

Self-determination in Infrastructure

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Acknowledgment of Country

We acknowledge the Traditional Owners of the lands in which this project takes place, Wurundjeri Woi-wurrung peoples of the Kulin Nations.

We send our respects to their Ancestors, Elders past and present, and we recognise their ongoing connection to land, sky, water, culture and community.

We acknowledge the richness of all Aboriginal and Torres Strait Islander cultures, traditions and wisdom that has been nurtured for thousands of years. We thank all Traditional Owners and Custodians for their ongoing connection to and caring of Country and for keeping culture alive.

Sovereignty was never ceded.

Our respect extends to Bunurong Traditional Owners, whose lands we live and work on.

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Executive summary

What is self-determination?

- In basic terms, self-determination describes Indigenous Peoples' right to exercise control and authority over their own lives; in other words, to be the authors of their own destinies.
- This right has a wide range of applications across social, economic, political, and cultural domains. In the Australian infrastructure context, self-determination is often inextricably linked to Traditional Owner aspirations and objectives for Country, community, and culture.
- Victorian Traditional Owners are not only deeply connected to Country but are stewards of its care. To respect the right to self-determination, infrastructure projects must make efforts to align project outcomes with the long-term visions of Traditional Owners in relation to sustainability and respect for the natural environment.
- However, self-determination means different things to different communities in different contexts. It is therefore important to define and redefine the term in direct engagement with communities as conditions, contexts, relationships, and mutual understandings evolve.
- Self-determination requires ongoing conversations as projects develop and extend into new territories, and as Traditional Owner aspirations accumulate experience and wisdom through such engagement.

Best practice engagement

- The evidence shows that when engagement is approached through an equity lens, Traditional Owners and government agencies can collaborate to create infrastructure outcomes that are well-fitted to community needs and benefit from a deeply rooted sense of ownership. Engagement needs to follow the communities' leads in terms of participation, time, expectations, and any relevant cultural protocols.
- Most engagement still takes place through the lens of western organisations and decision-making bodies. While many project proponents and Traditional Owner groups agree that engagement is an important part of establishing a project, the parties may have different expectations about what this means.

Victoria in practice

- In practice, self-determination principles are most evident in the overlapping disciplines of cultural heritage compliance, Designing with Country, and social procurement. However, for many Traditional Owner groups, true self-determination means that projects on Country are Traditional Owner-led and guided by Traditional Owner objectives and aspirations for Country, community and culture. Currently, embedding self-determination in project and program governance, optioneering and project decision-making remains a key area of opportunity.

Opportunities

- Opportunities are drawn from best practice evidence as outlined in the case studies and international benchmarking exercises included in this report, as well as the experience and expertise of The Indigenuity Lab, developed through deep engagement with Traditional Owner groups across a range of Victorian infrastructure projects and programs.
- The opportunities are summarised below:
 - o Infrastructure developers and industry participants should be aware of the existing commitments and obligations related to self-determination.
 - o Localised cultural awareness training should be mandatory for all project delivery teams prior to project commencement to enhance understanding of Traditional Owner protocols and culture.

- Engagement with Traditional Owners should occur from project inception and continue throughout the project lifecycle, with co-designed processes to ensure active involvement in decision-making.
- Traditional Owners should have a leading role in appointing Aboriginal practitioners for engagement, or at minimum, an endorsement process for practitioners should be established.
- Procurement processes should reflect self-determination principles, including appropriate weighting for Traditional Owner input in tender evaluations and criteria for social benefits.
- Social procurement strategies should engage Traditional Owners for advice on local Aboriginal businesses and ensure economic benefits flow to the community on whose Country the project occurs.
- Voluntary cultural heritage management assessments beyond minimum requirements can provide valuable insights into cultural values and help protect them from the outset.
- Project budgets and timelines should be flexible and commensurate with the scale of Traditional Owner engagement required, ensuring Free, Prior, Informed Consent is upheld.
- The integrity of Indigenous Cultural Intellectual Property (ICIP) shared during consultations must be maintained throughout the project lifecycle, with Traditional Owners having control over its use in public outcomes.
- Governance approaches should include formal Traditional Owner endorsement processes, appropriate grievance procedures, and regular engagement updates with sign-off mechanisms for Traditional Owners.
- Further engagement with Traditional Owners and stakeholders to support in translating the opportunities outlined in this Review into actionable outcomes and policy changes.

Overview

Victoria leads the nation in Australia's progress towards self-determination and Treaty, but we still have a long way to go.

In commissioning this Desktop Review (the Review), Infrastructure Victoria is initiating a step along that path to learn how infrastructure projects in Victoria are embedding self-determination in projects and delivering for Victorian Aboriginal communities.

Infrastructure Victoria appointed a female-led, 100% Indigenous-owned consultancy, The Indigenuity Lab, led by Director Kaylee Anderson, to map the current state of self-determination in the Victorian infrastructure context, and to identify associated opportunities and challenges. Kaylee has led Traditional Owner engagement across some of Victoria's largest infrastructure projects. With significant industry experience, and with Country always placed at the heart of engagements, Kaylee has worked in partnership with Traditional Owners to amplify aspirations for Country, community and culture throughout project lifecycles.

This Review has the power—and the responsibility—to influence how Infrastructure projects empower Traditional Owners, not just in the co-design of architecture and landscape solutions, but in planning and delivery processes from inception to construction, and beyond.

This Review aims to identify the foundations that will create the systemic changes to embed Traditional Owner-led solutions in infrastructure projects and lay the right foundations as we progress towards Treaty.

True self-determination captures the entire breadth of First Peoples' rights, and ensures there is a transfer of power, enabling community-led solutions. This is fundamental to delivering projects that promote social cohesion, inclusivity, reconciliation and community wellbeing, and driving outcomes that deliver intergenerational social and economic benefits.

Working in partnership with Traditional Owners means recognising their profound, ongoing connection to land, sky and water. It means understanding the sovereignty and sacredness of Country, and the living cultural practices that preserve, protect and maintain Victorian Aboriginal People's connections with Country, and with each other.

Notes on inclusive language

This Review upholds a standard for self-determination that recognises free, prior and informed consent, provides opportunities for truth telling, and is flexible and transparent in providing Traditional Owners with opportunities to iterate engagement processes to define their preferred ways of working.

