



# **Submission to the Yoorrook Justice Commission Inquiry into Economic Injustices**

**April 2024**

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## 1. Introduction

The Federation of Victorian Traditional Owner Corporations (**Federation**) is the Victorian state-wide body that convenes and advocates for the rights and interests of Traditional Owners while progressing wider social, economic, environmental, and cultural objectives. We support the progress of agreement-making and participation in decision-making to enhance the authority of Traditional Owner Corporations on behalf of their communities. The Federation does not speak for Traditional Owners in Victoria, but our work is directed by Traditional Owners and responds to issues raised by Traditional Owners of Country in Victoria.

The Federation welcomes the opportunity to make this submission to the Yoorrook Justice Commission (**the Commission**) in response to the Issues Paper on Economic Prosperity as part of its investigation into the systemic injustices experienced by First Peoples in economic life, including economic development and prosperity.

This submission does not address all questions raised by the Commission's Issues Paper; it has a particular focus on the experience of Traditional Owners in Victoria and advancing collective economic justice at the Nation level, alongside individual-centred development and prosperity. Strong Nations, and strong First Nations economies, will lead to improved socio-economic outcomes for First Peoples.

The Federation submits that First Peoples' right to self-determination is foundational to advancing economic empowerment and sustained economic development in line with the cultural, social and wealth aspirations of First Peoples. Simultaneously, we submit that economic independence and economic prosperity are foundational to the exercise of true self-determination.

The Federation asserts that the vesting of proprietary rights to First Nations groups, as well as the transfer of authority over decision-making, are critical to achieving economic justice for First Nations and Peoples. Sustained, self-determined economic development in line with cultural, social and wealth aspirations is essential for longer term economic prosperity. Strong structures and institutions of governance are necessary to achieve these ends and governments must commit the resources to support the governance capacities of First Nations groups. Moreover, governments must change the legislative and policy settings to support economic prosperity for First Nations and Peoples.

### **Note on terminology**

We use the term 'Indigenous' as it relates to Indigenous Peoples globally in the context of international rights and instruments.

We use the term First Peoples to refer to all Aboriginal and Torres Strait Islander Peoples.

We use the term First Nations to specifically refer to Traditional Owner Nations. First Nations are also referred to as Traditional Owners at different times.

## 2. The Federation's economic development work

An important component of the Federation's work is to support improved economic development outcomes for First Nations communities, people, and organisations.

Our work aims to support and strengthen First Peoples' full participation in the broader Victorian economy and the development of a thriving, sustainable Aboriginal economy, including the Traditional Owner economy, through in part, the securing, recognition and activation of rights vested with Victoria's Traditional Owners.

Currently, the Federation, in partnership with the Department of Jobs, Skills, Industries and Regions, is undertaking a significant program of research intended to evaluate and strengthen Victoria's Aboriginal and Traditional Owner economies. As part of this program, the Federation has commissioned the following research papers.

- ANU report, *Supporting Aboriginal economic development in Victoria*, provides an analysis of the necessary supports for achieving Aboriginal economic development outcomes in Victoria (**ANU Report**).
- Project 1, *State of play of the Victorian Aboriginal economy*, provides an understanding of the size and composition of the Aboriginal economy and evaluates its contribution to the wider Victorian economy (**Project 1**).
- Project 2, *Sector-specific analysis*, assembles top-down information on industries and markets that resonate with the capabilities, assets and interests of Traditional Owners and offer opportunity for significant employment and business growth (**Project 2**).
- Project 3, *Indigenous business sector growth potential*, will assess economic opportunities and constraints from the 'bottom-up' perspective of Traditional Owner Corporations and other Aboriginal enterprises across the State (**Project 3**).
- Project 4, *Building towards investment*, will bring together the findings of Projects 1-3, and include additional desktop research and consultation with Traditional Owner Corporations and other businesses to develop a road map for accelerated development of these enterprises and the Aboriginal economy (**Project 4**).
- Project 5, *Overarching institutions to promote growth in Aboriginal businesses*, will define the industry development, training, policy coordination and governance capabilities and agencies required to support Traditional Owner Corporations and other relevant enterprises in the fulfilment of their economic potential (**Project 5**).

The initial ANU report (prepared by the Australian National University), as well as Projects 1 and 2 (prepared by Deloitte) are complete and we have included them as addendums to our submission. Projects 3 – 5 are due to be completed by September 2024. It is anticipated that many of the recommendations to come out of these reports will be closely connected to matters central to the achievement of sustained, self-determined economic development and economic independence. The Federation would be pleased to provide the Commission with these reports when they become available.

The Federation has also facilitated the development of several Traditional Owner-initiated and -led strategies. These strategies deal with specific issues, encapsulating First Peoples' aspirations and establishing approaches to realise them, including opportunities and actions for economic development. These include:

- The Victorian Traditional Owner Native Foods and Botanicals Strategy<sup>1</sup>
- The Victorian Traditional Owner Cultural Landscape Strategy<sup>2</sup>
- The Traditional Owner Game Management Strategy<sup>3</sup>
- The Victorian Traditional Owner Cultural Fire Strategy<sup>4</sup>

Further, the Federation is currently the elected sector representative for Economic Development and Employment on the Victorian Partnership Forum on Closing the Gap. In this role, with the support of the Department of Premier and Cabinet, the Federation has undertaken broad engagement across the sector to inform sector policy development and discussions at the Partnership Forum, with the aim of supporting the Partnership Forum to contribute to broad-ranging policy reform to progress Victoria’s commitments under the National Agreement on Closing the Gap.

### 3. Important considerations in advancing economic development for First Nations groups and peoples.

In this section we canvass some foundational issues relevant to addressing issues of economic justice and economic development and prosperity for First Nations groups and people. The concepts discussed in this section provide the foundations for our responses to the questions set out in the Commission’s Issues Paper later in this submission.

#### 3.1. Self-determination, sovereignty, governance and economic development

Our submission is grounded in the recognition that self-determination and sovereignty - including the authority to make decisions over land and natural resources - is inextricably linked to social and economic development.

Several articles in the United Nations Declaration on the Rights of Indigenous Peoples (**UNDRIP**) speak directly to economic development and affirm the rights of First Nations groups and people to determine and control their own economic futures.

Of foremost importance, UNDRIP article 3 explicitly recognises the connection between development and the right to self-determination:

“Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic and social and cultural development.”<sup>5</sup>

UNDRIP’s preamble acknowledges how colonisation has undermined Indigenous Peoples’ ability to exercise this self-determination to their social and economic detriment. It states:

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<sup>1</sup> *The Victorian Traditional Owner Native Foods and Botanicals Strategy (Strategy, 2021)* < [Traditional-Owner-Native-Foods-and-Botanicals-Strategy.pdf \(fvtoc.com.au\)](https://fvtoc.com.au/Traditional-Owner-Native-Foods-and-Botanicals-Strategy.pdf) >

<sup>2</sup> *The Victorian Traditional Owner Cultural Landscape Strategy (Strategy)* < [1258\\_FVTOC\\_CulturalStrategy\\_web.pdf](https://fvtoc.com.au/1258-FVTOC-CulturalStrategy_web.pdf) >

<sup>3</sup> *The Traditional Owner Game Management Strategy (Strategy, 2022)* < <https://fvtoc.com.au/documents/traditional-owner-game-management-strategy/> >

<sup>4</sup> *The Victorian Traditional Owner Cultural Fire Strategy (Strategy 2020)* < [Victorian Traditional Owner Cultural Fire Strategy - Federation of Victorian Traditional Owner Corporations \(fvtoc.com.au\)](https://fvtoc.com.au/Victorian-Traditional-Owner-Cultural-Fire-Strategy-Federation-of-Victorian-Traditional-Owner-Corporations-fvtoc.com.au) >

<sup>5</sup> *United Nations Declaration on the Rights of Indigenous Peoples, GA Res 61/295, UNGAOR (2007) (UNDRIP), Article 3.*

“Indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonisation and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests.”<sup>6</sup>

The literature relating to First Nations prosperity, economic development and wellbeing point to two predominant views about the ways in which self-determination and development relate to each other:

1. Self-determination is understood as foundational. This perspective maintains that self-determination and sovereignty are essential to pursuing appropriate development or prosperity. It allows communities and nations to define their own measures of success and to ensure that economic initiatives are responsive to local conditions, needs, values, aspirations, and priorities. Self-determination also plays a crucial role in preserving and sustaining strong, healthy First Nations. This requires governments to shift decision-making power to First Nations leadership and institutions.<sup>7</sup>
2. Self-determination and autonomy are considered outcomes of economic development and prosperity.<sup>8</sup> This view maintains that full participation in the economy gives communities and nations the resources they need to be fully determining. Without a strong Aboriginal economy, Aboriginal self-determination as described by UNDRIP cannot be achieved.

Indeed, it is the Federation’s view that self-determination and economic development reinforce one another – achieving one strengthens the other.

There is strong Australian and international evidence linking Indigenous self-determination to effective and sustainable outcomes for Indigenous peoples.

The leading social science research on Indigenous economic development, the Harvard Project on American economic development (**Harvard Project**), which made several findings of what approaches lead to improved social and economic conditions in Indigenous Nations in North America and across the world, concluded that First Nations socioeconomic growth begins with sovereignty, or the authority to make decisions and determine priorities at the local level.<sup>9</sup>

The project demonstrates that the more control that is given to a Nation, the more effectively sustainable development is achieved.

“When native nations make their own decisions about what development approaches to undertake, they consistently outperform external decision-makers – on matters as diverse as governmental form, natural resources management, economic development, health care and social service provision.”<sup>10</sup>

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<sup>6</sup> UNDRIP, Preamble.

<sup>7</sup> Thomassin, A., et al (2020) Centre for Aboriginal Economic policy Research, Australian National University, *Exploring Economic Prosperity for Aboriginal Peoples in New South Wales: Review of the Literature, Report to Aboriginal Affairs NSW*, p7-8.

<sup>8</sup> Ibid., p7.

<sup>9</sup> Cornell, S & Kalt, J (1998) Sovereignty and Nation Building: The Development Challenge in Indian Country today, *American Indian Culture and Research Journal*, Volume 22, No. 3, p206.

<sup>10</sup> The Harvard Project on American Indian Economic Development and Harvard University, “About,” The Harvard Project on American Economic development, accessed 1 April 2024

The Harvard Project observed that in the United States, every instance of sustained economic development in Indigenous communities (of which the researchers were aware) had the First Nation in control of decisions on ‘development strategy, resource allocation and use, internal affairs and related matters.’<sup>11</sup>

Importantly, the research emphasises that assertions of sovereignty must be backed by effective governance structures and mechanisms – capable of determining priorities and making decisions – that support the *exercise* of that sovereignty.<sup>12</sup>

In fact, the researchers argue that successful economic development in Indigenous contexts has less to do with the presence of resources, education levels, or other indicators often identified in development models, than with the ability of Nations to create environments for successful economic development initiatives through the exercise of autonomy. The key to the development of these environments, in turn, is Indigenous control over their own affairs and an emphasis on the development of governance foundations (which the Harvard Project calls “nation-building”) rather than on development itself.<sup>13</sup>

This necessitates governments committing resources to enhance First Nations governance capacities, as well as the recalibration of relationships between government and First Peoples.

Research in Australia, such as findings of the Indigenous Community Governance Project and of the Indigenous Nation Building Collaboration, reflect the Harvard Project results. Hunt and Smith conclude that:

“[W]hen Indigenous governance is based on genuine decision-making powers, practical capacity and legitimate leadership at the local level, it provides a critical foundation for ongoing socioeconomic development and resilience.”<sup>14</sup>

Relevantly, article 18 of UNDRIP clearly sets out the importance of Indigenous governance:

“Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own decision-making institutions.”<sup>15</sup>

Also of significance, UNDRIP article 20 establishes that Indigenous Peoples have the right to ‘maintain and develop their political, economic and social systems or institutions’. In terms of the scope and nature of the right, UNDRIP is clear:

“Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, Indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic

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<https://indigenousgov.hks.harvard.edu/about#:~:text=Sovereignty%20Matters,care%2C%20and%20social%20service%20provision.>>

<sup>11</sup> Cornell, S & Kalt, J (1998) Sovereignty and Nation Building: The Development Challenge in Indian Country today, *American Indian Culture and Research Journal*, Volume 22, No. 3, p209.

