



Ms Meryl Swanson MP
Committee Chair
House Standing Committee on Primary Industries
PO Box 6021
Parliament House
Canberra ACT 2600
Via email: pic.reps@aph.gov.au

28 July 2026

Dear Ms Swanson,

Inquiry into factors shaping social licence and economic development outcomes in critical minerals projects across Australia

The Federation of Victorian Traditional Owner Corporations (the Federation) welcomes the opportunity to make this submission to the House Standing Committee on Primary Industries' Inquiry into factors shaping social licence and economic development outcomes in critical minerals projects across Australia.

About the Federation

The Federation is the state-wide body progressing the rights and interests of Victoria's 12 formally recognised Traditional Owner groups.¹ We work towards policy and regulatory settings that remove barriers to Traditional Owner groups exercising their rights, including contributing research and policy input on rights-based economic development for Traditional Owner groups. The Federation has been in the role of Secretariat of the Victoria's Traditional Owner Corporation Caucus of the Statewide Caring for Country Partnership Forum. In this capacity we have been facilitating Traditional Owner engagement with the state government on design of a Traditional Owner Critical Minerals Benefit Sharing Model for Victoria

Endorsement of the Mabo Centre / National Native Title Council and the Central Land Council's submission

The Federation acknowledges and endorses in full the submissions of the Central Land Council (CLC) and the joint submission of the National Native Title Council (NNTC) and the Mabo Centre. We urge the Inquiry to adopt the recommendations of CLC's submission regarding the need to amend relevant Commonwealth legislation, regulation and program requirements to be aligned with the principles of Free, Prior and Informed Consent as set out in the United Nations

¹ Formal recognition is achieved through appointment as a Registered Aboriginal Party under the Aboriginal Heritage Act 2006 (Vic); a positive native title determination under the Native Title Act 1993 (Cth); or an agreement made with the State of Victoria under the Traditional Owner Settlement Act 2010 (Vic).

Declaration on the Rights of Indigenous People, and the Commonwealth government encourage state governments to do the same. The Federation's submission to the Commonwealth Inquiry on UNDRIP can be found [here](#). We support the recommendations in the Mabo Centre/NNTC submission, in particular that any Commonwealth government programs such as Future Made in Australia which provide support for Critical Minerals projects must include in a requirement for eligibility is that an agreement has been negotiated with affected Traditional Owners.

This submission highlights unique factors in Victoria which have historically proven to inhibit Victorian Traditional Owners to access an equitable share of benefits derived from the extraction of resources from their Country. There is a risk of repeating this phenomenon in relation to critical minerals sector development. It sets out some key recommendations for the Commonwealth government to support Traditional Owners to access economic development opportunities from the extraction of resources from critical minerals projects and be engaged in decision making regarding minimising and managing their impacts on Country. It presents agreement making with Traditional Owners as a central to critical minerals projects gaining social license.

Yoorrook Justice Commission findings and land justice

In 2025, the Yoorrook Justice Commission (YJC) submitted its final reports and recommendations to the Victorian Government. These were the culmination of four years of dedicated work of the Yoorrook Commissioners, staff and legal team; 1300 submissions and more than 250 witnesses, and 9000 engagements with First Peoples individuals and groups.

The YJC hearings and reports included wide ranging and thorough documentation of colonial practices and their impacts since the British arrived in Victoria in the 1800s. The reports include 100 recommendations across land justice, health, education, housing and economic and political life, which will inform the next stages of Treaty negotiations, engagement with the state and broader reforms. (See appendix 1 for YJC recommendation related to mining activities in Victoria)

The YJC reports also found that First Peoples in Victoria have not received any of the wealth generated from mining, timber harvesting, grazing and government land licences, or from water-related revenue. First Peoples have been largely excluded from the traditional resource sectors in Victoria and their benefits, and denied a meaningful opportunity to grow wealth from their traditional lands and waters. (See appendix 1 for Y

This can be seen as being partly due to patterns of land dispossession. The Yoorrook inquiry included documenting the history of land dispossession from the rapid seizing of large swathes of high value agricultural land and waters in the first half of the 1800s, and which continued in subsequent years, eventually resulting in approximately 60% of the state covered by freehold land tenure.