Throughout this Review, the term 'Victorian Aboriginal peoples' and 'Aboriginal peoples' includes all people of Aboriginal and Torres Strait Islander descent who are living in Victoria. We recognise the diversity of Aboriginal people living throughout Victoria. In some contexts, the term 'Indigenous' is used in recognition of all Indigenous Peoples of the world, typically in the context of international applications derived from the United Nations Permanent Forum on Indigenous Issues (UNPFII) and the Declaration on the Rights of Indigenous Peoples (UNDRIP).

This Review recognises that Victorian Aboriginal Peoples hold a diverse range of perspectives regarding the terms 'Traditional Owner' and 'Traditional Custodians'. We acknowledge that 'Traditional Owner' is often applied to peoples who have formal recognition and is not inclusive of peoples without formal recognition. We recognise that regardless of formal recognition through legislative processes, all Aboriginal Peoples possess strong, ongoing connections to Country, culture and community, and that we are all people of the lands and waters.

Methodology

This Review was informed by several research inputs across two stages.

Stage 1: Desktop research to inform high-level strategic context

The Indigenuity Lab completed a strategic assessment of existing self-determination commitments to Traditional Owners, and existing materials created by Traditional Owner groups, e.g. Country Plans, Management Plans and other key strategic documents. Additionally, desktop research and

benchmarking exercises were undertaken to understand and draw learning from international applications of self-determination by Indigenous Peoples on their respective lands and waters.

Stage 2: Development of high-level review

This Review collates a range of information to provide insights into how self-determination is working in practice across the Victorian context, and how Victoria compares nationally and internationally. It considers a multitude of factors informed by existing commitments, Traditional Owner outcomes and aspirations for Country, community and culture, as well as international benchmarking and a range of relevant case studies.

Being a Desktop Review, direct engagement with Victorian Traditional Owners was not scoped as part of this Review. Rather, their expectations and aspirations are reflected through their existing plans and strategies.

The aspirations and objectives of Traditional Owner groups are driven by Country, culture and community, and are subject to ongoing change and evolution over time. The information provided in this Review should not be seen as prescriptive, and further engagement should be undertaken at the commencement of any project on Country.

Victorian Traditional Owners

As shown in Figure 1, there are 12 Registered Aboriginal Parties (RAPs) covering approximately 77.5% of Victoria.¹ Victoria's Traditional Owners groups are diverse, with rich histories, cultures, traditions and ways of being. Some of these are shared among groups, and some are unique to each Country.

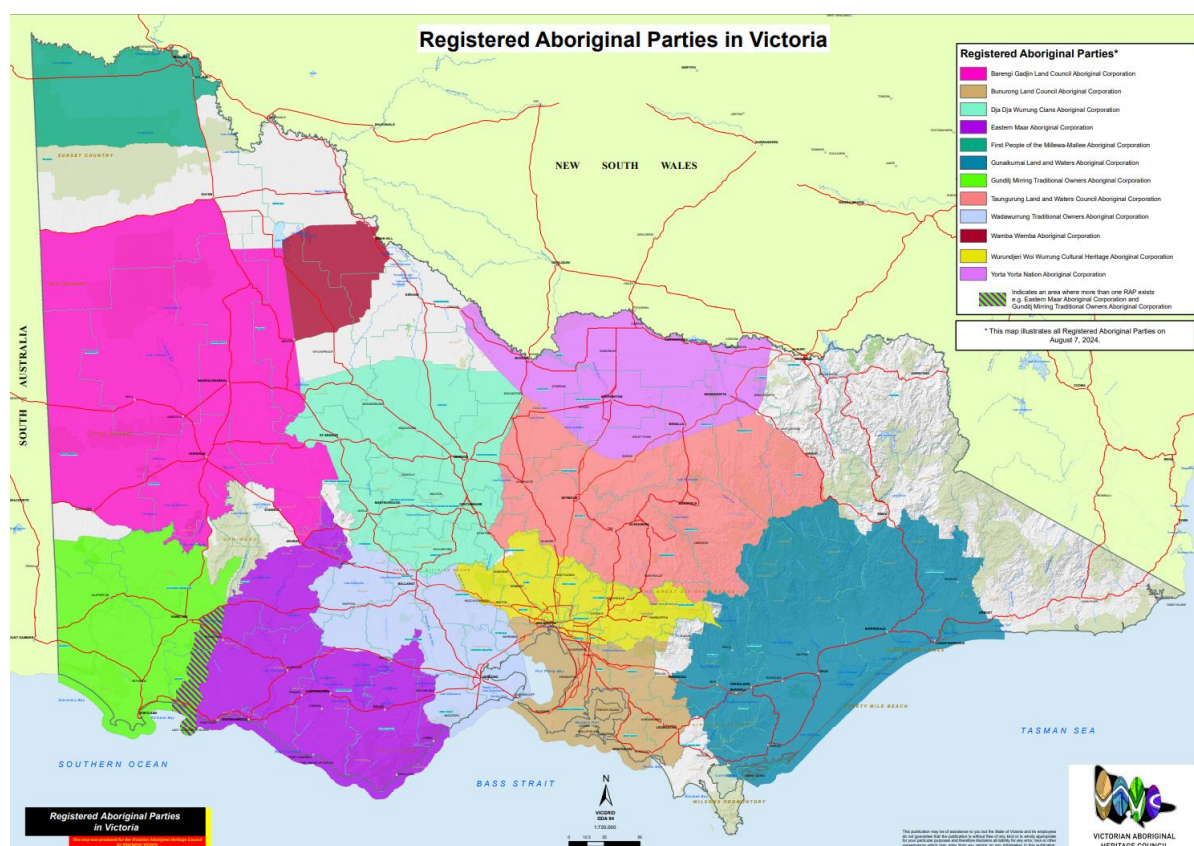


Figure 1 - Registered Aboriginal Parties in Victoria²

¹ Victorian Aboriginal Heritage Council, 'Victoria's registered Aboriginal parties' available at <https://www.aboriginalheritagecouncil.vic.gov.au/victoria-registered-aboriginal-parties>

² Victorian Aboriginal Heritage Council, available at <https://www.aboriginalheritagecouncil.vic.gov.au>

RAPs are local organisations established under the *Victorian Aboriginal Heritage Act 2006* which aims to recognise Aboriginal Peoples as

“the primary guardians, keepers and knowledge holders of Aboriginal cultural heritage, and to accord the appropriate status to Aboriginal people with traditional or familial links with Aboriginal cultural heritage by promoting this heritage as an integral part of land and natural resource management.”³

In addition to the 12 recognised RAPs, there are several Traditional Owner groups yet to be formally recognised in the Northwest, Northeast and Far East Gippsland regions.