<sup>12</sup> Ibid., pp 188, 206.

<sup>13</sup> Ibid., p190.

<sup>14</sup> Hunt, J & Smith, D (2011) ‘Understanding and Engaging with indigenous Governance – Research Evidence and Possibilities for Engaging with Australian Governments’ *Journal of Australian Indigenous Issues*, Volume 14, No. 2-3, p31.

<sup>15</sup> UNDRIP, Article 18.

and social programmes affecting them, and as far as possible, to administer such programmes through their own institutions.”<sup>16</sup>

Further, before adopting and implementing new policies or legislation that may affect Indigenous Peoples, states have an obligation to consult and cooperate in good faith with Indigenous peoples through their own representative institutions to obtain their free, prior and informed consent.<sup>17</sup> Obligating states to consult with Indigenous Peoples on matters of development is important as it unambiguously reaffirms Indigenous Peoples’ right to be involved in the development process.

### 3.2. Defining economic development and prosperity

In considering First Peoples’ economic futures and related policy frameworks, an important starting point is developing a thorough understanding of what constitutes successful economic development and prosperity as it relates to First Peoples.

A report prepared for Aboriginal Affairs NSW by the Australian National University in 2020, *Exploring Economic Prosperity for Aboriginal Peoples in New South Wales: Review of Literature*, presents findings of a desk-based review of literature exploring the concepts of prosperity, economic development and wellbeing – including as they relate to First Peoples in Australia and overseas.<sup>18</sup>

The report observes that the terms economic development and prosperity can have many interpretations and are used in varied ways in discourses and policy frameworks relating to First Peoples’ economic futures. However, they are often used without clear explanation of their intended meaning. Indeed, the varied uses of these terms create distinct discourses that influence the content of policy frameworks and First Peoples’ futures – economic and beyond. Accordingly, of foremost importance, is how these concepts are defined and implemented in policy.<sup>19</sup>

#### *Economic development*

Economic development in non-Indigenous contexts is often conceived of purely in terms of promoting the accumulation of money and material wealth. Many government policy approaches that relate to First Peoples’ economic development focus on addressing statistical inequalities based on standard Western measures of individual progress, such as income, home ownership and wealth, which tend to reflect and establish a dominant Western conceptualisation of economic development.<sup>20</sup>

This conceptualisation of economic development has been widely criticised for imposing non-Indigenous values, priorities and ideas of progress that simply perpetuate ongoing colonisation

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<sup>16</sup> UNDRIP, Article 23.

<sup>17</sup> UNDRIP, Article 19.

<sup>18</sup> Thomassin, A et al (2020) Centre for Aboriginal Economic policy Research, Australian National University, *Exploring Economic Prosperity for Aboriginal Peoples in New South Wales: Review of the Literature, Report to Aboriginal Affairs NSW*.

<sup>19</sup> Ibid., p10.

<sup>20</sup> Ibid., pp 10, 16.

and assimilation, and potentially excluding First Nations' diverse values and aspirations beyond the dominant concept of economic development.<sup>21</sup>

While these are important metrics, for First Peoples, other concerns become pertinent in assessing economic development. For First Nations people, collective well-being is core to their value system and quality of life, rather than individual wealth and accumulation of money or assets. The International Expert Group of the United Nations Permanent Forum on Indigenous Issues has acknowledged these differing views of development:

“Indigenous peoples have a more holistic view as a collective over the dominant individual-centered development, which promotes competition and accumulation. Indigenous communities value interdependence and sharing of resources and conserving these for the needs of future generations.”<sup>22</sup>

Amanda Young, CEO of First Nations Foundation, observed that:

“For First Nations people, the idea of financial wellbeing is viewed through the lens of family and community. It’s not just confined to dollars; it’s how well an Indigenous family and the community around it are faring.”<sup>23</sup>

Other values and priorities for First Nations communities and people may include the preservation of cultural assets and the health of Country.

The Federation once again stresses the important link between self-determination and economic development. First Peoples must be able to define what development means for them and how it relates to their notions of economic justice. There is no single universal approach to economic development. To respect the diversity of First Peoples and their circumstances, cultures, beliefs, goals and aspirations, we cannot impose a notion of what sort of development is appropriate. First Peoples must be able to seek various sorts of development that are grounded in their specific contexts and reflect their values, aspirations and priorities. This conception of development aligns with that conceived in UNDRIP. For example, as canvassed in article 23, “Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development.”

### *Prosperity*

The term prosperity has been widely used in number of government policies and strategies related to Indigenous economic and social development operating at both the state and national level. For example:

- the Council of Australian Governments' initial efforts to refresh the Closing the Gap framework adopted the pursuit of prosperity as one goal.<sup>24</sup>

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<sup>21</sup> See for example, Altman, J.C, Centre for Aboriginal Economic Policy Research, The Australian National University, The economic status of Indigenous Australians, Discussion Paper No193 (2000) <[CAEPR Discussion Paper 193 \(anu.edu.au\)](#)>

<sup>22</sup> United Nations Permanent Forum on Indigenous Issues, The international expert group meeting on the theme “Sustainable Development in the Territories of Indigenous Peoples” New York, 23-25 January 2018, Note by Secretariat. E/C.19/2018/7 <[Microsoft Word - N1804874.DOC \(iitc.org\)](#)>

<sup>23</sup> Centre for Social Impact (2019) Media Release: *Groundbreaking report reveals level of Indigenous exclusion* <<https://www.csi.edu.au/news/groundbreaking-report-reveals-level-of-indigenous-financial-exclusion/>>

<sup>24</sup> The new National Agreement on Closing the Gap does not reference prosperity.

- Victoria’s Closing the Gap Implementation Plan 2021-2023, which aims to achieve the objectives of the new National Agreement on Closing the Gap<sup>25</sup> is focused on reducing disparity in employment, home ownership and general prosperity outcomes for Aboriginal Victorians.<sup>26</sup>
- The Victorian Aboriginal Affairs Framework 2018-2023 is built around six domains, one of which is building ‘opportunity and economic prosperity’ for all Aboriginal Victorians.<sup>27</sup>
- The Yuma Yirramboi Strategy: Invest in Tomorrow sets out to achieve ‘economic opportunity, prosperity and parity’ for Aboriginal Victorians,<sup>28</sup> with one of the key implementation principles underpinning the Strategy being that First Nations people ‘achieve wealth and prosperity outcomes equal to those of the rest of the population.’<sup>29</sup>

Like the term ‘economic development’, the term ‘prosperity’ is rarely defined, despite the fact it can hold multiple meanings.

Ideas about prosperity in Western cultures tend to have strong associations with financial success, wealth accumulation and material affluence. Other more relational and holistic understandings of prosperity place greater emphasis on broader social, cultural and spiritual values, which better accommodate First Peoples’ aspirations, such as “ecological and intergenerational sustainability, the quality of relationships and reciprocity, autonomy, and a sense of meaning and purpose”.<sup>30</sup>

What is clear is that the notion of prosperity is open to a range of interpretations and perspectives, each potentially leading to different economic futures for First Peoples. It is therefore vital that First Nations, peoples, and organisations are at the center of defining, planning for, and achieving economic development and longer-term prosperity. The diversity of First Nations communities, and the variable impacts of colonisation, further calls for flexibility in policy making.<sup>31</sup>

The Federation submits that supporting First Nations, people, and organisations to explore and articulate desired outcomes and establish a clear vision and direction for economic development and prosperity in Indigenous policy, as well as measures to realise it, must be a priority; must be led by First Nations; and must make First Nations development goals central, for economic development to be meaningful and sustainable.

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<sup>25</sup> National Agreement on Closing the Gap < [National Agreement on Closing the Gap | Closing the Gap](#)>

<sup>26</sup> State Government of Victoria, The Victorian Closing the Gap Implementation Plan 2021-2023 (2021) < [The Victorian Closing the Gap Implementation Plan 2021-2023\\_0.pdf \(content.vic.gov.au\)](#) >

<sup>27</sup> State Government of Victoria, Victorian Aboriginal Affairs Framework 2018-2023, Domain 3: Opportunity and Prosperity < [https://content.vic.gov.au/sites/default/files/2019-09/Victorian-Aboriginal-Affairs-Framework\\_1.pdf](https://content.vic.gov.au/sites/default/files/2019-09/Victorian-Aboriginal-Affairs-Framework_1.pdf) >

<sup>28</sup> State Government of Victoria, Department of Jobs, Precincts and Regions (2002) *Yuma Yirramboi, Victorian Aboriginal Employment and Economic Strategy*, p VIII <[Yuma-Yirramboi-Invest-in-Tomorrow-Strategy-2022.pdf \(djsir.vic.gov.au\)](#)>

<sup>29</sup> Ibid., p20.

<sup>30</sup> Thomassin, A et al (2020) Centre for Aboriginal Economic policy Research, Australian National University, *Exploring Economic Prosperity for Aboriginal Peoples in New South Wales: Review of the Literature, Report to Aboriginal Affairs NSW*, p12.

<sup>31</sup> Altman, J.C, Centre for Aboriginal Economic Policy Research, The Australian National University, The economic status of Indigenous Australians, Discussion Paper No193 (2000), p VI <[CAEPR Discussion Paper 193 \(anu.edu.au\)](#)>

### 3.3. First Nations' collective rights and assets

The primary focus of most endeavours to improve economic independence for First Nations peoples in Australia has been on better enabling participation in the mainstream economy. Government policies and programs tend to focus strongly on the individual and the creation of training and employment opportunities in this mainstream, non-First Nations oriented economy. While these present important opportunities to build capacity for economic development, the entrenched disparity in socioeconomic circumstances between First Nations peoples and the rest of Australia's population demonstrates that this approach alone is inadequate.<sup>32</sup>

The Federation submits that emerging First Nations economic development policy must be more focused on the development of a distinct 'First Nations economy' based on the collective holding of proprietary rights in assets, resources and decision-making. While policy focused on supporting First Peoples' participation in the mainstream economy should not be overlooked, growth in the broader economy does not necessarily translate to greater social, cultural, and economic outcomes for First Peoples. A distinct 'First Nations' economic development approach will better support First Peoples' broader social and cultural values and Aboriginal self-determination in its true form.<sup>33</sup>

For many First Peoples, this rests in their traditional lands, the natural resources on those lands and the economic value that is captured in their unique intellectual property.<sup>34</sup>

As will be discussed in more detail in our responses to the questions raised in the Commission's Issues Paper, colonisation stripped First Nations and Peoples of their economic asset base. While some rights and assets have been reclaimed, the opportunity for First Peoples to appropriate value from these assets is significantly constrained. First Peoples are not able to use their rights and assets for economic development in the same way as other Australians. This legislative and policy environment is far from being favourable to First Peoples' economic self-determination.<sup>35</sup>

The Federation submits that there is a need to shift policy frameworks to remove the constraints faced by First Peoples and identify opportunities that allow First Nations to activate the economic value in the collective proprietary rights and assets they hold and continue to reclaim.

### 3.4. Proprietary rights in land and natural resources and economic development

As outlined in the Federation's submission to the Commission's recent Inquiry into Land, Sky and Waters, the intrinsic link between the collective holding of proprietary rights in land and its resources, the collective economic development and independence of First Nations groups, and the realisation of self-determination is widely recognised and understood.

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<sup>32</sup> First Nations Portfolio, The Australian National University (2002) *Marramarra murru (creating pathways)*, *First Nations Economic Development Symposium Background Paper*, p 5. <[2303\\_FNP\\_SymposiumPaper\\_12.WEB\\_.pdf \(anufirstnations.com.au\)](#) >

<sup>33</sup> *Ibid.*, pp 80-82.

<sup>34</sup> *Ibid.*, p 80.

