



**Submission to the Joint Standing
Committee on Aboriginal and Torres
Strait Islander Affairs.**

***Inquiry into Economic Self-
determination and opportunities for
First Nations Australians***

May 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 (**Submission**) to the Joint Standing Committee's *Inquiry into Economic self-determination and opportunities for First Nations Australians* (**the Inquiry**).

This Submission is not intended to directly address each of the matters included in the Inquiry's Terms of Reference in detail. Rather, it focuses on:

- a) Describing some of the key assumptions and principles that underpin the Federation's approach to driving First Nations' economic development,
- b) Highlighting the direct nexus between a strong First Nations economy and the achievement of 'UNDRIP style' collective self-determination,
- c) Highlighting that a greater emphasis on a 'rights-based First Nations approach' to Indigenous economic development is the key to providing greater economic opportunity for all Indigenous Australians, and
- d) Briefly summarising the Federation's current, and ongoing, program of work supporting implementation of the Victorian government's Victorian Aboriginal Employment and Economic Strategy (*Yuma Yirramboi*) (**Federation's ED work program**) and the key findings so far.

In addition to leading work supporting *Yuma Yirramboi*, 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.

The Federation notes this Submission draws, in part, from its recent submissions (April/May 2024) to Victoria's *Yoorrook Commission's Inquiry into Economic Injustices* (**the Yoorrook Submissions**). The *Yoorrook Submissions* are included in this Submission as **Attachments 1 and 2**.

Notes on terminology

This Submission uses the term:

'*Indigenous*' and '*Aboriginal*' interchangeably depending on the jurisdictional context. Each term is intended to include Torres Strait Islander people.

'*Aboriginal economy*' to refer to that part of the Australian economy contributed to by Aboriginal individuals and Aboriginal-owned businesses.

'*First Nations economy*' and '*Traditional Owner economy*' interchangeably to refer to that part of the Aboriginal economy based in the collectively held legal and cultural rights of First Nations or Traditional Owner groups.

2. The Federation's approach to Aboriginal Economic Development in Victoria.

The principle of Indigenous self-determination, as developed at international law and described by the *United Nations Declaration on the Rights of Indigenous Peoples*, is the foundation for all the Federation's work. Self-determination is a right held communally by a group of people to, at a minimum, have, and maintain, a 'small-n' national identity within a broader 'National' governance system.

Significant research by organisations such as the Harvard Project have demonstrated the clear linkage between the progression/achievement of Indigenous self-determination and economic development. It goes without saying that, both at the individual and collective level, true self-determination cannot be achieved without some level of economic independence.

Economic development cannot be achieved without a strong, functioning Aboriginal and First Nations economies. Increasingly, while progressing the Federation's ED work program, it has become useful to distinguish between the 'Aboriginal economy' and the 'First Nations' economy. The Aboriginal economy being a function, primarily, of the economic value of both Aboriginal employment and Aboriginal-owned business. An economy 'trading' in individual rights that accrue at large but, in this instance, are held by Aboriginal people.

The First Nations economy, on the other hand, being seen as a function of the economic value provided by the 'trading' of communally held property, economic, procedural and/or cultural rights. These communally held rights do not vest in individuals and any economic (and/or cultural) benefit from their use accrues to the collective, or 'nation' as a whole.

While a strong and growing Aboriginal economy helps, in part, to address matters of individual social disadvantage, it is a strong and growing First Nations economy that better progresses matters of self-determination and 'nationhood'. While not diminishing the importance of addressing matters of individual social disadvantage, the Federation is of the view that little legislative and policy-making attention is given to supporting the First Nations economy.

In addition, the Federation is of the view that a prioritisation of the First Nations economy has the potential to not only fast track the addressing of issues of individual disadvantage but, at the same time, to make significant progress in the journey to self-determination.

Finally, it is the Federation's view that, as with any economy, the First Nations economy is fundamentally the exchange of rights between parties. In the instance of the First Nations economy, communally held rights vested in the group are exchanged. As such, the key to growing the First Nations economy is by the creation of, grant to, and recognition and protection of, property, economic, procedural and/or cultural rights vesting in the collective. What this Submission describes as a 'rights based First Nations approach'.

At the risk of being overly simplistic, the Federation provides the following 2 examples of how this approach could be adopted to not only grow the First Nations economy, but both the Aboriginal and broader Australian economies as well.

1. **The Nature Repair Market** – Committee members will be aware of the growing nature repair market largely grounded in the idea of private landowners receiving a financial incentive to achieve certain pre-determined, assessed and approved biodiversity outcomes. Evaluation and monitoring requirements ensure these agreed outcomes are met. A value is given to the 'repair of nature', with 'repair' being defined through a Western-science lens.

During consultation in relation to the development of the *Nature Repair Bill 2023* (Cth), the Federation advocated that the same biodiversity outcomes delivered through a ‘cultural landscape’ lens should be given added value. In short, landowners that delivered the desired biodiversity outcomes in a way consistent with First Nations’ understanding of Country would be offered extra incentive.

Noting that there are numerous justifications for such an approach, one natural result would be the creation of a ‘First Nations industry’ involved in the assessment, planning, carrying-out and evaluation of landowner proposals. An industry based on collectively held cultural ‘rights’ underpinned by rights vesting in, predominantly though not exclusively, non-Indigenous landowners. Where subject land is owned by First Nations, the value to the First Nations economy would be even greater.

