International Union for Conservation of Nature Protected Area Categories**

It is recommended that the Public Land Act adopt or be compatible with the International Union for Conservation of Nature (**IUCN**) protected area categories. IUCN protected area management categories classify protected areas according to their management objectives. The categories are recognised as the global standard for defining and recording protected areas. IUCN protected area categories are used in Indigenous Protected Areas. In particular, categories V (Protected Landscape / Seascape) and VI (Protected area with sustainable use of natural resources) should be adopted.



#### **4. Tenures and Authorisations**

It is recommended that the Public Land Act and the Settlement Act be amended to enable renumerated lease back options for Aboriginal Title.

Currently under section 19(2)(b) of the Settlement Act, the grant is subject to the limitation that the Traditional Owner Group Entity is not able to lease or licence the estate or any legal or equitable interest in the estate. Further, under section 20 of the Settlement Act, on the grant of Aboriginal Title the State and the Traditional Owner Group Entity are required to enter into a contract that provides the State with the right to occupy, use, control and manage the land.

No fees are currently payable under this arrangement.

In other jurisdictions, such as the Northern Territory and New South Wales, the Territory and State governments provide lease payments back to Traditional Owners. In the Northern Territory, Traditional Owners are also provided a share of the park's revenue.

#### **5. Other Recommendations**

##### **Redefine Public Land**

It is recommended that the definition of Public Land under the Settlement Act be amended to include government or government associated public corporation owned freehold land.

Victoria's public land is land that is currently subject to the *Crown Land (Reserves) Act 1978*, *Land Act 1958*, *Forests Act 1958*, and the *National Parks Act 1975*, and excludes government owned freehold land. It also includes Crown land managed under the *Wildlife Act 1975* (e.g State Game Reserves).

The definition of public land in the Settlement Act impacts the procedural rights afforded to Traditional Owners. Therefore, expanding the definition in the Settlement Act may be more appropriate.



## Federation of Victorian Traditional Owner Corporations

### Conclusion

The Public Land Act provides an opportunity to improve the way Traditional Owners can be involved in the management of public land. This will benefit the Victorian community as a whole. The Committee provides the following preliminary recommendations:

<b>Recommendation 1:</b> It is recommended that the Public Land Act enables Traditional Owner Corporations to sole management and improve joint management
<b>Recommendation 2:</b> It is recommended that Traditional Owner Corporations can be Category A or B Land Managers.
<b>Recommendation 3:</b> It is recommended that Traditional Owner Corporations should be added to the list of possible appointments for Committee of Management.
<b>Recommendation 4:</b> It is recommended that the Public Land Act include an Indigenous Cultural Land Category.
<b>Recommendation 5:</b> It is recommended that the Public Land Act formally recognise Management Plans, including but not limited to Whole of Country Management Plans and their strategies ( <b>Country Plan</b> ).
<b>Recommendation 6:</b> It is recommended that the Public Land Act and the Traditional Owner Settlement Act be amended to enable lease back options for Aboriginal Title.
<b>Recommendation 7:</b> It is recommended 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.

Yours faithfully,

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