<sup>35</sup> *Ibid.*, pp 42, 59.

First Peoples' proprietary rights in land, and the use, and management, of the connected resources are critical to building the capacity to undertake economic development. They represent important assets which can be leveraged to achieve development objectives and are fundamental to the economic stability required to advance long-term, inclusive and sustained development. Beyond their economic values, as recognised in the remarks above, land and its resources are the sources of First Peoples' spiritual, cultural and social identity. Without access to and respect of their rights over their lands and resources, First Peoples' distinct cultures, and the possibility of determining their own development and future, becomes eroded.

As noted above in this submission, the rights of First Peoples to self-determination, development and their lands and resources are enshrined in UNDRIP.<sup>36</sup>

### *Land tenure regimes*

A number of features of the existing land tenure regimes in Victoria inhibit First Peoples' economic development. While there are also some aspects of these regimes that support economic development, they are either largely inapplicable to the Victorian context or need to be strengthened.

This historical imposition of legal and political institutions based on the legal fiction of *terra nullius*, or 'land belonging to no one', meant that at the time of European settlement, no proprietary rights were vested in the First Nations population in relation to land, water and the attached resources.

### Native title

The concept of *terra nullius* remained the legal principle on which colonisation rested until 1992, when the High Court decision in *Mabo v Queensland (No.2)*<sup>37</sup> overturned the idea of *terra nullius* and recognised the existence of inherent Indigenous rights in land and water – native title (a type of proprietary right) – before European settlement in Australia. This, in turn, led to the enactment of the *Native Title Act 1993 (Cth)* (**the Act**) which provides the statutory mechanism for recognition of native title. This paved the way for First Nations to reclaim their traditional lands and assert their rights to land and resources. Since then, some progress has been made in re-vesting these types of rights in First Nations groups, laying the way for restorative economic justice. However, the difficulty in securing a native title determination in Victoria, limits Victorian First Nations from gaining legal title to their traditional lands, on which economic development depends.

To prove native title, Traditional Owners must demonstrate that they have existed as a community continuously since British acquisition and continued to observe their laws and customs. Even if Traditional Owners can prove continuous connection, native title can be either partially or fully extinguished by the creation of non-Indigenous property interests over the same land. In most cases, native title is found to exist alongside other non-Indigenous property rights, such as pastoral leases. Characterised as a 'bundle of rights' to do certain things on land rather than an 'underlying title to land' itself, these non-exclusive native title rights may include the right to hunt, fish or conduct ceremony over an area (depending on the traditional laws and customs from which the rights are derived), but not the right to control access to, and use of, an area. The practical effect of this is that potential economic entitlements are severely

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<sup>36</sup> UNDRIP, Articles 3, 26, 32.

<sup>37</sup> *Mabo v Queensland (No.2)* 1992 175 CLR 1.

restricted.<sup>38</sup> In some cases, native title rights may include possession to an area to the exclusion of all others. Exclusive possession is possible only where there is no extinguishment by other interests on the land.

As noted by the Aboriginal and Torres Strait Islander Justice Commissioner in his 2006 Native Title Report:

“The economic effect of the legal test for extinguishment is to permit the expansion of non-Indigenous interest in land and erode the Indigenous land base”.<sup>39</sup>

Native title has been particularly difficult to prove in the south-east and southern parts of Australia, like in Victoria, where dispossession occurred first and there has been extensive settlement and grants of titles to land. Indeed, native title has been determined to exist in only limited areas of land in Victoria.<sup>40</sup> Even where native title is determined to exist, in all cases, Traditional Owners do not have exclusive possession of the land. Without title to land, “there is no entitlement to participate in the management of land, control access to land, or obtain benefit from the resources that exist on the land.”<sup>41</sup>

Moreover, as observed by First Nations Legal and Research Services in their submission to the Commission’s Inquiry into Land, Sky and Waters, recognised native title rights in Victoria have primarily been non-commercial in nature. For example, the determined native title rights of the Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagulk Peoples can only be exercised for “personal, domestic and non-commercial communal needs”.<sup>42</sup> Similarly, the Eastern Maar People’s native title rights can be exercised for “non-commercial purpose to satisfy personal, cultural, domestic or communal needs”.<sup>43</sup> While these rights are central to First Peoples’ cultures and identities, they are not rights to land that will allow First Peoples to pursue economic development activities on their land.

The native title regime demonstrates that the economic exclusion of First Nations which ‘underwrote the development of the nation’ continues.<sup>44</sup> The regime clearly supports the ongoing exploitation of land and natural resources by non-Indigenous people and overlooks Indigenous economic development.<sup>45</sup>

One mechanism in the Act which seeks to advance economic development is the ‘right to negotiate’ provision, which gives native title holders the right to negotiate regarding certain types of future acts that will affect native title rights, such as mining leases. Negotiated agreements can cover a wide range of benefits and opportunities to drive economic development within communities impacted by the development. For example, they can allow native title holders to share in project revenues and benefit from employment, community development and preferential tendering for business opportunities.

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<sup>38</sup> Aboriginal and Torres Strait Islander Social Justice Commissioner (2007) *Native Title Report 2006*, p49.

<sup>39</sup> Aboriginal and Torres Strait Islander Social Justice Commissioner (2007) *Native Title Report 2006*, p39.

<sup>40</sup> Native title determinations in Victoria make up 0.64% of all determinations across Australia.

<sup>41</sup> Aboriginal and Torres Strait Islander Social Justice Commissioner (2007) *Native Title Report 2006*, p40.

<sup>42</sup> *Clarke on behalf of the Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagulk Peoples v Victoria* [2005] FCA 1795, cited in First Nations Legal and Research Services (2023), *Submission to the Yoorrook Justice Commission Inquiry into Land, Water and Sky*, p17.

<sup>43</sup> *Austin on behalf of the Eastern Maar People v State of Victoria* [2023] FCA 237, cited in First Nations Legal and Research Services, Submission to the Yoorrook Justice Commission Inquiry into Land, Water and Sky (2023), p17.

<sup>44</sup> *Mabo v Queensland (No 2)* (1992) 175 CLR 1, per Dean and Gaudron JJ at [109], cited in Aboriginal and Torres Strait Islander Social Justice Commissioner (2006) *Native Title Report 2005*, p35.

<sup>45</sup> Aboriginal and Torres Strait Islander Social Justice Commissioner (2006) *Native Title Report 2005*, p47.

While the positive economic impacts of this provision have been well documented in relation to mining in the remote parts of Australia, due to the limited application of the Act in Victoria and the nature of the Victorian economy, the same benefits have not accrued to First Nations groups in Victoria.

Similarly, while Indigenous Protected Area projects on First Nation lands can drive direct economic development through employment, education, and training opportunities for First Peoples and their communities, much of the positive economic effect has similarly been disproportionately felt outside of Victoria.

### Traditional Owner Settlement Act

Acknowledging the challenges faced by Victorian Traditional Owners under the native title regime, the introduction of the *Traditional Owner Settlement Act 2010* (Vic) (**TOSA**) provides an alternate framework for the recognition of Traditional Owner rights in Victoria in compensation for the dispossession of First Peoples from their traditional lands. Under the Act, Traditional Owner groups can negotiate a Recognition and Settlement Agreement (**RSA**) with the State, which recognises their rights over land and provides various benefits. Settlement packages under RSAs include a suite of benefits that go beyond those provided under the NTA, including grant of statutory Traditional Owner rights (freehold title) over Crown land, grant of Aboriginal Title and establishment of joint management arrangements over parks and reserves, procedural rights for Traditional Owners for activities undertaken on Crown land, financial benefits and more.

Unfortunately, however, the actual recognition of Traditional Owner rights in land under TOSA has been limited. Even those Traditional Owner groups that have entered RSAs see little economic development impact, again, largely due to the high proportion of the State covered in freehold title and the nature of the Victorian economy.

Furthermore, the exercise of Traditional Owner rights under TOSA is tightly regulated by the State and local government laws. As First Nations Legal and Research Services has observed, in some instances, the extent and complexity of regulation is such that the Traditional Owner rights are practically not exercisable. There is little opportunity under the TOSA regime for Traditional owners to manage and control the exercise of their own rights.<sup>46</sup>

A recent review of the Act, known as the First Principles Review,<sup>47</sup> provided 36 recommendations for both legislative and policy change to enhance the exercise of Traditional Owners' rights under the Act. Key recommendations relate to access and commercial use of natural resources, recognition of Traditional Owners rights in water and the development of Crown land.

It is imperative that the conferring of statutory land rights and native title be reformed to enable First Nations to build economic independence and wealth through the full use of their collective rights and interests in land. This is particularly imperative for Victorian Traditional Owners, who have been disproportionately disadvantaged in securing proprietary rights and progressing collective economic development as a result of a history of rapid and extensive dispossession,

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<sup>46</sup> First Nations Legal and Research Services (2023) *Submission to the Yoorrook Justice Commission Inquiry into Land Water and Sky*, p18.

<sup>47</sup> Joint Review of the First Principles Review Committee and the Executive Policy Owners Forum (2023) *The First Principles Review of the Traditional Owner Settlement Act 2010* < <https://content.vic.gov.au/sites/default/files/2024-04/First-Principles-Review-of-the-Traditional-Owner-Settlement-Act-2010-Final-Report.pdf> >

in comparison to other states. The capacity of Traditional Owners to be able to capitalise on their lands and resources is critical to economic development, improving community well-being and establishing a prosperous future for First Peoples.

The Victorian treaty-making process presents an ideal opportunity to address some of the shortcomings of the existing land tenure regimes, however we submit that the Victorian Government needs to be considering and progressing reforms as part of its day-to-day operations and commitment to supporting First Peoples' self-determination, and not waiting for treaty.

## 4. Focus of Yoorrook's Inquiry

### 4.1. Theme One – Historic and current barriers

#### **How did colonisation disrupt First Peoples' economies and prosperity? What are the ongoing effects of this upon First Peoples in Victoria?**

The question of the impact of colonisation necessarily involves an understanding of precolonial society.

It is widely accepted that First Peoples have inhabited Australia for at least 65,000 years. It is estimated that there were over 500 distinct Nations in existence around Australia at the time colonisation began in 1788. Each with their distinct territories, social structure, language, ceremony, custom and tradition - which was central to their identity. There were around 200-250 distinct languages and many related dialects.<sup>48</sup> These Nations were characterised by sophisticated governance and legal systems. They employed sustainable land and resource management practices to maintain and improve the health of the land and sustainably harvest foods and materials. They manufactured tools for hunting, harvesting and food preparation, weaponry for protection and built shelter and watercraft. They had developed intricate knowledge of their environment and its resources and sophisticated systems for the communication, preservation, and transmission of knowledge from generation to generation.<sup>49</sup>

These Nations engaged in trade of produce, manufactured goods, and services along ancient trade routes, which created the basis for their economies. While there was trade amongst First Nations on the continent, First Nations also traded internationally with traders from Indonesia and Papua New Guinea. Their resource-based economies were based on reciprocity and harmony with the land, to ensure the availability of resources and wealth for future generations.<sup>50</sup> This notion of economic success valued the prosperity of Country, people and relationships as sovereign Nations.<sup>51</sup> First Nation societies and their economies were strong and well-developed and self-determining.

These Nations were not recognised by colonisers as legitimate – the basis of Britain's claim of *terra nullius* – and almost all the actions taken by colonial powers, directly or indirectly, have sought to dismantle these structures.

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<sup>48</sup> History of Indigenous Australia < <https://www.evoves.com.au/history-of-indigenous-australia/> >

<sup>49</sup> First Nations Portfolio, The Australian National University (2002) *Marramarra murrū (creating pathways)*, *First Nations Economic Development Symposium Background Paper*, p25. <[2303\\_FNP\\_SymposiumPaper\\_12.WEB\\_.pdf \(anufirstnations.com.au\)](#)>

<sup>50</sup> McIlwraith, P., (2023) *Wealth Redistribution in Australia* < [Wealth Redistribution in 'Australia' | Common Ground](#)>

<sup>51</sup> Ibid.