In 2016, the Victorian Government committed to pursuing Treaty, and in the 2022-2023 financial year committed \$150 million in the budget to support statewide Treaty negotiations per the *Advancing the Treaty Process with Aboriginal Victorians Act 2018* (the Treaty Act). The Treaty Act will negotiate the formal transfer of power and resources, empowering Victorian Aboriginal communities to control matters that impact their lives. Treaty will also recognise and celebrate the unique status, rights, cultures and histories of Victorian peoples. Treaty promises Traditional Owner groups increased autonomy and self-determination, as well as increased engagement across infrastructure projects being undertaken on Country.

Please refer to the appendices for each RAP’s key aspirations for Country, culture and community.

Self-determination and Traditional Owner aspirations

As outlined in the section above, and in the corresponding appendices, each RAP has aspirations for Country, culture, and community. In some cases, these are outlined in Country Plans, while in other cases they are evident in public statements and foundational documents. In all cases these aspirations are explicitly linked to the right of self-determination. Even when the link is not explicitly stated, the objectives and goals of all Traditional Owners are deeply intertwined with the principles of self-determination, economic empowerment and the recognition of Traditional Owner rights to Country and culture.

Moving forward, the ongoing journey towards self-determination for Victorian Traditional Owners requires that the Victorian Government continues to prioritise the development of Country Plans and the delivery of their goals, as well as defined ways of working outlined by Traditional Owners. It is particularly important to promote mutually beneficial partnerships that align with the long-term goals of Traditional Owners for Country, culture and community.

Traditional Owner aspirations and objectives outlined in the appendices provide a foundational level of insight into aspirations for Country, community and culture, demonstrating that self-determination:

- should always be discussed upon commencement of consultations
- differs from project to project, and from group to group
- may be interpreted differently within groups, and within different areas of Country
- should be front of mind for government agencies and infrastructure partners when planning projects on Country.

As outlined in the Victorian Aboriginal Affairs Framework (VAAF),⁴ self-determination represents a continuum that begins with improved relationships and engagement, progresses through co-ownership, and leads to Traditional Owner-led decision-making and resources control. Based on this continuum, government agencies and infrastructure partners need to be laying the right foundations and allocating the right resources now to enable a future that embraces Traditional Owner-led processes for all projects on Country. This means an increased focus on creating spaces for Traditional Owner voices to be heard, enhancing flexibility and transparency across all projects, and working with Traditional Owners to map the flow of social and economic benefits to community. Figure 2 details the three reasons why Aboriginal self-determination underpins the VAAF.

³ *Aboriginal Heritage Act 2006 (VIC)*, available at <https://classic.austlii.edu.au/au/journals/AUIndigLawRw/2007/47.pdf>

⁴ Victoria State Government, *Victorian Aboriginal Affairs Framework 2018-2023*, available at www.firstpeoplesrelations.vic.gov.au/sites/default/files/2019-09/VAAF%20FINAL.pdf

There are three reasons Aboriginal self-determination underpins the VAAF



Figure 2 - Three perspectives on self-determination from the Victorian Aboriginal Affairs Framework⁵

The diversity of Victorian Traditional Owners, each with unique histories, cultures, and aspirations, underscores the need for tailored approaches to engagement and self-determination. While there are commonalities in their connection to Country and desire for cultural preservation, each Traditional Owners' specific goals and priorities must be considered in infrastructure projects. The varying levels of formal recognition and agreements in place for different groups also highlight the complexity of the engagement landscape.

⁵ Ibid., p. 22.

What is self-determination?

‘Self-determination’ is a broad term that has a simple definition in theory, and a range of more complex meanings in practice. In its most basic terms, self-determination describes Indigenous Peoples’ right to exercise control and authority over their own lives; in other words, to be the authors of our own destinies. This right has a wide range of applications across social, economic, political, and cultural domains, and in the Australian infrastructure context, self-determination is often inextricably linked to aspirations and objectives for Country, community and culture.

In the Australian context, the right of self-determination means different things to different communities.⁶ It is therefore important to define and redefine the term in direct engagement with communities over time as conditions, contexts, relationships and mutual understandings evolve. In the context of engagement around infrastructure projects and programs, this conversation should be revisited—directly, or as part of a discussion about the aspirations and objectives of Traditional Owners—as a key part of the engagement approach for each project. This should be an ongoing conversation. Projects develop and extend into new territories, and Traditional Owner expectations and aspirations evolve by accumulating experience and wisdom through such involvement.

This section of the Review illustrates self-determination by providing multiple perspectives on a broad understanding of the concept and related themes.

The basis for self-determination

The right to self-determination is enshrined in Article 3 the *United Nations Declaration on the Rights of Indigenous Peoples*⁷ (UNDRIP). Australia is obliged to observe the right to self-determination under Article 1 of the *International Covenant on Civil and Political Rights*,⁸ and Article 1 of the *International Covenant on Economic, Social and Cultural Rights*.⁹

The Australian Human Rights Commission notes that “self-determination is the central right of [the UNDRIP]. All other rights support Aboriginal and Torres Strait Islander peoples’ exercise of self-determination.”¹⁰

According to the UNDRIP, which was authored from the perspective of international Indigenous groups, self-determination means that:

1. We have choice in determining how our lives are governed and our development paths.
2. We participate in decisions that affect our lives. This includes a right to formal recognition of our group identities.
3. We have control over our lives and future including our economic, social and cultural development.

The UN Committee on the Elimination of Racial Discrimination interprets self-determination as involving “the rights of all peoples to pursue freely their economic, social and cultural development without outside interference”. Notably, self-determination is a collective right, rather than an individual right, meaning that it applies to Indigenous Peoples as a whole, and to groups of Indigenous Peoples as a collective. However, the domestic reflection of self-determination across Australia and within Victoria remains inconsistent. Australia formally endorsed UNDRIP in 2009 after its adoption by the UN General Assembly in 2007. However, Australia has not yet reflected UNDRIP principles in legislation.¹¹

⁶ Australian Human Rights Commission, ‘Self-determination’ available at <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/self-determination>

⁷ United Nations Human Rights: Office of the High Commissioner, *UN declaration on the rights of Indigenous peoples*, available at <https://www.ohchr.org/en/indigenous-peoples/un-declaration-rights-indigenous-peoples>

⁸ United Nations Human Rights: Office of the High Commissioner, *International covenant on civil and political rights*, available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

⁹ United Nations Human Rights: Office of the High Commissioner, *International covenant on economic, social and cultural rights*, available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>

¹⁰ Australian Human Rights Commission, ‘Self-determination’.