Traditional Owner rights in Victoria are recognised under *Native Title Act 1993* (NTA), *Traditional Owner Settlement Act 2010* (TOSA) and the *Aboriginal Heritage Act 2006* and new processes for recognising the Traditional Owner rights in relation to Country have been established via Victoria's Treaty legislation. Victorian Traditional Owners have also faced obstacles in having their land rights recognised under the NTA, and this situation had only been partly remedied by the

Victorian government enacting the TOSA. Seven Traditional Owner groups have had land rights recognised under NTA or TOSA, while there are a number of Traditional Owner groups with active Native Title claims and negotiating Recognition and Settlement Agreements under TOSA. Victorian Traditional Owners are at the early stages of having rights recognised under Treaty legislation.

Under the *Native Title Act 1993*, the 60% of freehold title and another approximately 20% of the state covered by other tenure types extinguishes Native Title, and accompanying rights under the Future Acts regime to negotiate with mining proponents. Under the *Traditional Owner Settlement Act 2010* (TOSA) freehold title also effectively extinguishes the recognition of land rights and the right to negotiate. Of the remaining areas of Crown Land which make up part of the Aboriginal estate under NTA and *Traditional Owner Settlement Act 2010* (TOSA), much of this land is under management regimes which limit its use such as National Parks and State Reserves.

Critical Minerals deposits in Victoria are concentrated in a few parts of the state. There are large deposits of minerals sands in the north west of the state which are remnants of an ancient sea, stretching approximately 300kms from near Swan Hill though to Horsham and beyond. Smaller mineral sands deposits in the south east of the state, and antimony deposits alongside gold seams in central Victoria.

Most of these deposits occur on what is now freehold title. This contrasts with estimations that nationally 57.8% of critical minerals deposits are on Aboriginal estate, where Traditional Owners have the right to negotiate under the NTA or other land rights legislation. This increases to 79.2% when including areas where there are active native claims.

This highlights due to the patterns of colonisation and land dispossession in Victoria, and a lesser degree of formal recognition, Victorian Traditional Owners risk not being able to establish agreements with Critical Minerals proponents, and the range of benefits these afford unless additional measures are adopted.

We recommend that Commonwealth government adopt and support measures that require meaningful engagement and the negotiation of agreements with all Traditional Owners, not dependent on formal levels of recognition. This is due to the acknowledgement that Traditional Owner rights can be expected to evolve during the lifetime of projects, and it would enable all Traditional Owners equitable access to meaningful economic development opportunities presented by critical minerals developments. This will also enable the building of long-term constructive relations with proponents and mitigate risks of financial costs for proponents resulting from project delays or legal fees that could emerge in the case of disputes.

Victorian Traditional Owners critical minerals benefit sharing advocacy

In what can be seen as a response to the Yoorrook Justice Commission hearings, the Victorian government has committed in the Victorian Critical Minerals Roadmap to partner with Traditional Owners to develop a Traditional Owner Critical Minerals benefits sharing model.

The Federation in its capacity as Secretariat of the Traditional Owner Corporation Caucus (TOCC), has been supporting Traditional Owners to have input into the design of this benefit sharing model. Core to the TOCC's advocacy has been enlivening the model through amendment

of Victoria's *Mineral Resources (Sustainable Development) Act*. Components of the proposed model include mandatory agreement making with affected Traditional Owners, for projects on all tenure types and including access to benefits for all Traditional Owner groups not dependent on level of formal recognition.

The TOCC and the Federation have seen agreement making being a central vehicle in a benefit sharing model as they have the potential to encompass:

- financial components, such as revenue or equity shares;
- procurement, jobs and training opportunities;
- Traditional Owner involvement with project planning and decision making;
- provisions for Traditional Owner involvement with managing the impacts of projects on cultural heritage and cultural values of Country, including rehabilitation of projects sites at the project closure.

Agreements also enable greater self-determination, through being tailored to each group's objectives and interests.