The imposition of colonial and early Australian Government legislation, policies and practices “systematically stripped Australian First Nations of their economic assets, precluded them from developing economic capacity and prevented them from participating in employment or entrepreneurship,” thereby denying them of the opportunity for economic participation and development.<sup>52</sup> This resulted in enormous economic loss, dependency and social disadvantage, and long-lasting, far-reaching, intergenerational consequences, which are reflected in the ongoing inequities First Peoples face today.

The legislative and policy frameworks facilitated, for example:

- *Displacement and dispossession of First Nations’ lands*

One of the most devastating economic consequences of colonisation was the forced displacement of First Peoples and the accompanying loss of traditional lands. Through laws and policies of segregation, such as the forced relocation of First Peoples onto reserves and missions separate from the settler population, and assimilation, such as the forcible removal of children from their families and communities (which became the stolen generation),<sup>53</sup> colonisers systematically dispossessed First Nations of their traditional lands, disrupting established social and economic structures. The loss of land deprived First Nations of the resources upon which they relied for their economic wellbeing, including agriculture, hunting grounds and access to water resources, and has left First Peoples with drastically reduced land bases from which to develop politically and economically.

Moreover, as detailed in section 3 above, and below in our responses to other questions raised by the Commission’s Issues Paper, ongoing colonisation continues to impact First Peoples’ proprietary rights over land and its resources. Even where First Nations have reclaimed proprietary rights over traditional lands – through native title rights, statutory land rights or Aboriginal Title - current government policies and legislation constrain their ability to exercise effective control over land and resource management decisions.

- *Exploitation of natural resources*

Another primary economic consequence of colonisation was the exploitation of natural resources abundant in First Nation’s territories.

The colonial processes of displacement and dispossession of First Nations from their traditional lands simultaneously denied First Peoples of access to, and control of use and management and custodianship of the natural resources attached to their lands. The imposition of the colonial-settler legal system separated land and its various natural resources (such as water, minerals and wildlife) into different regimes, failing to recognise interrelated land and resource systems and First Peoples holistic ways of knowing and caring for Country. Primary rights to natural resources were vested in the Crown.

The historical and current mismanagement of the environment under the imposed legal system regulating land and waters - including inadequate consideration for sustainable practices for the long-term health and wellbeing of the ecosystem, inequitable allocation of natural

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<sup>52</sup> First Nations Portfolio, The Australian National University (2002) *Marramarra murru (creating pathways)*, *First Nations Economic Development Symposium Background Paper*, p59 <[2303\\_FNP\\_SymposiumPaper\\_12.WEB\\_.pdf \(anufirstnations.com.au\)](#)>

<sup>53</sup> *Bringing them home*, Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their families (1997) pp 50-61 <[bringing\\_them\\_home\\_report.pdf \(humanrights.gov.au\)](#)>

resources and assets, failure to recognise First Peoples' knowledge in management approaches, failure to include First Peoples in key decisions about the environment and failure to allow First Peoples to make decisions about the management of Country based on their traditional knowledge – has denied First Peoples equitable access to natural resources, and has resulted in the depletion of natural resources, massive destruction of sites of cultural significance and degradation of the environment, while generating massive wealth for the State and private settler interests.<sup>54</sup>

For example, access to water is of primary and continuing concern for First Nations. The mismanagement and loss of water is of particular concern for First Nations freshwater communities. Limited rights to water have constrained their ability to support healthy Country and the growth and development of cultural and water-based economies.<sup>55</sup> The extremely low level of water entitlements currently held by Traditional Owners<sup>56</sup> means that they have been almost completely excluded from commercial water use and have not had the same opportunities to develop their water businesses and become economically independent and build intergenerational wealth.

The continued lack of access to Country and limited control and management authority of First Peoples over natural resources contributes to the ongoing dispossession and colonisation of First Peoples.

- *Employment inequality*

During the colonial period, First Peoples were subject to a range of exploitative labour practices. First Peoples were paid at discriminatory levels and in many instances, forced to work in conditions that we now recognise as slavery. Children were forcibly removed from their families and placed in positions of domestic servitude.<sup>57</sup> As observed in the *Hard Labour, Stolen Wages - National Report on Stolen Wages*:

“Governments around Australia commonly controlled wages, savings, and other benefits belonging to Aboriginal and Torres Strait Islander People for most of the 20<sup>th</sup> century. Payments withheld include child endowment, pensions, and even soldiers' pay. Much of the money held in trust was never paid to its owners. Trust account funds were transferred to public revenue or disappeared through fraud or negligence together with many of the records.”<sup>58</sup>

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<sup>54</sup> Commonwealth of Australia, Department of Climate Change Energy Environment and Water (2022) *Australia State of the Environment 2021* < [Indigenous governance, rights and access | Australia state of the environment 2021 \(dcceew.gov.au\)](https://www.dcceew.gov.au/indigenous-governance-rights-access)>

<sup>55</sup> State Government of Victoria, Department of Environment, Land Water and Planning (2002) *Water is Life: Traditional Owner Access to Water Roadmap 2022*, pp 40-42 < <https://www.water.vic.gov.au/aboriginal-values/the-aboriginal-water-program>>

<sup>56</sup> In Victoria, the total volume of water entitlements held by Indigenous organisations is less than 0.2% of all water access entitlements. See State Government of Victoria, Department of Environment, Land, Water and Planning (2002) *Water is Life: Traditional Owner Access to Water Roadmap 2022*, p40 <<https://water.vic.gov.au/aboriginal-values/the-aboriginal-water-program>>

<sup>57</sup> Human Rights and Equal Opportunity Commission (1997) *Bringing them home, Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their families*, HREOC, Canberra, p 22 <[bringing\\_them\\_home\\_report.pdf \(humanrights.gov.au\)](https://www.humanrights.gov.au/bringing-them-home-report)>

<sup>58</sup> Kidd, R., (2007) *Aboriginals for Native Title and Reconciliation, Hard Labour, Stolen Wages – National Report on Stolen Wages*, p8 < <https://roskidd.com/wp-content/uploads/2013/09/HardLabourStolenWages-first-edition.pdf> >

It is estimated that tens of thousands of First Peoples had their labour controlled by state and territory governments during this time.<sup>59</sup>

The enduring impact of stolen wages for First Peoples is catastrophic and is regarded as a key contributor to the intergenerational poverty experienced by First Peoples today. With previous generations unable to generate wealth and livelihood, money and land hasn't been passed down through generations the way it was able to for non-First Peoples.

- *Economic dependency*

The imposed legislative and policy frameworks established during colonisation, resulted in First Peoples' dependence on government welfare, creating an imbalance which persists today.

Notably, the awarding of equal wages to First Peoples in the late 1960s, whilst of itself of undeniable necessity, was accompanied by a downturn in employment of First Peoples, with employers unable to pay the basic wage to First Peoples. Consequently, poverty became entrenched and reliance upon government income support grew. This resulted in intergenerational welfare dependency among many First Nations families and communities, further alienating them from economic participation.<sup>60</sup>

Overall, this history of direct and deliberate exclusion of First Nations from the economy, denied First Peoples' self-determination, arrested the natural development of the First Nations economy, and resulted in the dependency and disadvantage of First Peoples. The brutal history of colonial exclusion and dispossession continues to reverberate today, with ongoing contemporary impacts to First Peoples' land and resource rights and economic well-being.

### **How should success be measured when it comes to economic justice for First Peoples?**

Existing policy frameworks relating to First Peoples economic development and prosperity tend to strongly focus on the individual, with a presumed measure of success being statistical equivalence in socio-economic indicators, such as employment, income, home ownership and wealth, between First peoples and non-Indigenous Australians. Most notably, these are measures used by the National Agreement on Closing the Gap and the Victorian Aboriginal Affairs Framework.

The Federation recognises that addressing individual disadvantage is important and must not be overlooked, however we submit that, alone, this approach is not adequate to deliver economic justice for First Peoples. Economic justice goes beyond relieving individual disadvantage and measuring improvements against individual indicators.

As Ian Hamm, Chair of First Nations Foundation, observes:

“Too often, the target is on alleviation of disadvantage instead of building opportunities for Aboriginal people. [We need to be asking] how can we increase their capacity to raise

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<sup>59</sup> Ibid.

<sup>60</sup> First Nations Portfolio, The Australian National University (2002) *Marramarra murru (creating pathways), First Nations Economic Development Symposium Background Paper*, p31 <[2303\\_FNP\\_SymposiumPaper\\_12.WEB\\_.pdf \(anufirstnations.com.au\)](#)>

their income and build their capital not just as individuals but also as a community as a whole.”<sup>61</sup>

The Federation submits that the current socio-economic circumstances faced by First Peoples and economic justice must be addressed through the lens of self-determination, a collective right of First Peoples, best enabled through the exercise of collectively held rights. It is essential that the Victorian government adequately facilitates the advancement of collective justice at the Nation level, alongside individual-centred development, and prosperity.

- *The importance of self-determination*

The immense injustice that stemmed from the systematic dismantling of First Peoples economies at colonisation (discussed above) undermined First Peoples’ self-determination to the detriment of their social and economic development.

As we have asserted above, the ability of First Nations to freely determine their own economic development is fundamental to securing economic justice for First Peoples. We further assert that an essential measure of the exercise of the right to self-determination, and achieving economic justice for First Peoples, is First Nations’ autonomy and control over the use and management of lands and resources. This necessarily involves restoring the proprietary rights of First Nations to occupy and enjoy their traditional lands and associated resources, as well as returning autonomy, or authority over decision-making, to First Peoples. Proprietary rights are critical to the economic stability required to advance sustained, self-determined economic development in line with cultural, social and wealth aspirations, and for longer term economic prosperity.

We have canvassed these key issues in detail in our comments above and refer the Commission to sections 3.1 - 3.4 of this submission.

- *Defining economic development and prosperity*

As noted above, current policy frameworks are centered around addressing statistical inequalities on indicators such as income, home ownership and wealth. This view reflects contemporary non-Indigenous aspirations and ideas of progress, without consideration for differences in First Peoples’ worldviews and aspirations to live in ways different to dominant Western notions of development - undermining First Peoples’ self-determination.

Measures of progress or success must be defined by First Peoples to accord with their values, aspirations and priorities. As we have asserted above, it is therefore critical that First Nations, peoples, and organisations are at the centre of defining what progress, or success, means in terms economic development and longer-term property and justice, and how best this could be pursued.

We refer the Commission to our discussion above at section 3.2.

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<sup>61</sup> Business Think, University of Sydney (16 September 2019) Feature: *Can banks grasp how Aboriginal people talk about money?* <<https://www.businessthink.unsw.edu.au/articles/can-banks-grasp-how-aboriginal-people-talk-about-money#:~:text=%E2%80%9CToo%20often%2C%20the%20target%20is,a%20community%20as%20a%20whole.%E2%80%9D>>

**What are the current systemic barriers to First Peoples in Victoria achieving economic equity with non-Indigenous peoples, such as a) income b) wealth c) capital?**

The Federation anticipates that numerous submissions to the Commission from Aboriginal Community Controlled Organisations (**ACCOs**) and others in the social services sector will address current systemic barriers as they relate to individual measures of economic equity, such as home ownership, education, employment and income.

In responding to this question, we emphasise our comments above, that achieving economic parity with non-Indigenous peoples as they relate to these individual indicators is an assumed measure of success, reflecting contemporary non-Indigenous aspirations and ideas of progress, without consideration for differences in First Peoples worldviews and aspirations to live in ways different to dominant Western notions of development - undermining First Peoples' self-determination.

The Federation submits that for First Peoples to advance economic development consistent with their economic, social and cultural aspirations, there needs to be a sharp focus on collective self-determination and the development of a distinct First Nations economy, founded on First Nations' proprietary rights and interests in land, water and resources. Strengthening these collective rights of First Nations will in turn advance individual development and prosperity outcomes for First Peoples.