¹¹ Australian Human Rights Commission, ‘Implementing UNDRIP’ available at https://humanrights.gov.au/sites/default/files/2020-10/implementing_undrip_-_australias_third_upr_2021.pdf

Australian context

In Australia, colonisation heralded intergenerational impacts on Aboriginal and Torres Strait Islander Peoples. In addition to the violent dispossession from Country, the forced removal of children from families, and the full range of well-documented atrocities and injustices, the colonial system also systematically stripped Australia's First Peoples of autonomy and agency, dispossessing them from cultural practices, group decision-making, and rights to make their own way in the world.

Over the last two centuries, government policies and decisions impacting Indigenous Peoples (and Country) have been enacted without consent, without input, and without considering perspectives, objectives and aspirations. In many ways, the right to self-determination directly responds to righting this ongoing dark chapter in Australia's shared history by acknowledging First People's collective right to live according to their own values, ways of being and beliefs. As a guiding principle, it has been adopted in policies and frameworks at all levels of government—to varying degrees.

“Self-determination is an ongoing process of ensuring that peoples are able to make decisions about matters that affect their lives. Essential to the exercise of self-determination is choice, participation and control.”
Australian Human Rights Commission¹²

Victorian Government perspectives

At the state level, Victoria's implementation of self-determination principles is encouraging yet falls short of fully reflecting the intent of UNDRIP. The Victorian Government has established initiatives such as the First Peoples' Assembly of Victoria, Yoorrook Justice Commission, Treaty Authority, Treaty Negotiation Framework, and the Self-Determination Fund.¹³

In Victoria, the Victorian Aboriginal Affairs Framework (VAAF) provides an outline of the Victorian Government's commitment to Aboriginal self-determination. This framework was built with significant input from Aboriginal Victorians, particularly in relation to its understanding of self-determination and what it means in practice. The VAAF adopts the UNDRIP definition of self-determination as “the ability for Indigenous People to freely determine political status and pursue economic, social and cultural development.”¹⁴ The VAAF reflects self-determination as “a spectrum of rights that are necessary for Aboriginal Victorians to achieve economic, social and cultural equity, based on own values and way of life,” and as “the key approach that has produced effective and sustainable improvement in outcomes for Indigenous People across many jurisdictions.”

Alongside the VAAF, the Victorian Government has developed the Self-determination Reform Framework¹⁵ (the Framework), which aims to equip the Victorian Public Service (VPS) to actively enable self-determination in accordance with the commitments made in the VAAF. As shown in Figure 3, the Framework builds on the VAAF definition of self-determination by defining four 'self-determination enablers' and contextualising them within a process of actions and outcomes.

The Framework also adopts eleven guiding principles: human rights, cultural integrity, commitment, Victorian Aboriginal expertise, partnership, decision-making, empowerment, cultural safety, investment, equity, and accountability.

A more detailed overview of the Victorian legislative and policy context is provided in the section of this Review titled 'Review of the current Victorian context'.

¹² Australian Human Rights Commission, 'Self-determination and indigenous peoples' available at

<https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/self-determination-and-indigenous>

¹³ Victoria Equal Opportunity & Human Rights Commission, 'Promoting the rights of First Nations people' available at

<https://www.humanrights.vic.gov.au/legal-and-policy/advocacy-and-law-reform/promoting-aboriginal-self-determination>

¹⁴ Victoria State Government, *Victorian Aboriginal Affairs Framework 2018-2023*, p. 22.

¹⁵ First Peoples – State Relations, 'Self-Determination Reform Framework' available at

<https://www.firstpeoplesrelations.vic.gov.au/self-determination-reform-framework>

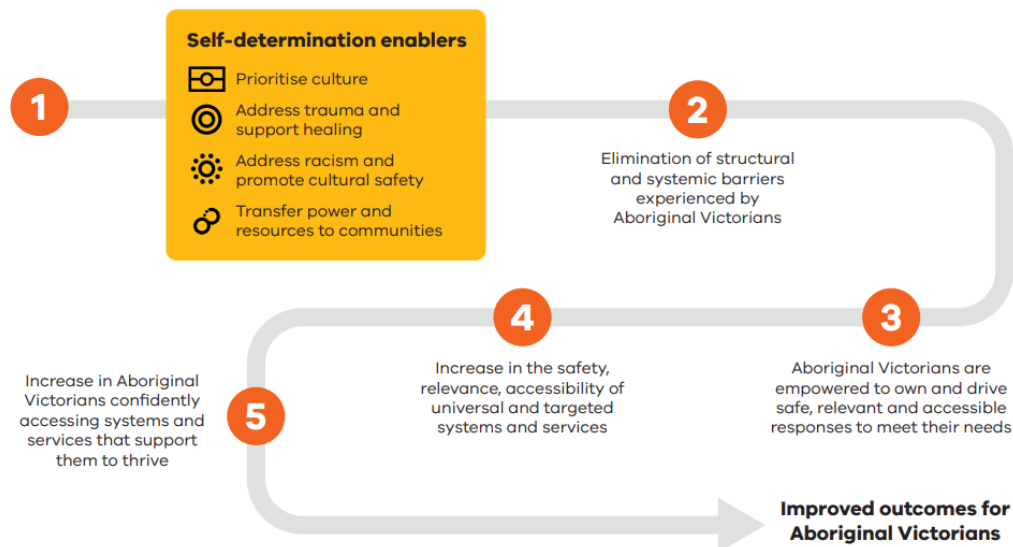


Figure 3 - Victorian Aboriginal Affairs Framework action logic¹⁶

Traditional Owner perspectives

The Victorian Traditional Owners section of this Review, and the related appendices, outline the objectives and aspirations of Victorian Registered Aboriginal Parties (RAP). Many of these groups refer directly to the right of self-determination, but across these diverse communities the term is likely to mean many different things depending on context and experience.