The Victorian Traditional Owner benefit sharing model is yet to be finalised. The Victorian government has recognised that agreement making with Traditional Owners is the best vehicle to achieve economic development and social license outcomes, although it is yet to clarify how a benefit sharing model will drive agreement making.

Innovative approaches of Victorian Traditional Owners

In Victoria we have seen an increase in activity of proponents progressing applications for mining licences for Critical Minerals projects in recent months, which can be seen as a response to the Victorian Critical Minerals Roadmap and the Commonwealth Government negotiating the *United States–Australia Framework for Securing of Supply in the Mining and Processing of Critical Minerals and Rare Earths*.

Some Victorian Traditional Owner groups have been engaging and negotiating with multiple critical minerals project proponents. In the context of an inadequate legislative and regulatory context, these groups have had to employ innovative approaches to build their preparedness to conduct this engagement in a proactive and informed manner.

Following strong advocacy from Traditional Owner groups regarding the challenges they faced in the rapid pace and scale of the renewable energy transition, the Victorian government provided Traditional Owner Corporation with resourcing to prepare to engage with the sector and project proponents. Traditional Owner groups have adapted partnership frameworks and strategies that were developed using this resourcing. For example, the [Cultural, Environmental, Social and Governance Certification Framework](#) developed by the Taungurung Land and Waters Council. These frameworks, along with engaging suitable qualified legal and technical advisors have enabled these TOCs to engage in a self-determined, proactive and informed manner. The preparedness of TOCs to engage with proponents of major projects, is at present not evenly spread across Victorian Traditional Owner Corporations, and further investment in these efforts is required to consolidate this capacity and capability building is needed.

Evidence has shown that quality of engagement and outcomes of negotiations can vary greatly depending on the access to quality advisors and supports as groups are engaging with

proponents. As the pace of the critical minerals sector development is at least partly being driven by state and Commonwealth government policy settings, we recommend that the Commonwealth government make contributions to add to that being provided by state governments to enable groups to develop their own partnership frameworks and prepare to engage with proponents in an informed and empowered way. We also recommend that the Commonwealth government build in requirements that proponents cover the engagement and negotiation costs of Traditional Owner groups.

Recommendations:

- Amend relevant Commonwealth legislation, regulations and program requirements to be aligned with the principles of Free, Prior and Informed Consent;
- Commonwealth government programs such as Future Made in Australia which provide support for critical minerals projects must include in its eligibility criteria that an agreement has been negotiated with affected Traditional Owners;
- Commonwealth government adopt definitions of Traditional Owners which include those recognised under state-based legislation as well as the NTA, and Traditional Owners yet to gain formal recognition as this recognition can be expected to continue to evolve during the lifetime of critical minerals projects;
- The Commonwealth Government add resources to those provided by state governments to support Traditional Owner groups to engage their community members and legal and sector experts and prepare Partnership Frameworks;
- The Commonwealth Government require critical minerals proponents to resource Traditional Owner engagement and negotiation expenses for critical minerals projects on all tenure types;

We would welcome the opportunity to speak more to this thinking and thank the Inquiry for the opportunity to contribute.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Kaley Nicholson', with a stylized, cursive script.

Kaley Nicholson
Chief Executive Officer

Appendix 1

Yoorook Justice Commission recommendation regarding enabling just Traditional Owner outcomes from the mining sector in Victoria:

Recommendation 43

In consultation with the First Peoples' Assembly of Victoria, the Victorian Government must conduct a review of:

- a. Existing mechanisms for Traditional Owner consultation and consent in the development of minerals, resources and extractive projects (whether on private or public land) at least to ensure consistency with the principles of free, prior and informed consent in UNDRIP;
- b. Traditional Owner participation in the development and implementation of rehabilitation and remediation plans, making them consent authorities;
- c. Mechanisms for greater Traditional Owner participation in: i. rehabilitation works; and ii. the management of post-mining land (including under Part 7C of the Mineral Resources (Sustainable Development) Act 1990 (Vic)).
- d. Opportunities for the return to Traditional Owners of post-mining land (including for commercial and cultural economy purposes) as a default provision.