- *Inability to activate proprietary rights in land and resources*

The primary barrier to the development of the First Nations economy is the lack of proprietary rights in land, resources and decision-making held by Traditional Owners. Proprietary rights are critical to leveraging outcomes from property. In basic economic terms, without proprietary rights, First Nations cannot participate in the economy.

As detailed above, the imposition of colonial laws, policies and practices, stripped First Peoples and their communities of their proprietary rights in relation to land, water and the attached resources. While some progress has been made to reclaim traditional lands and assert rights to land and resources - through native title rights, statutory land rights and Aboriginal title – the ability of First Nations to activate the economic value in those assets and rights remains substantially fettered.

A number of features of the existing land tenure regimes constrain economic development. While there are also a few aspects of these regimes that support economic development, they are either largely inapplicable to the Victorian context or need to be strengthened.

We refer the Commission to our discussion of land tenure regimes above at section 3.4.

The Federation restates that Victorian First Nations groups were not only disproportionately impacted by the effects of dispossession and colonisation but are also currently disproportionately disadvantaged in progressing collective economic development due to the lack of real land justice reform in Victoria. Economic justice is not easily separated from land justice.

The Federation stresses the need to recognise, protect, restore, and strengthen the collective proprietary rights of First Peoples over their lands and resources, specifically applicable to the Victorian economic context, to support the economic development goals of First Nations groups in Victoria and to preserve their distinct values and cultures.

- *Limited access to capital*

Access to capital is a critical factor for the economic development and self-determination of First Peoples. Access to financial resources provides an independent means for First Nations communities to work towards economic development in line with their own economic, social and cultural development goals and with some autonomy from government.

However, access to finance is a particular challenge for First Nations people, communities, and enterprises. They face several unique limitations that inhibit their ability to access and leverage capital: limited collateral (including the inability to use collectively owned traditional lands as collateral for bank loans), limited financial literacy, limited access to financial institutions, inability to access low-cost finance, discrimination, and perceptions of risk.

There is a need to develop new and innovative ways of assisting First Nations people, communities, and enterprises to access capital. A number of jurisdictions have mobilised capital for First Peoples and communities, advancing economic inclusion and opportunity for people and communities. The North American experience shows that financial institutions are prepared to participate in loan arrangements with First Nations, by using creative approaches. In Canada, the First Nations Fiscal Management Act (**FNFMA**) led to the development of a First Nations-designed framework to enhance local revenue-raising powers of communities and improve access to capital markets. The FNFMA framework created key institutions, including a First Nations Finance Authority which helps secure low-cost financing for First Nations businesses and communities.<sup>62</sup>

The Federation understands that the recently established Self-Determination Fund intends to provide a financial resource independent of government, that empowers First Peoples to build capacity, wealth and prosperity, though the scale and the scope of what can be funded is currently unclear.

- *Inadequate funding of Traditional Owner Corporations*

Traditional Owner Corporations (**TOCs**) are uniquely placed to advance economic development for First Peoples, as well as advancing economic justice at the Nation-scale. TOCs are vehicles through which economic development can be progressed to support community wellbeing and enable activation of rights, and self-determination, of their communities and citizens.

In addition to the fundamental role TOCs play in holding, managing and protecting a Nation's collective land and resources, TOCs play a broader role in contributing to the Nation's economic, social and cultural outcomes. They are likely to return social, cultural, and economic value directly to their communities and citizens through the high tendency to employ First Peoples, providing First Peoples with a culturally supportive working environment, investing in the development of First Peoples, and providing opportunities to undertake activities that are meaningful to First Peoples.<sup>63</sup> Further, through the provision of cultural and traditional land management services, TOCs offer opportunities for direct connection to Country and help

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<sup>62</sup> Schembri, L., National Aboriginal Capital Corporations Association (2002) *Economic reconciliation: Supporting a return to Indigenous prosperity*. Available at < [Economic reconciliation: Supporting a return to Indigenous prosperity - Bank of Canada](#)>

<sup>63</sup> First Nations Portfolio, The Australian National University (2002) *Marramarra murru (creating pathways)*, *First Nations Economic Development Symposium Background Paper*, p8 <[2303\\_FNP\\_SymposiumPaper\\_12.WEB .pdf \(anufirstnations.com.au\)](#)>

maintain culture and biodiversity for current and future generations. These unique community benefits need to be understood and valued.

Despite this, TOCs remain severely underfunded. For many TOCs, most of their funding is secured through short-term government grants available for the provision of key services such as land management. There is a need for more long-term, robust and secure funding that allows TOCs to grow their capacity to engage in economic development activities and pursue self-determined goals.

- *Systemic racism*

Stemming from the colonial legacy of dispossession and discriminatory legislation and policies, First Peoples continue to face systemic racism which creates and sustains economic disadvantage by excluding them from economic opportunities.

Systemic racism persists in a range of institutional settings. Racism is a substantial barrier to First Peoples accessing, engaging, and succeeding within educational institutions. As a result, many First Peoples miss out on attaining education qualifications. The importance of appropriate education and training cannot be underestimated in equipping First Peoples with the capacity to aspire to sustainable employment. Systemic racism is also a major barrier to employment. First Peoples remain vastly under-represented or excluded from the workforce.

Providing culturally competent and culturally safe learning environments and workplaces for First Peoples is critical to educational achievement and improving the recruitment and retention of First Peoples. This needs to begin early in our education system and be carried through to tertiary institutions and workplaces.

Moreover, government strategies and policies that present First Peoples as deficient, inadequate and problematic, influence and reinforce unconscious bias within these settings and amongst the broader public. It is critical that policies relating to First Peoples avoid deficit-based narratives and recognise and promote First Peoples strengths and capabilities.

- *Lack of support services and networks*

First Peoples have been isolated from the networks and supports that enable and assist in business and economic development. The skills, knowledge and attitudes, networks and relationships are often built over generations. The connections through the right school, through tertiary institutions and business networks and chambers are all ways to bridge to others in the business sector.

While there are many examples of First Peoples successfully breaking down these barriers, networks and supports remain difficult to access.

Kinaway, the Aboriginal Chamber of Commerce in Victoria, has been the focal point for government investment and programmatic support in building networks, strengthening relationships, and creating opportunities for First Peoples' businesses. However, it is difficult for First Peoples to advance from 'bonding' (connecting to similar businesspeople) to 'bridging' (connecting to a wider degree) without significant support and services.

Commonwealth service support through Indigenous Business Australia has for the last decade given greater focus on home loans than business loans. The Indigenous Land and Sea Council has equally been regarded as providing limited support in Victoria. There has been little connection through government to support, or assist those agencies facilitating connections

and ultimately, investment into business. In short, the level of services has been relatively small and relatively mainstream.

The level of service and functional networking and support for Traditional Owner interests has had an even lighter touch in terms of government services. For example, key elements of Tharamba Bugheen were not funded or implemented under that strategy, although it should be recognised that Agriculture Victoria did support business development through the Djakitjuk Djanga program and through aspects of the Traditional Owner Native Foods and Botanicals Strategy.

Under the Federation's advocacy on procurement in 2015, key elements were to support the relationship, communications, and business support, as a way to enable Aboriginal businesses and TOCs to become familiar with and develop a track record in delivery of services. The preferential procurement approach was folded within the social procurement framework, which compared to the benefits seen in the Commonwealth Indigenous Procurement Policy for Aboriginal business, has had relatively poor outcomes.

**What are the consequences of systemic injustice faced by First Peoples in their participation in the Victorian economy? How does this affect a) individuals and families b) communities and c) First Nations businesses and enterprises?**

As discussed in detail in our responses to the questions above, colonial dismantlement and destruction of First Nations economies and the continuing exclusion of First Peoples' participation in the Victorian settler economy – through restricted proprietary rights in land and resources, lack of access to capital, and experiences of racism – has profoundly shaped the deep-seated disadvantage experienced by First Peoples today.

As Walter argues in the context of health:

“Aboriginal people, families, households, and communities do not just happen to be poor. Just like socioeconomic advantage, socioeconomic deprivation accrues and accumulates across and into the life and related health chances of individuals, families and communities.”<sup>64</sup>

The deprivation of access to economic resources has denied First Peoples and communities the opportunity to build wealth and accumulate assets for the next generation, the way non-Indigenous people have been able to. It has denied First Peoples self-determination, halted the development of the First Nations economy, and forced First Peoples and communities into a state of economic dependency and disadvantage.

First Peoples' businesses and enterprises have largely been forced to develop and operate within a non-Indigenous, western, capitalist economy – completely removed from First peoples' understandings of social good, resource management and wealth creation.

At the nation level, a lack of collective wealth and communal assets has hindered First Nations' self-determination and sovereignty. Without this economic independence, Traditional Owner groups continue to rely on government funding, often in the form of administratively burdensome short-term contracts. This significantly limits the ability of Traditional Owner

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<sup>64</sup> Walter, M., (2007) *Aboriginality, Poverty and Health - Exploring the Connections*. University of Tasmania. Conference contribution, p81.

groups to develop and undertake economic opportunities (in line with their cultural, social and economic aspirations) that benefit the broader community, including their capacity to contribute to Individual wealth creation through employment and training opportunities.

### **What are the economic and social costs (including opportunity costs) of limited participation or exclusion of First Peoples from the Victorian economy?**

As documented above, the dismantling of First Peoples economies and the replacement with an economy that deliberately excluded First Peoples is central to the significant socio-economic disadvantage faced by First Peoples today. This disadvantage can be seen in the dismal metrics associated with First Peoples poverty, employment, education, housing, health, and social and emotional wellbeing. There are vast economic costs to the state in addressing these challenges.

There are also major opportunity costs associated with the limited participation of First Peoples in the Victorian economy. It is difficult to put a figure on what has been lost from not placing value on First Peoples knowledge, skills and perspectives. Had these been properly valued, rather than dismissed, First Peoples could be playing a leading role in a range of sectors, such as land management, native food production, and cultural tourism. There is an ever-increasing demand for Indigenous knowledge and products associated with it, and Victoria should be looking to capitalise on this. For instance, in the native food and botanicals sector, the application of a First Peoples layer to these products has the potential to add value to the whole economy.

At an individual level, the economic exclusion of First Peoples means there are fewer people contributing to the growth and diversification of the Victorian economy. Project 1, commissioned as part of the Federation's economic development work program, estimates that First Peoples employment contributed \$3.73 billion to the total gross value added of the Victorian economy in 2021. This figure would be significantly higher, were it not for the many historic and current obstacles to economic participation faced by First Peoples.

## **4.2. Theme Two – Current Government and Corporate Strategies**

**How effective is Yuma Yirramboi (Invest in Tomorrow)? a) It is achieving its goals? b) If not, why not? c) What is driving good progress and how can that be scaled up? d) Is the Strategy effectively monitored? How effective are current governance and accountability mechanisms? How can they be strengthened?**

The Yuma Yirramboi Strategy is a relatively new Strategy, having been in operation for only two years. The Federation submits that there has not been sufficient time for the Strategy to be fully implemented and its effects observed.

We note that the Strategy does not include a monitoring, evaluation and reporting framework, which limits the ability of robust impact evaluation. Proper evaluation of the Strategy is integral to assessing its strength and effectiveness and facilitating accountability.

### **What would you recommend be changed in the policy and its implementation?**

As noted above, the development of a monitoring, evaluation and reporting framework for the Strategy is critical to its effective implementation. It is important that this includes an independent analysis of the investments and actions contained in the Strategy as well as the cumulative impact of these initiatives.

We also note that, while the Strategy acknowledges the unique position and challenges of Traditional Owners in generating economic outcomes for their community members and revenue for their organisations, Traditional Owner interests and outcomes are weaved throughout the Strategy together with broader Victorian First Peoples interests and outcomes and may limit the Strategy's usefulness in supporting Traditional Owners.

The Federation supports the development of a Traditional Owner Economic Development Strategy to bring focus on how to best support TOC's economic development strategies within their regional, social and economic contexts. We anticipate that Project 4 of the Federation's economic development work program, which will develop a road map for accelerated development of the Aboriginal economy, will provide valuable inputs into the development of such a strategy.