Indigenous Cultural and Intellectual Property (ICIP) - Committee members will be familiar with the growing calls for ICIP to be treated and/or protected within a similar legislative framework as ‘Western’ intellectual property in order to effectively prohibit the use of Indigenous traditional knowledge and cultural expression without the permission of its holders.

Increasingly, non-Indigenous interests are appropriating ICIP as a way of adding value to their product/service offering, etc. A paradigm example of this is current environment in which the native foods, botanicals and pharmaceuticals industries operate without any agreement of ICIP holders. It should also be noted that, consistent with understanding of a still existing and residual sovereignty, Victoria’s Traditional Owners assert a proprietary interest in the genetic resource itself, not just cultural rights in relation to its management and use.

The Federation brings two simple examples to the attention of Committee members to demonstrate the ongoing colonisation of ICIP and native resources:

- a) *‘Australia’s National Brand’* – the Federation is aware of current moves to establish an ‘Australia’ brand which draws on ICIP as part of its ‘selling point’. Clearly, the brand is intended to add value to products carrying the brand. Effectively, the scheme commercialises ICIP without any regard to the rights and interests of Traditional Owners. A legislative framework that required permission and benefit-sharing for such use of ICIP would stop this type of misappropriation occurring.
- b) *An ‘Indigenous Agricultural Product’ definition and certification system* – Committee members may be aware of current Federal funding supporting the National Farmers Federation (NFF) to develop a definition for an ‘Indigenous Agricultural Product’. The purpose for such a definition is unclear, but seemingly, it is being developed for use in an ‘Indigenous Agricultural Product’ certification system. Presumably, such a system is being established on the basis that it would add value to the Australian agricultural sector.

Initial draft definitions had the effect of allowing non-Indigenous producers to avail themselves of such a certification if they were producing a ‘native’ product with particular characteristics.

Such a definition would mean that non-indigenous interests could have their produce certified, without any agreement with First Nations, and retain all the added value provided by such a certification.

Further, there is uncertainty as to the level of commitment to ensure any entity with oversight of such a scheme would be controlled by First Nations.

During the feedback period, the Federation noted that the adherence to two fundamental principles would help ensure the 'indigenous Agriculture' sector was a significant part of the First Nations Economy going forward. Firstly, such a certification should only be available to First Nations producers, or other producers under benefit-sharing arrangements. Effectively, those producers could make use of ICIP under licence. Secondly, any body administering such a certification system must be First Nations controlled.

The Federation notes that it is fully supportive of a First Nations designed and administered certification scheme for 'native' products and is currently a member of the *Indigenous Labelling and Certification Alliance* looking at these types of issues.

Findings from the Federation's ED work program are highlighting the critical role ICIP protection can play in developing a broad-based economic base to drive the First Nations economy and economic development for all Indigenous people.

It should also be noted that Victoria's treaty process provides opportunity for First Nations in Victoria to secure rights across the categories listed above. Equally, the process has given government the opportunity to 'defer' these issues rather than continue legislative and policy reform to bring about the desired outcomes. As such, in a perverse way, the treaty process has inhibited continuing progress in these areas.

3. The Federation's ED work program

As mentioned, the Federation is currently undertaking a series of projects, collectively making up the Federation's ED work program. The work program is funded by the Victorian Department of Jobs, Skills, Industry and Regions and supports the implementation of *Yuma Yirramboi*. The work program is also intended to support Victoria's Traditional Owner Corporations in becoming 'treaty ready' by having a fuller understanding of where opportunities for future economic development are and what 'treaty rights' might be required to underpin their realisation.

The Federation's ED Work Program is made up of the following projects:

- **Initial report (ANU) - *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 (Deloitte) - *State of play of the Victorian Aboriginal economy***, provides an understanding of the size and composition of the Aboriginal and First Nations economies and evaluates the contribution made to the wider Victorian economy.
- **Project 2 (Deloitte) - *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 3 (Greenshoot Consulting) - *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 4 (SGS Economics and Planning) - *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 5 (Australian Venture Consultants) - *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.

The ANU Report and reports for Projects 1 and 2 are included as **Attachments 3-5** of this Submission. Projects 3-5 are still in progress and the Federation would be happy to provide the Inquiry with the relevant documents as they become available.

The Federation has also facilitated development of several Traditional Owner initiated and led strategies including:

The Victorian Traditional Owner Native Foods and Botanicals Strategy

The Victorian Traditional Owner Cultural Landscape Strategy

The Traditional Owner Game Management Strategy

The Victorian Traditional Owner Cultural Fire Strategy

These strategies deal with specific issues/First Nations economic sectors, encapsulating Traditional Owner aspirations and establishing approaches to realise them, including opportunities and actions for economic development.

For convenience these documents have not been attached to this Submission but are available on the Federation’s web-site.

List of Attachments

1. *Submission to Yoorrook Commissioners on Land Justice Inquiry* (FVTOC, December 2023).
2. *Submission to the Yoorrook Justice Commission Inquiry into Economic Injustices* (FVTOC, April 2024).
3. *Supporting Aboriginal Economic Development in Victoria* (FVTOC/ANU, 2023).
4. *Project 1: Analysis of the State of Play of the Victorian Aboriginal Economy* (FVTOC/Deloitte, March 2024).
5. *Project 2: Methodology Report for Sector Analysis* (FVTOC/Deloitte, March 2024).