This section provides an overview of publicly stated perspectives on self-determination from various Victorian Traditional Owners, and the perspectives of Custodians that are not members of recognised as Registered Aboriginal Parties in Victoria—for example, communities of the Mid Northwest, Northeast, and Far East Gippsland regions.

As noted in the introduction to this section, Victorian Aboriginal perspectives are subject to change based on a range of factors, including changing conditions, different contexts, and in relationship to different areas within Country.

Notions of self-determination are also subject to change through the accumulation of experience and knowledge, for example, the rediscovery of cultural knowledge through archaeological research, the development of organisational knowledge through capacity building, or improved knowledge of processes through ongoing participation in engagement across a variety of projects.

To quote the Dja Dja Wurrung's *Dhelkunya Dja Country Plan 2014 – 2034*, “We will not be frozen in time.” The perspectives outlined in this section should not be considered set in stone, or representative of a particular group’s current perspective. Instead, they should be read—as with the definitions shared above—as perspectives that, taken together, helps to provide understanding on the concept of self-determination, both in theory and in application.

Caring for Country is self-determination enacted

In 2022, Trent Nelson, chairperson of the Dja Dja Wurrung Clans Aboriginal Corporation (DJAARA), released a media statement asserting that “Caring for Country is self-determination enacted”.¹⁷

Referring to DJAARA’s 2013 Recognition and Settlement Agreement with the State of Victoria, Mr Nelson argues that “it is our [Dja Dja Wurrung’s] right to self-determine, and it is our responsibility to use that self-determination to heal Country.” In this statement, Mr Nelson defines self-determination as “Aboriginal Peoples making decisions about all things that affect their lives.”

In the context on ongoing discussions about “access, ownership and management of Country”, DJAARA are championing Forest Gardening as a Country-first example of self-determination in action that empowers them to make decisions about remediation and repatriation works on Country, blending traditional knowledge with contemporary practice to create a thriving environment.

¹⁶ First Peoples – State Relations, ‘Self-Determination Reform Framework’, p. 6.

¹⁷ Dja Dja Wurrung Clans Aboriginal Corporation, ‘Caring for country is self-determination enacted’ available at <https://djadiawurrung.com.au/media-statement-3>

Not only the destination, but also how we will get there

ABC News recently reported that First Peoples' Assembly of Victoria co-chair, Gundjitrara man Rueben Berg described self-determination as "not only the destination, but also how we will get there."¹⁸ Mr Berg has advocated for the transfer of decision-making powers from Government to the Aboriginal community and has described this process as 'self-determination in action'. "We want to be part of making those decisions, not having stuff forced upon us, as has sadly happened so much," Mr Berg said.

The First Peoples' Assembly of Victoria is the independent and democratically elected body to represent Traditional Owners of Country and Victorian Aboriginal communities. It has been established in preparation for Treaty negotiations in Victoria, which are slated to commence in 2025. For its former co-chair, Taungurung man Marcus Stewart, forming the assembly was "in and of itself a hopeful and bold act of self-determination."

"Self-determination...flow(s) from an endeavour
to regain recognition of our original rights to freedom
and control of our own lives which were lost
with the invasion of our lands."

Mick Dodson, Aboriginal and Torres Strait Islander
Social Justice Commissioner (1993)¹⁹

Voices without formal recognition

In developing the Traditional Owner Self-Determination Scheme, Aboriginal Victoria (now First People – State Relations) engaged with Victorian Traditional Owners of the Mid Northwest, Northeast and Far East Gippsland; Custodians who have not yet been recognised through formal recognition schemes and legislative processes. Given Custodians have not yet achieved Registered Aboriginal Party (RAP) status, they do not receive the same levels of government funding and support as established RAPs, meaning resources are limited, and aspirations and objectives have not generally been captured in foundational documents like Country Plans.

Some perspectives on self-determination were captured in *Traditional Owner voices: Improving government relationships and supporting strong foundations* prepared by Aboriginal Victoria in partnership with the Australian Indigenous Governance Institute in 2019.

*"Many groups talked about government having an obligation to recognise and abide by Aboriginal cultural rights and human rights including self-determination and free, prior and informed consent (FPIC). One group spoke of the importance of government ensuring cultural rights were being considered when making decisions. Another group talked about this in terms of recognising Aboriginal peoples' inherent rights to Country, for example to hunt and fish, regardless of whether formal recognition processes had been completed."*²⁰

In discussions about the self-determination scheme itself, communities consulted outlined several values to be considered when providing support on the journey towards self-determination. Communities suggested that the proposed self-determination scheme should focus on projects that:

- promote healing for individuals and across families, groups and regions
- build on the strengths base of Traditional Owners
- respect cultural knowledge and build cultural connections
- engage young people in all stages.

¹⁸ N. Woodall & K. Ashton, 'Indigenous leaders have long called self-determination the key to Closing the Gap — but what does it mean?' ABC News, available at <https://www.abc.net.au/news/2024-09-08/victoria-self-determination-indigenous-treaty-yoorrook/103918900>

¹⁹ G. Foley, 'Whiteness and blackness in the Koori struggle for self-determination' Paper for winter school on advocacy and social action, 16-18 July 1999 Trades Hall, Melbourne, available at https://kooriweb.org/foley/essays/pdf_essays/whiteness%20and%20blackness%20in%20the%20koori%20struggle.pdf

²⁰ Aboriginal Victoria, "To be heard and for the words to have actions" – *Traditional Owner voices: Improving government relationships and supporting strong foundations*, available at <https://www.firstpeoplesrelations.vic.gov.au/sites/default/files/2019-11/Traditional-owner-voices-improving-government-relationships-and-supporting-strong-foundations.pdf>, p. 29.

International perspectives

First Nations, Métis and Inuit Peoples in Canada

In Canada, as in Australia, there are a range of context-specific legal and policy interpretations regarding the right of self-determination. The meaning of the term also tends to vary among different First Nations groups, including Métis and Inuit groups, Indigenous organisations, academics, researchers, and government agencies.