### **How would you describe the quantum and sustainability of government funding programs and investment in First Peoples' enterprises, First Peoples women in business, First Peoples economic development, First Peoples employment and Traditional Owner corporations on-country economic initiatives?**

ACCOs are some of the largest employers of First Peoples in Victoria. TOCs also employ many First Peoples, with staff numbers growing exponentially, and plenty of scope for further growth. ACCOs, TOCs and First Peoples' businesses are committed to employing First Peoples, providing a culturally safe working environment, and enabling career progression of First Peoples employees. In this way, these organisations remove existing barriers to entering the workforce and play a key role in boosting First Peoples' participation rates with the associated economic development outcomes, particularly in regional areas.

However, the potential of these organisations to support First Peoples economic development is not fully realised. More effective resourcing is needed to capitalise on these opportunities. The prevalence of short-term funding models (for example 12–18-month contracts) is a key factor in limiting the ability of these organisations to contribute to employment outcomes. Such funding models make it difficult for ACCOs and TOCs to provide their employees with equivalent salary, stability and work conditions to be able to compete with opportunities in the public service. There is a need to shift to long term, flexible, outcomes-based funding models for ACCOs and TOCs, which enable better work conditions and greater self-determination. Further, grant funding and procured services that target 'minimum spend', do not take into consideration the time it takes for First Peoples' organisations and businesses to build capacity to be as competitive as established businesses.

TOCs have proven to be effective at leveraging a wide range of economic development opportunities to build on their competitive advantages and activate rights that have been secured. This is enhanced when funding is provided to enable the foundational work required to access opportunities, such as the development of sector strategic plans, securing dedicated staff and having access to required expert advice. Such funding should be based on self-

determination principles and be consistent to enable planning and capacity building, and the implementation of such plans.

We also note that different levels of government funding based on different levels of formal recognition have resulted in unequal funding and unequal economic development opportunities for Traditional Owner groups across Victoria. For example, groups which have successfully negotiated an RSA under TOSA have access to additional funding and resources, and greater involvement in the management of the public estate, leading to subsequent economic benefits. However, there are a number of Traditional Owner groups which appear unlikely to successfully negotiate an RSA - and should not be denied the resources to self-determine their economic futures. These issues are likely to be picked up in Treaty negotiations between the groups and the government. We further note that, where an RSA has been negotiated, the government must give effect to agreed procurement targets with Traditional Owner groups under those agreements.

Based on the Federation's consultation with TOCs and sector peak bodies, the effectiveness of many government programs targeting economic development outcomes, such as training and employment, could be improved with the consideration and inclusion of First Peoples self-determined objectives. Current programs are constrained by government priorities and funding models defining the scope of programs.

As sector representative for Economic Development and Employment on the Victorian Partnership Forum on Closing the Gap, we would be pleased to provide the Commission with a copy of the Federation's Economic Development and Employment sector engagement Report once it has been through the review process and becomes publicly available.

The Commission may also be interested in the Indigenous Economic Power Project being undertaken by the University of Melbourne's Dilin Duwa.<sup>65</sup>

**What corporate strategies currently exist that promote First Peoples employment, economic development and investment in First Peoples businesses? What are their strengths and weaknesses?**

Corporate strategies relating to First Peoples employment and economic development include:

- *Traditional Owner Corporation Strategies* – most TOCs have Country Plans and various other Strategic Plans which incorporate employment and economic development outcomes for their community members.
- *Local Government Strategies* – The Victorian Aboriginal Local Government Action Strategy 2021-26<sup>66</sup> includes economic participation as one of its key pillars. The Strategy encourages and supports local governments to work in partnership with TOCs and Aboriginal communities to increase their participation in local economic activities through employment and business ventures. There is no clear evidence that this has progressed substantially across local governments.

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<sup>65</sup> Dilin Duwa, Indigenous Economic Power Project < <https://dilinduwa.com.au/snapshot-2> >

<sup>66</sup> The Victorian Aboriginal Local Government Action Strategy 2021-26 < [https://www.localgovernment.vic.gov.au/\\_data/assets/pdf\\_file/0029/183935/Victorian-Aboriginal-and-Local-Government-Strategy.pdf](https://www.localgovernment.vic.gov.au/_data/assets/pdf_file/0029/183935/Victorian-Aboriginal-and-Local-Government-Strategy.pdf) >

- Reconciliation Action Plans – allow organisations to take tangible actions to advance economic equity and Aboriginal self-determination.

These Strategies have not been the focus of the Federation’s work, so we are unable to provide meaningful comment on the effectiveness of these initiatives.

### **4.3. Theme Three - Employment and corporate governance**

**What is the current level of First Peoples’ participation in: a) public sector boards (including those relating to resources such as water)? b) private sector boards (If possible, please provide this information by gender)?**

The Federation does not have a clear line of sight into the current level of First Peoples’ participation in public and private sector boards. However, we submit that participation in such boards is only one aspect of corporate governance responsibility. Traditional Owners seek a fundamental shift to increase their authority in decision-making over areas such as land and natural resource management.

Existing institutional arrangements, through for example joint working groups and councils, have had some positive effect, but too often the power imbalance remains – the resources to support the research and policy formulation are inadequate and the scope or terms of reference, including accountability measures, remain embedded in achieving government outcomes rather than shared goals, missing the holistic nature of Traditional Owner interests.

Placing Traditional Owners on boards alongside other stakeholders reduces the opportunity for true partnership and fails to recognise that Traditional Owners, like government, are ‘forever’ interests, and not simply another stakeholder. Moreover a ‘lone voice’ on a board, committee or other body, being seen as ‘the single source of the Aboriginal voice’ can undermine the potential positive contribution as the weight of expectation or responsibility is unable to be fulfilled without the ability to draw on community considerations.

**How would you describe the current effectiveness and achievements of:**

**a) public sector First Peoples employment targets and strategies?**

**b) private sector First Peoples employment strategies?**

The Federation does not have enough information to make an informed comment on the effectiveness of First Peoples’ employment targets and strategies. Alongside public and private sector targets and strategies, we submit that there needs to be a much broader focus on funding to develop and strengthen First Peoples organisations, such as TOCs and ACCOs, to employ their own people to drive their self-determined priorities and pursue their own economic development.

While First Peoples employment targets within government certainly have their place, they can often contribute to a ‘brain drain’ at Aboriginal-led organisations, which are unlikely to be able to provide the same salaries, benefits and conditions as those found within government roles.

The raw figures that measure progress towards employment targets do not measure how long roles have been held for, whether the workplace provides a culturally safe environment and

whether there are opportunities for skill development and career progression. Employment targets and strategies often ignore the rich complexity of these issues.

**How would you describe the current effectiveness and achievements of:**

**a) public sector First Peoples procurement policies (including major procurements such as the Big Build)?**

**b) private sector First Peoples procurement policies?**

Indigenous Preferential Procurement Programs (**IPPPs**) are an effective way of supporting the establishment and growth of First Peoples' businesses, increasing First Peoples' employment, and improving the overall well-being of First Peoples. Recognition of the importance of IPPPs has seen them adopted in some form by the Commonwealth Government, five of the eight state and territory governments, and in parts of the private sector.<sup>67</sup>

Victoria does not have an Indigenous Preferential Procurement (**IPP**) program, instead opting for a Social Procurement Framework (**SPF**) which includes aspects of IPP. As a result, the outcomes for First Peoples businesses achieved under the SPF appear to lag behind the outcomes achieved in other jurisdictions which have IPP programs, such as the Commonwealth, New South Wales, and Queensland.

Victoria needs to move First Peoples procurement out of the SPF. IPP is about more than simply employing individuals; it is about First Peoples' economic empowerment and the broader social benefits that come from investing in First Peoples' businesses. These benefits occur at an individual and family level, but they also flow onto broader First Peoples' communities. Partly, it is also about creating role-models. First Peoples enterprises teach younger generations that not only is it possible for First Peoples to run successful businesses, but also how to succeed in business. Many of these businesses are also actively investing in the development young First Peoples.

The Federation facilitated an IPP Symposium in October 2022,<sup>68</sup> and one of the key recommendations to come out of it was that Victoria would benefit from developing a nation-leading Indigenous Preferential Procurement Program. Such a program would advance First Peoples employment outcomes and provide economic development opportunities for First Nations communities. Significant social benefits would flow out of this, including to future generations. A specific IPP program would ensure greater accountability of government.

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<sup>67</sup> Economic Empowerment for Aboriginal Victorians: The Role of Indigenous Preferential Procurement Programs, Proceedings of the Symposium, 24 October 2022, p1. <https://fvtoc.com.au/sections/indigenous-preferential-procurement/>

<sup>68</sup> Economic Empowerment for Aboriginal Victorians: The Role of Indigenous Preferential Procurement Programs, Proceedings of the Symposium, 24 October 2022, p1. <https://fvtoc.com.au/sections/indigenous-preferential-procurement/>

#### 4.4. Theme Four – Ending systemic economic injustice

##### **What works and doesn't work when it comes to building strengths-based First Peoples' economic participation?**

The Federation notes that, in an attempt to promote equality, most policy relating to improving First Peoples' development and well-being is constructed on discourses of deficit. Notably, the National Agreement on Closing the Gap and the Victorian Aboriginal Affairs Framework are both dominated by deficit metrics and statistical equality targets. These policies represent First Peoples in terms of deficiency and failure, placing responsibility for the socio-economic problems First Peoples face with them, and obscuring embedded structural problems.<sup>69</sup> This has resulted in a focus on the individual and welfare related issues.

As Armstrong describes:

For too long, there has been an emphasis on the social agenda rather than the economic agenda.<sup>70</sup>

Such policy approaches reflect negatively on First Peoples' capacity for 'agency, resilience, persistence and resistance.'<sup>71</sup>

The Federation strongly supports attempts to reframe the position of First Peoples' participation in the economy from a framework of disadvantage and dependency to 'strengths-based,' 'rights based' frameworks founded on self-determination, economic empowerment, opportunity, aspiration and the capabilities and assets of First Peoples – that facilitate genuine structural change.

As Behrendt notes:

“Without a rights framework that works there is no opportunity to create and protect the rights necessary for economic self-sufficiency. Leaving Indigenous peoples, families and communities dependent on welfare. Even worse, they will remain dependent upon the benevolence of the government.”<sup>72</sup>

##### What works

- *Self-determination*

As we have noted throughout this submission, there is strong evidence linking Indigenous self-determination to improved economic outcomes for Indigenous communities. We have discussed this nexus in detail above in section 3.1 and elsewhere in this submission.

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<sup>69</sup> Fogarty, W., Bulloch, H., McDonnell, S. & Davis, M. 2018, *Deficit Discourse and Indigenous Health: How narrative framings of Aboriginal and Torres Strait Islander people are reproduced in policy*, The Lowitja Institute, Melbourne, p VII <[DeficitDiscourseandIndigenousHealthFINALWEB.pdf](#)>

<sup>70</sup> Armstrong, L., A place for Indigenous economic self-sufficiency in a reconciled Australia (2004) *Journal of Indigenous Policy* Issue 4, p3 <<https://classic.austlii.edu.au/au/journals/JIIndigP/2004/8.pdf>>

<sup>71</sup> Westbury N and Dillon MC (2019), *Overcoming Indigenous exclusion: very hard, plenty humbug*, Policy Insights Paper 1/2019, Centre for Aboriginal Economic Policy Research, Australian National University, Canberra <[Overcoming Indigenous exclusion: Very hard, plenty humbug \(anu.edu.au\)](#)>

<sup>72</sup> Behrendt, L., *Indigenous self-determination: re-thinking the relationship between rights and economic development* (YEAR) *UNSW Law Journal* 24(3), p855.

We acknowledge that the Victorian government has committed to working towards self-determination as the driver for government policy and implementation.<sup>73</sup> However, in practice, there have been varying efforts by government departments to shift power, control, decision-making and resources from government to First Nations people and communities.

- Self-government

As canvassed above, stable and effective political governance has been identified as a critical foundation in the exercise of self-determination and realising the goals of Indigenous nations.

We again refer the Commission to our discussion above in section 3.1.

- *Supporting First Peoples business growth*

As noted above, Indigenous preferential procurement policies have been recognised as a key policy approach to stimulating Indigenous entrepreneurship and business development, thus providing Indigenous people with more opportunities to participate in the economy. This has seen such policies being introduced in some form by the Commonwealth Government, five of the eight state and territory governments, by many key resources firms and, more broadly in the private sector.

In 2015, the Commonwealth Government introduced the Indigenous Procurement Policy (IPP) to leverage the Commonwealth's annual multi-billion-dollar procurement spend to drive demand for First Peoples' goods and services, stimulate First Peoples' economic development and grow the First Peoples' business sector. In its first two years alone, it is reported that the IPP led to 956 Indigenous businesses winning \$594 million worth of Commonwealth procurement on a value for money basis. This compares to just \$6.2 million in 2012-13 under earlier policies.<sup>74</sup>

The outcomes of the Commonwealth's IPP demonstrate the policy's ability to boost First Peoples' participation and aspiration in the Australian economy. As mentioned above, Victoria does not have an Indigenous Preferential Procurement program, instead opting for a Social Procurement Framework (SPF) which includes aspects of IPP. As a result, the outcomes for First Peoples' businesses achieved under the SPF appear to lag behind the outcomes achieved in other jurisdictions which have IPP programs, such as the Commonwealth, New South Wales, and Queensland.

#### What doesn't work

- *Short term funding to Aboriginal institutions*

As we have observed elsewhere in this submission, Aboriginal institutions such as TOCs and ACCOs have an important role to play in enabling First Peoples' involvement in the economy. Through their respective roles in managing and protecting their Nation's collective land and resources and providing important health and other services to First Nations communities, TOCs and ACCOs provide important employment opportunities for First Peoples. Moreover, as we have noted, these institutions enable other important cultural and social benefits.

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<sup>73</sup> The Victorian Aboriginal Affairs Framework and the Self Determination Framework both reference a commitment to the principle of self-determination.

<sup>74</sup> The Australian Government, Department of Premier and Cabinet (2019), *Closing the Gap Prime Ministers Report 2018, Chapter 5 Growing Economic Development* < <https://www.niaa.gov.au/sites/default/files/reports/closing-the-gap-2018/economic-development.html> >

Strong TOCs and ACCOs are important channels to empower First Peoples' communities and their citizens and support their economic participation, however, short term government grants (and underfunding) have hindered their ability to grow and take up economic development opportunities. True self-determination and self-governance requires Nations to be strategic and oriented to long term decision-making (and development aspirations), rather than short-term, reactive decision-making directed by external funding opportunities.<sup>75</sup> It is imperative that these important institutions receive stable, ongoing core funding to pursue their collective economic development aspirations.

#### What is necessary

- *Harnessing First Peoples cultural strengths, capabilities and knowledge*

Indigenous communities can offer substantial, unique, and culturally appropriate opportunities for advancing First Peoples' participation in the economy and delivering sustainable socio-economic benefits for First Peoples over the long-term.

Opportunities to leverage this unique competitive advantage – outside mainstream markets – include First Peoples' abilities to manage land and knowledge of ecosystems, culture (art, dance, song), traditions/ceremonies which contribute to well-being, cultural tourism and wildlife harvesting.

In addition to economic benefits, these opportunities can deliver other benefits for enhancing cultural practices and learning, supporting identity and cultural responsibilities, and enabling First Peoples to lead lives in self-determined ways.

However, contemporary intellectual property frameworks provide limited protection for First Nations, or Indigenous cultural and intellectual property (**ICIP**) – traditional knowledge, cultural expression and genetic resources – enabling non-Indigenous interests to appropriate economic value from First Nations cultural and intellectual property. Moreover, the lack of adequate protection means that many First Nations custodians of ICIP guard it tightly, often beyond cultural constraints, resulting in significant opportunity cost.<sup>76</sup> As the Marramarra murru (creating pathways) First Nations Economic Development Symposium Background Paper noted:

“This represents a significant opportunity cost, whereby with an appropriate protection framework and in accordance with cultural protocols, this cultural and intellectual property could potentially underpin significant sectors of a self-determined First Nations economy.”<sup>77</sup>

This is a global issue. International conventions have made some progress toward establishing a suitable framework; however, Australia has been slow to adopt world standards of best-practice.<sup>78</sup> The Federation understands that work is being done at the Commonwealth level to include ICIP as part of a broader intellectual property regulatory environment to protect and

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<sup>75</sup> Behrendt, L, Jorgensen, M, and Vivian, A, Jumbunna House of Learning, University of Technology Sydney (2017) Self-determination: Background Concepts, p21

<<https://content.health.vic.gov.au/sites/default/files/migrated/files/collections/research-and-reports/s/self-determination-scoping-paper.pdf>>

<sup>76</sup> First Nations Portfolio, The Australian National University (2002) *Marramarra murru (creating pathways)*, *First Nations Economic Development Symposium Background Paper*, p10. <[2303\\_FNP\\_SymposiumPaper\\_12.WEB\\_.pdf \(anufirstnations.com.au\)](#)>

<sup>77</sup> *Ibid.*, p106.

<sup>78</sup> *Ibid.*, p9.

support the interests of First Peoples in sectors such as dance, art and music. Further work has commenced in relation to sectors such as native foods, botanicals and pharmaceuticals, and tourism.

The Federation has advocated for stronger protection of Indigenous cultural and intellectual property as it relates to native foods, fibres and botanicals through our work in implementing the Traditional Owner Native Foods and Botanicals Strategy. The Traditional Owner Native Food and Botanicals Protocol sets out best practice for engagement, understanding and agreement-making between the industry and Traditional Owners based upon self-determination and custodianship.<sup>79</sup> With growing demand for these products, it is imperative that Traditional Owners are able to give free, prior and informed consent for the use of their intellectual and cultural property. If the Victorian Government were to embed these protections for First Peoples intellectual and cultural property in legislation – across a range of areas such as production, marketing and research – this would position Traditional Owners as leaders of the sector and greatly advance their participation in the economy. The Federation advocates for similar protection of ICIP in other sectors.

The full economic potential encapsulated in First Peoples' cultural and intellectual property will not be unlocked until there is adequate protection under Australia's intellectual property framework.

- *Re-vesting proprietary rights*

As we have argued throughout this submission, to further support First Peoples' economic participation, the Federation stresses the need to recognise, protect, restore, and strengthen the collective proprietary rights of First Nations over their lands and resources, particularly in the Victorian economic context.

First Nations have access to varying levels of ownership, control, use and access, to management of land and resources but are limited in their ability to use these assets to meaningfully leverage economic outcomes.

Opportunities to create proprietary rights include:

- Embedding First Nation rights in the development of renewable energy projects, including a right to determine whether projects can proceed on Country and benefit sharing arrangements.
- Vesting the rights to any new commercial fisheries with First Nations. Recent examples of fisheries rights that could have been vested with First Nations include the licenses and quotas for periwinkle and sea urchins.
- Vesting rights stemming from emerging green markets, such as carbon credits, with First Nations in the first instance.

Strengthening these collective rights of First Nations will in turn advance First peoples' participation in the economy and longer-term prosperity. We refer the Commission to the Federation's submission to Yoorrook's Land Injustice Inquiry for more information about the recognition and activation of First Nations' proprietary rights.

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<sup>79</sup> *The Traditional Owner Native Foods and Botanicals Cultural Protocol Factsheet* (2023) < [https://fvtoc.com.au/wp-content/uploads/2023/04/TONFABS-Cultural-Protocol-Fact-Sheet\\_20231010.pdf](https://fvtoc.com.au/wp-content/uploads/2023/04/TONFABS-Cultural-Protocol-Fact-Sheet_20231010.pdf) >

## What will support building intergenerational wealth amongst First Peoples?

The inability of First Peoples to build and transfer generational wealth is a key factor in explaining persisting inequalities.

To build and grow wealth for future generations First Peoples require adequate access to capital and assets. It is also essential to understand First Peoples notions of wealth.

- *Integrating First Peoples notions of wealth*

Efforts to support the building of intergenerational wealth amongst First Peoples need to centre around a definition of wealth from First Peoples' perspectives, rather than the dominant western definition, which promotes the accumulation of money and material possessions. For many First Peoples, wealth is not just about material accumulation but is also perceived in non-monetary terms – embracing notions of social, natural and cultural capital - such as collective well-being and care of relationships between family, community and Country. First Nations economies are based on distribution, reciprocity and exchange that support the livelihood and sustenance of all citizens and the health of Country. First Peoples also place great emphasis on cultural abundance such as buildings, sites, artworks and artefacts (tangible) as well as beliefs and traditions (intangible). Indigenous wealth building 'creates spaces where Indigenous people have access to their language, lifeways, spirituality, and ceremonies.'<sup>80</sup>

- *Access to capital and assets*

Building and sustaining wealth for future generations will require the ability to access capital and assets. Government must look at different models to support First Peoples' organisations and communities to access capital. New financial institutions may need to be established to support this, as has been the case in Canada.<sup>81</sup>

The Federation hears from TOCs about the unwillingness of the State to hand back valuable assets, in particular property, to First Nations. Some corporations feel that Government is holding back on such assets for Treaty, so that they can be used as a negotiation tool. This is actively delaying the economic development prospects of these corporations, and a different approach must be adopted. Greater support must be provided to TOCs and other First Nations organisations to accumulate assets.

- *Changing the narrative*

Government also has a role to play in terms of changing the narrative around First Nations communities with respect to wealth and success. There remains a section of the Victorian public who hold negative, racist perceptions of First Peoples – for instance, around poverty and welfare dependence. This narrative must shift from “First Peoples should just be grateful” to “First People can and should be wealthy and successful”. There must be efforts made to explain how funding for First Nations organisations and First Peoples-specific programs is not a “handout”, but rather a way to address their historic exclusion from the economy, and the vast disadvantage which has stemmed from this.

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<sup>80</sup> Bennett Institute of Public Policy (20 September 2022) *Wealth in First Nations: Inclusive wealth and colonial legacies* < <https://www.bennettinstitute.cam.ac.uk/blog/wealth-in-first-nations/> >

<sup>81</sup> Government of Canada, Crown-Indigenous Relations and Northern Affairs Canada, *First Nations fiscal management* < <https://www.rcaanc-cirnac.gc.ca/eng/1393512745390/1673637750506> >

## **How can Victoria grow the Aboriginal economy?**

As canvassed above, the Federation submits that creating opportunities for First Nations to develop a distinct Aboriginal economy is critical to supporting truly self-determined, sustained economic development, and improving the economic independence of First Nations people and communities.

We direct the Commission to the Federation's significant program of work supporting First Peoples' economic development in Victoria. The initial report and Projects 1 and 2, which are attached to this submission, are of particular relevance to the question of how Victoria can grow the Aboriginal economy. The initial report provides an analysis of the necessary supports for achieving First Peoples' economic development outcomes in Victoria. Project 1 provides an overview of the Aboriginal economy in Victoria and evaluates its contribution to the wider Victorian economy. It is intended to act as a starting point to measure future progress over time. Project 2 undertakes a sector specific analysis of industries and markets that align with the capabilities, assets and interests of Traditional Owners and present prospects for significant employment and business growth.

### *Defining Aboriginal economy*

As Project 1 observes, the concept of Aboriginal economy is not well-defined. Therefore, in assessing how to grow the Aboriginal economy, it is important to first determine what the Aboriginal economy encompasses. For instance, for the purposes of Project 1, Aboriginal economy was defined to include First Peoples employment (in both Aboriginal and non-Aboriginal organisations), Aboriginal enterprises, and economic activity across their respective supply chains.<sup>82</sup>

We also once again highlight that for First Nations, economic development has additional social, communal, and cultural objectives. Therefore, the success of the Aboriginal economy may not necessarily be defined by the level of profit generated in monetary terms, but rather by the benefits provided to communities or groups and Country.