Statistics Canada is the government agency responsible for measuring Indigenous self-determination as a key indicator in the newly developed Quality of Life Hub. This agency notes that measuring self-determination is difficult given the lack of a universally accepted definition but recognises that it encompasses “the need to recognise and advance Indigenous Peoples’ jurisdiction or self-determination as a central feature of successful, legitimate, and accountable governance, and the importance of direct engagement with Indigenous Peoples when changes are proposed.”²¹

The Canadian Government has also linked the project of Indigenous self-government to the right of self-determination, acknowledging that Indigenous Peoples practiced their own forms of government prior to colonisation, and that these forms of government were displaced by successive colonial institutions engaged in paternalistic law-making. “Canada is working with Indigenous Peoples to support them in their work to rebuild and reconstitute their nations, advance self-determination and, for First Nations, facilitate the transition away from the *Indian Act* and toward self-government.”²²

In the public health context, the National Collaborating Centre for Indigenous Health (NCCIH) also acknowledges the range of definitions attributable to ‘self-determination’, and the range of different approaches to self-determination used within healthcare systems around the world. However, a report by the NCCIH found that the best outcomes were achieved when there was a sustained national government commitment to self-determination, scalable self-determination dependent on capacity, and ongoing community engagement and participation in the development of services.²³

A detailed overview of the Canadian Government’s approach to engagement with First Nations, Métis, and Inuit Peoples in infrastructure projects is included in the section titled ‘Evidence-based, best practice engagement’.

Sami People in Northern Europe

In contrast to the Aboriginal Australian context, the Sami people live across multiple national borders including European Union (Sweden and Finland) and non-European Union (Norway and Russia) states. However, the UNDRIP clearly confers the right to self-determination to all Indigenous groups, regardless of national borders, meaning all Sami people share this fundamental right.

The Sami Parliament is a publicly elected Indigenous government, and an agency of the Swedish state. It defines self-determination as consisting of both internal and external aspects, and the definitions below are quoted from their statement on self-determination.²⁴

Internal aspect of self-determination

The internal aspect includes a right for all people to themselves decide on their financial, social and cultural development. According to international law, Indigenous People have the right to steer, among others, the development of their language, education, information, media, traditional knowledge, traditional cultural expressions, health services, housing policy and social services. They own the right to form and preserve their identity as a distinct people. Included is also the right to be consulted in the capacity as a people, on all matters that concern the people in question.

²¹ Statistics Canada, ‘Indigenous self-determination’ available at <https://www160.statcan.gc.ca/good-governance-saine-gouvernance/indigenous-self-determination-autodetermination-autochtones-eng.htm>

²² Statistics Canada, ‘Self-government’ available at <https://www.rcaanc-cimac.gc.ca/eng/1100100032275/1529354547314>

²³ R. Halseth & L. Murdock, *Supporting Indigenous self-determination in health: Lessons learned from a review of best practices in health governance in Canada and internationally*, available at <https://www.nccih.ca/Publications/Lists/Publications/Attachments/317/Ind-Self-Determine-Halseth-Murdoch-LC-2023-06-08-VS-EN-003-WEB.pdf>

²⁴ Sámediggi, ‘Organization’ available at <https://www.sametinget.se/9690>

External aspect of self-determination

The external aspect is connected to Indigenous Peoples' traditional land and water areas and natural resources. A part of the right to self-determination is to give Indigenous People the right to decide on and/or exercise influence over their land and water areas, natural resources and traditional forms of living. Several UN agencies have emphasised that Indigenous People have the right to control their traditional land and water areas, natural resources and traditional forms of livelihoods.

A detailed overview of the European Union's approach to engagement with the Sami People, and with Inuit People, is included in the section titled 'Evidence-based, best practice engagement'.

As detailed in the sections above, self-determination is not one thing to all people. It has been described as both the vehicle and the destination for meaningful change, the right that underpins all Indigenous rights, and a spectrum of rights. Examples of self-determination in action have included caring for Country, establishing representative bodies, practicing self-government, connecting with Country and being empowered in decision-making roles.

With so many competing perspectives and levels of nuance, it is little wonder that so much literature has been written on the principle of self-determination. In a sense, all these perspectives are true, because the very meaning of self-determination in application is, in and of itself, *something that must be determined by the Peoples who own the right*.

The easiest part of the term to define is the 'self' in self-determination. It refers to Indigenous Peoples globally, and to Aboriginal and Torres Strait Islander peoples specifically in the Australian context. This should be a clear signal that the right to define the objectives, aspirations and actions that forms First Peoples' paths to self-determination belongs to them, as do the benefits and outcomes.

This is why Traditional Owner led processes in Victoria underpinned with best practice engagement—meaning regular, good faith engagement on all matters that impact Traditional Owners and Country—remains at the heart of enabling and empowering Traditional Owners to make their own progress towards the goal of self-determination.

Self-determination is a multifaceted concept that goes beyond a simple definition. It encompasses the right of Indigenous Peoples to control destinies, make decisions about their lives, and maintain cultural practices. In the context of infrastructure projects, self-determination means involving Traditional Owners in all stages of decision-making, from planning to implementation. The interpretation and application of self-determination can vary between groups and contexts, emphasising the need for ongoing dialogue and flexibility in approach.

Main points

- Self-determination describes Indigenous Peoples' right to exercise control and authority over their own lives; in other words, to be the authors of our own destinies. Self-determination can evolve over time, adapting depending on the context and shared perspective.
- Australian self-determination is widely seen as a response to historical dispossession and loss of autonomy experienced by Aboriginal and Torres Strait Islander peoples.
- Australian (and Victorian) efforts to implement principles of self-determination are encouraging yet there is good opportunity to continue integrating their needs and expectations through consultation.
- In Australia, each Registered Aboriginal Party (RAP) has key aspirations for Country, culture, and community, often outlined in Country Plans or public statements.
- The Victorian Aboriginal Affairs Framework outlines self-determination as a continuum from improved relationships to Traditional Owner-led decision-making.
- The diversity of Victorian Traditional Owners underscores the need for tailored approaches to engagement and self-determination.
- Other governments' approaches to Indigenous Peoples around the world show that the very meaning of self-determination is something that must be determined by the Peoples who own the right.

Review of current Victorian context

As the Victorian Government works toward self-determination and Treaty, engagement with Aboriginal communities is governed by a disparate set of state, national and international legislation and agreements. These documents set out the roles and responsibilities of the Victorian Government in promoting self-determination and decision-making and upholding Traditional Owner rights.

However, none of these documents clearly articulates how these obligations work together. Nor do they provide comprehensive guidance for implementation. This leaves a significant gap that government agencies, practitioners, and Aboriginal communities must negotiate.