### *Government stimulation of the Aboriginal economy*

The Victorian Government plays a pivotal role in creating the economic conditions to stimulate the Aboriginal economy.

The Victorian Government primarily supports the Aboriginal economy in Victoria through the promotion of education, training and employment pathways for First Peoples and as noted above, limited preferential procurement for First Peoples businesses in the mainstream economy. The recent introduction of the Yuma Yirramboi: Invest in Tomorrow Strategy, however, is a noteworthy initiative, and provides a good foundation to enhance Aboriginal economic development opportunities outside of these approaches.

As the Yuma Yirramboi Strategy observes, the Victorian Government possesses various 'levers' to generate long-term opportunities for First Peoples and their enterprises. These include strategies, policies, funding programs, partnerships, and regulatory reforms to activate more

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<sup>82</sup> Federation of Victorian Traditional Owner Corporations (2024), Victorian Aboriginal Employment and Economic Strategy, *Project 1: Analysis of the State of Play of the Victorian Aboriginal Economy*, p12.

effective purchasing decisions that drive employment and Aboriginal development across the public and private sectors and support for skills and capacity building.<sup>83</sup>

Below we identify some key factors to enable the growth of a prosperous self-determining Aboriginal economy.

- *A policy framework that supports self-determination*

For First Nations to achieve economic prosperity, economic development frameworks need to sharply focus on self-determination and opportunities for First Nations to develop a distinct First Nations economy.

- *Access to capital*

As noted above access to finance is a particular challenge for First Peoples, their communities, and their enterprises. They face several unique limitations that inhibit their ability to access and leverage capital: limited collateral (including the inability to use collectively owned traditional lands as collateral for bank loans), limited financial literacy, limited access to financial institutions, inability to access low-cost finance, discrimination, and perceptions of risk.

There is a need to develop new and innovative ways of assisting First Nations peoples, communities, and enterprises to access capital.

- *Access to markets*

Due to the specific nature of some First Nations businesses (traditional produce) and their location (rural, regional and remote), they face challenges with respect to establishing competitive products in markets and forming and participating in supply chains.

The growth of a self-determined Aboriginal economy will need to address these structural challenges and have a significant focus on growing markets and creating opportunities for greater access to, and participation in, larger national and international markets for the products and services of First Nations businesses.<sup>84</sup>

- *First Nations business support services*

There is a need for entities that provide basic business support and assist First Nations businesses to grow through access to education, training, mentoring, coaching, networking, sound business planning and other opportunities to develop the knowledge, skills and aptitude necessary to grow and strengthen a prosperous First Nations business sector and economy.

The ANU Report commissioned as part of the Federation's program of work on economic development, recommends the establishment of a dedicated Aboriginal-owned and controlled entity committed to delivering impact brokerage services and support throughout the economic development ecosystem. The report emphasises that 'the entity should prioritise the establishment and growth of relationships with the broader mainstream economy, thereby facilitating the scalability of Aboriginal businesses.' Appendix 6 of the report provides an

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<sup>83</sup> State Government of Victoria, Department of Jobs, Precincts and Regions (2002) *Yuma Yirramboi, Victorian Aboriginal Employment and Economic Strategy*, p19 <[Yuma-Yirramboi-Invest-in-Tomorrow-Strategy-2022.pdf \(djsir.vic.gov.au\)](#)>

<sup>84</sup> First Nations Portfolio, The Australian National University (2002) *Marramarra murru (creating pathways), First Nations Economic Development Symposium Background Paper*, pp 14 & 120 <[2303\\_FNP\\_SymposiumPaper\\_12.WEB\\_.pdf \(anufirstnations.com.au\)](#)>

overview of key considerations for the establishment of a dedicated entity.<sup>85</sup> The Federation endorses this view and refers the Commission to recommendation 7 in our submission to the Commission's Inquiry into Land, Sky and Waters for the establishment of a Traditional Owner-led Centre for Aboriginal Economic Development to support the building of the Aboriginal economy.

- *Role of Traditional Owner Corporations and Aboriginal Community Controlled Organisations*

There is a need to support the growth of TOCs and ACCOs and their capacity for self-generated income. For many of the TOCs and ACCOs, most of their funding is secured through government grants available for the provision of key services such as health services and land management.

As discussed elsewhere in this submission, TOCs and ACCOs hold a valuable place in the Aboriginal economy. In addition to their respective roles in managing and protecting a Nation's collective land and resources and providing culturally appropriate health services to First Nations communities, TOCs and ACCOs play a broader role in contributing to a Nation's economic, cultural and social outcomes. They are likely to return social, cultural, and economic value directly to their Nations and their citizens through a high tendency to employ First Peoples, provide First peoples with a culturally supportive working environment, invest in the development of First peoples, and provide opportunities to undertake activities that are meaningful to First Peoples, while maintaining their language, culture and identity.

Strong TOCs and ACCOs are important channels to empower First Nations communities and their citizens and thus support the growth of the Aboriginal economy. It is imperative that these important institutions receive stable, ongoing foundational funding to pursue their core operations.

- *Leveraging land assets and cultural knowledge*

As discussed throughout this submission, First Nations proprietary interests in land, water and resources are an important component of economic development and provide important opportunities to grow the Aboriginal economy. However, due to the 'collective' ownership and 'inalienable' nature of traditional lands, First Peoples have been unable to capitalise the land to undertake economic development (including using their land as collateral when applying for a loan), placing First Nations at a competitive disadvantage.

As discussed in section 3.4 of this submission, the current land tenure regime fails to adequately activate the First Nations' asset base to provide legal rights with respect to the ability to appropriate value from land, water, and resources.

The First Principles Review offers some recommendations on how the State can better support Victorian Traditional Owners to exercise their rights under the Native Title Act and the Traditional Owner Settlement Act, as well as the recognition of a broader array of Traditional Owner rights. Key recommendations relate to the access and commercial use of natural resources, recognition of Traditional Owner water rights and the development of Crown land.

It is critical that the current land tenure regime is reformed to address the constraints on extracting economic value from land, water and resources in order to support the growth of the Aboriginal economy.

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<sup>85</sup> Australian National University, *Supporting Aboriginal Economic Development in Victoria*, p4.

- *Harnessing First Peoples cultural strengths, capabilities and knowledge*

As discussed above, Indigenous communities can offer substantial, unique, and culturally appropriate opportunities for advancing First Peoples' participation in the economy and delivering sustainable socio-economic benefits for First Peoples over the long-term.

However, limited protection for First Peoples cultural and intellectual property in Australia, and a lack of understanding of intellectual property frameworks by First Nation communities, puts them at significant risk of sharing traditional knowledge and losing control and ability to gain benefits from it.

### **What needs to be done to improve the way the public and private sectors value, invest in and protect First Peoples' cultural knowledge, science and intellectual capital?**

One way to place clear value on First Peoples' knowledge, science and intellectual capital is to protect it with ICIP legislation. Where First Nations' ICIP is protected, proprietary rights are created. These proprietary rights can then be leveraged to position First Peoples as the leaders in the sectors where they have clearly defined rights. As we have noted elsewhere in this submission, the current absence of ICIP protection in a range of areas (e.g. native foods, art, design) allows non-Indigenous people to appropriate and benefit from Indigenous knowledge. Terri Janke and Company has done significant work around the ICIP space.<sup>86</sup>

Further, improving the way the public and private sectors value and invest in First Peoples' cultural knowledge, science and intellectual capital will require greater education and awareness around:

- the existence of First Peoples' cultural knowledge, science and intellectual capital and the value of it;
- the unethical appropriation of First Peoples' cultural knowledge, science and intellectual capital;
- the potential economic and community benefits for First Peoples as a result of investing in and promoting products and services with authentic cultural overlays;
- the benefits for the broader Victorian economy.

Moreover, governments can improve the way the public and private sector values First Peoples cultural knowledge, science and intellectual capital by genuinely embedding and integrating First Peoples cultural and scientific understandings into its policies and programs. For example, genuinely incorporating First Peoples cultural fire practices into day-to-day land management and applying First Peoples' understanding of biodiversity into day-to-day game resources management. In this way, government is demonstrating and attributing clear value to First Peoples' cultural and scientific knowledge, beyond purely preserving cultural and scientific knowledge and practices.

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<sup>86</sup> Janke, T. Australian National University: "[True Tracks: Indigenous Cultural and Intellectual Property Principles for putting Self-Determination into practice](https://openresearch-repository.anu.edu.au/bitstream/1885/156420/1/Janke_PhD_ANU_True%20Tracks_ICIP%20Principles_SelfDetermination_2019.pdf)". < [https://openresearch-repository.anu.edu.au/bitstream/1885/156420/1/Janke\\_PhD\\_ANU\\_True%20Tracks\\_ICIP%20Principles\\_SelfDetermination\\_2019.pdf](https://openresearch-repository.anu.edu.au/bitstream/1885/156420/1/Janke_PhD_ANU_True%20Tracks_ICIP%20Principles_SelfDetermination_2019.pdf) >

This also requires a shift in government attitude regarding investment. Investment in First Peoples' cultural knowledge, science and intellectual capital should be viewed from an 'early intervention' perspective – investing in cultural knowledge and science will significantly reduce costs in the long-term. For example, Caring for Country should be viewed as a way of protecting the environment into the future.

### **What sectors can/should be accelerated to generate wealth amongst First Peoples and grow the Aboriginal economy?**

As noted above, as part of the Federation's program of research, the Federation commissioned Deloitte to conduct research into industry sectors and markets in Victoria that offer strong economic growth opportunities for TOCs and Victorian Aboriginal businesses (Project 2). We direct the Commission to Project 2, *Sector Specific Analysis*, which is attached to this submission.

The Project presents 17 sectors. The list was developed based on an assessment of multiple criteria: economic prospects; cultural significance; existing capability; social return on investment; and alignment with Treaty. The analysis identified the following 10 sectors as having the strongest potential for Traditional Owners and Victorian Aboriginal businesses:

- Health and Social Services
- Caring for Country
- Cultural Training
- Construction
- First Nations Tourism
- Clean Energy
- School Education
- Native medicine and food systems
- Indigenous Consulting
- Public Administration

Detailed sector profiles were created for these top 10 sectors, providing insights to guide strategic investment in Aboriginal economic development.

The Federation submits that TOCs are well placed to develop and undertake economic development opportunities relating to culture, caring for Country and native medicine and food systems. In addition to the economic benefits for communities and the Aboriginal economy, these sectors provide enormous potential for enabling and strengthening the knowledge systems, cultural practices and identities of Traditional Owners, and sustaining the health of Country.

However, TOCs should also be adequately supported to access other economic development opportunities determined to be aligned with their unique strengths and interests, and strategic priorities (such as tourism, fisheries, and aquaculture), along with emerging high growth sectors (such as the renewable energy industry).

The Federation again stresses that the re-vesting of proprietary rights to First Nations will be imperative to the development and acceleration of the Aboriginal economy. Too often the Government has created and conferred new proprietary rights to non-Indigenous stakeholders

without considering the inherent rights of Traditional Owners - resulting in the continued exclusion of First Peoples from economic development opportunities. For instance, commercial fishing rights stemming from the creation of new fisheries (e.g. periwinkle and sea urchin fisheries), and rights arising from the creation of new green markets (e.g. carbon credit mechanisms).

We also emphasise that the protection of Indigenous Cultural and Intellectual Property in the native medicine and food systems sector will also be critical.

We note that Project 3, *Indigenous business sector growth potential*, will assess economic opportunities and constraints from the 'bottom-up' perspective of TOCs and other Aboriginal enterprises across the State. Project 4, *Building towards investment*, will then bring together the findings of projects 1-3, and include additional desk-top research and consultation with TOCs and other businesses to develop a road map for accelerated development of these enterprises and the Aboriginal economy. The Federation anticipates that these Projects will provide further important insights into supporting the growth of the Aboriginal economy.

As noted above, these projects are due to be completed by September 2024 and the Federation would be pleased to provide them to the Commission once available.