This section explains the strategic context in which Victoria operates. It provides an outline of the key policy and legislative documents relevant to the development and implementation of infrastructure in Victoria, including:

- *United Nations Declaration on the Rights of Indigenous Peoples*²⁵
- *Native Title Act 1993 (Cth)*²⁶
- *National Agreement on Closing the Gap*²⁷
- *Traditional Owner Settlement Act 2010 (Vic)*²⁸
- *Aboriginal Heritage Act 2006 (Vic)*²⁹
- *Charter of Human Rights and Responsibilities Act 2006 (Vic)*³⁰
- *Victorian Self-Determination Reform Framework, 2018-2025*³¹
- Department of Environment, Land, Water and Planning, *Pupangarli Marnmarnepu 'Owning Our Future': Aboriginal Self-Determination Reform Strategy 2020-2025*³²
- *Victoria's Social Procurement Framework 2018*.³³

United Nations Declaration on the Rights of Indigenous Peoples

Adopted by the General Assembly in 2007 and endorsed by Australia in 2009, the *United Nations Declaration on the Rights of Indigenous Peoples* (the Declaration) is the most comprehensive tool on the rights of Indigenous Peoples. The Declaration is significant as it was developed through a democratic and open process of negotiation between Indigenous Peoples and governments to protect Indigenous rights and ensure survival, dignity and wellbeing. As indicated in the previous section, there continues to be good scope for continued work to reflect UNDRIP throughout legislation, policy and practices in Australia in general, and Victoria in particular.

²⁵ *United Nations Declaration on the rights of Indigenous Peoples*, available at

https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

²⁶ *Native Title Act 1993 (Cth)*, available at https://www8.austlii.edu.au/cgi-bin/viewdb/au/legis/cth/consol_act/nta1993147/

²⁷ *National Agreement on Closing the Gap*, available at <https://www.closingthegap.gov.au/national-agreement>

²⁸ *Traditional Owner Settlement Act 2010 (Vic)*, available at <https://www.legislation.vic.gov.au/in-force/acts/traditional-owner-settlement-act-2010/026>

²⁹ *Aboriginal Heritage Act 2006 (Vic)*, available at <https://www.legislation.vic.gov.au/in-force/acts/Aboriginal-heritage-act-2006/027>

³⁰ *Charter of Human Rights and Responsibilities Act 2006 (Vic)*, available at <https://www.legislation.vic.gov.au/in-force/acts/charter-human-rights-and-responsibilities-act-2006/015>

³¹ *Victorian Self-Determination Reform Framework, 2018-2025*, available at <https://www.firstpeoplesrelations.vic.gov.au/self-determination-reform-framework>

³² State Government of Victoria (Department of Environment, Land, Water and Planning), *Pupangarli Marnmarnepu 'Owning Our Future'*, available at https://www.delwp.vic.gov.au/_data/assets/pdf_file/0038/483887/Pupangarli-Marnmarnepu-Owning-Our-Future-Aboriginal-Self-Determination-Reform-Strategy-2020-2025.pdf

³³ The State of Victoria, *Victoria's Social Procurement Framework 2018*, available at <https://content.vic.gov.au/sites/default/files/2018-08/Victorias-Social-Procurement-Framework.PDF>

Native Title Act 1993 (Cth)

The Native Title Act 1993 (Cth) is the codification of the Mabo High Court decision that formally recognised the existence of Native Title—pre-colonial land interests of Indigenous Australians. The Act provides a process through which Indigenous Australians can lodge applications to seek a determination of Native Title. It also established the National Native Title Tribunal to register, hear, and determine Native Title claims. In 1998, the Australian Government made significant amendments to the Act, including the introduction of a registration test and Indigenous Land Use Agreements.

National Agreement on Closing the Gap

The *National Agreement on Closing the Gap* (the National Agreement) is a national strategy set by Commonwealth, state and territory governments in 2008, and updated in 2020, that seeks to enable Aboriginal and Torres Strait Islander people and governments to work together to achieve outcomes across health, education and economic opportunity targets. Annual *Closing the Gap* reports are presented to Australian Parliament, providing updates on the agreed targets and related topics. The Commonwealth and each state and territory is required to have its own implementation plan, based on the priority reforms set out in the National Agreement.

- The community infrastructure target will measure progress towards parity in infrastructure, essential services, and environmental health and conditions.
- The inland waters target will measure progress towards securing Aboriginal and Torres Strait Islander interests in water bodies inland from the coastal zone under state and territory water rights regimes.³⁴

Traditional Owner Settlement Act 2010 (Vic)

In Victoria, the *Traditional Owner Settlement Act 2010* provides an alternative system for resolving Native Title claims, separate from the *Native Title Act 1993 (Cth)*. It allows Traditional Owners to pursue an out-of-court settlement of Native Title. The *Traditional Owner Settlement Act 2010* allows the Victorian Government to recognise Traditional Owners and certain rights regarding Crown land. In return for entering a settlement, Traditional Owners must agree to withdraw any Native Title claim, pursuant to the *Native Title Act 1993 (Cth)*, and not make any future Native Title claims.

Aboriginal Heritage Act 2006 (Vic)

The *Aboriginal Heritage Act 2006 (Vic)* is pivotal in safeguarding the cultural heritage of Aboriginal communities in Victoria. In conjunction with the *Native Title Act 1993 (Cth)* and *Traditional Owner Settlement Act 2010 (Vic)*, it forms a comprehensive legal framework recognising and protecting the rights of Traditional Owners. The *Aboriginal Heritage Act 2006* is significant as it establishes mechanisms for the identification, preservation, and management of Aboriginal cultural heritage sites. This reinforces the cultural connection between Indigenous communities and their lands.

Charter of Human Rights and Responsibilities Act 2006 (Vic)

The *Victorian Charter of Human Rights and Responsibilities Act 2006* is a foundational document in Victoria. Its overarching purpose is recognising, protecting, and promoting fundamental human rights. It guides public authorities to behave consistently with these rights, fostering a culture of respect and dignity. The Charter explicitly acknowledges and protects the human rights of all individuals, including Aboriginal peoples, ensuring that their inherent dignity and freedoms are respected.

Victorian Self-Determination Reform Framework 2018-2025

The *Victorian Self-Determination Reform Framework* (the Framework) guides public service action to enable self-determination. It aligns with the Government's commitments in the *Victorian Aboriginal Affairs Framework 2018-2023*. The Framework initially ran from 2018 to 2023, but was extended until

³⁴ *National Agreement on Closing the Gap*, 7B: New or varied targets (87.a-b), available at <https://www.closingthegap.gov.au/national-agreement/national-agreement-closing-the-gap/7-difference/b-targets/new-varied>

June 2025 to allow time for ongoing engagement with First Peoples stakeholders to self-determine next steps in the development of a new framework.

The Framework is an architecture for government departments to report annually on progress towards the transformation of government systems and structures to enable self-determination. Eleven self-determination guiding principles were developed under the Victorian Self Determination Reform Framework following extensive community engagement with Victorian Aboriginal communities.

Department of Environment, Land, Water and Planning: *Pupangarli Marnmarnepu: ‘Owning Our Future’ Aboriginal Self-Determination Reform Strategy 2020-2025*

In 2018, the Victorian Department of Environment, Land, Water and Planning (DELWP) released a five-year strategy to guide its obligation to work in partnership with Traditional Owners and Aboriginal Victorians to support their right to self-determination. The strategy is guided by conversations and consultations DELWP undertook with Traditional Owners and Aboriginal groups across Victoria and works toward the two key outcomes identified by Traditional Owners: for Government to remove barriers to self-determination; and for DELWP to work in genuine partnership by transferring power back and becoming more accountable to Traditional Owners and Aboriginal Victorians.

Victoria’s Social Procurement Framework (2018)

Victoria’s Social Procurement Framework is a set of guidelines for all state departments and agencies to ensure value-for-money considerations in procurement are inclusive of opportunities to deliver social and sustainable outcomes that benefit the Victorian community. Under the Framework, purchasing from Aboriginal businesses is included in the definition of social procurement. The Victorian Government has committed to one per cent Aboriginal business procurement target by 2019-2020, and by 2022-2023 had achieved 2.9 per cent.

Summary of existing commitments

The existing commitments to Traditional Owners and Custodians have been drawn from the documents outlined in the above review of the current Victorian context.

Existing commitments	
Strategic context	Responsibilities and obligations
<i>United Nations Declaration on the Rights of Indigenous Peoples</i>	- Indigenous Peoples’ rights to self-determination. - Engagement for free, prior and informed consent. - Safeguarding cultural integrity and heritage including connection to Country, sacred and historical places, language, traditions and cultural practice. - Access to, control over and benefit from traditional lands and resources. - Promoting Indigenous Peoples’ effective participation in all aspects of society.
<i>Native Title Act 1993 (Cth)</i>	- Recognises Native Title where: - the rights and interests are possessed under traditional laws and customs that continue to be acknowledged and observed by the relevant Indigenous Australians - by virtue of those laws and customs, the relevant Indigenous Australians have a connection with the land or waters

Existing commitments	
Strategic context	Responsibilities and obligations
	- the Native Title rights and interests are recognised by the common law of Australia. - Sets up processes to determine where Native Title exists, how future activity impacting upon Native Title may be undertaken, and to provide compensation where Native Title is impaired or extinguished. - Gives Native Title holders the right to be consulted and, in some cases, the right to participate in decisions about activities proposed to be undertaken on the land.
<i>National Agreement on Closing the Gap</i>	- Peoples are empowered to share decision-making authority with governments to accelerate policy and place-based progress on closing the gap through formal partnership arrangements. - There is a strong and sustainable Aboriginal and Torres Strait Islander community-controlled sector delivering high quality services to meet the needs of Aboriginal and Torres Strait Islander people across the country. - Governments, their organisations and their institutions are accountable for closing the gap and are culturally safe and responsive to the needs of Aboriginal and Torres Strait Islander people, including through the services they fund. - Aboriginal and Torres Strait Islander people have access to, and the capability to use, locally relevant data and information to set and monitor the implementation of efforts to close the gap, their priorities and drive their own development.
<i>Traditional Owner Settlement Act 2010 (Vic)</i>	- A settlement under the Act can include: - a Recognition and Settlement Agreement to recognise a Traditional Owner group and certain Traditional Owner rights over Crown land - a Land Agreement which provides for grants of land in freehold title for cultural or economic purposes, or as Aboriginal title to be jointly managed in partnership with the state - a Land Use Activity Agreement which allows Traditional Owners to comment on or consent to certain activities on public land - a Funding Agreement to enable Traditional Owner corporations to manage their obligations and undertake economic development activities - a Natural Resource Agreement to recognise Traditional Owners' rights to take and use specific natural resources and provide input into the management of land and natural resources.
<i>Aboriginal Heritage Act 2006 (Vic)</i>	- Ensuring the conservation and protection of registered Aboriginal cultural heritage, which includes measures to prevent damage, destruction, or inappropriate use.

Existing commitments	
Strategic context	Responsibilities and obligations
	- Upholding obligations to engage in community consultation, including with Traditional Owners, during the identification, registration and management of cultural heritage.
Human Rights Charter	- Recognising and respecting the human rights of Indigenous People, as outlined in the Human Rights Charter. This includes cultural rights, rights to land and resources. - Ensuring that policies, programs and practices do not discriminate against Indigenous People and actively working to address existing inequalities and historical injustices. - Engaging in meaningful engagement and collaboration with Indigenous communities and seeking the input and participation of Indigenous People in decision-making processes that affect them. - Upholding obligations to protect and promote the right of Indigenous People to enjoy their own culture, practice their own religion, and use their own languages - Ensuring Indigenous People have access to adequate housing, healthcare, education, and economic opportunities, which is part of the government's responsibility under the Human Rights Charter. - Respecting and protecting Indigenous land rights and traditional practices, acknowledging the significance of these elements to the wellbeing and cultural identity of Indigenous communities.
Victorian Self-Determination Reform Framework	- Appropriately resourcing the Victorian Public Sector (VPS) to drive the development and implementation of culturally safe policies and programs that promote and enable self-determination. - Ensuring Aboriginal Victorians participate in policy development and decision-making processes through employment and meaningful engagement while transferring decision-making to communities. - Building a cultural competency workforce to engage effectively with Aboriginal communities. - Embedding self-determination enablers and guiding principles in policies and programs to ensure self-determination is core business. - Transforming systems to address structural racism and unconscious bias to enable self-determination. - Creating effective engagement mechanisms across government to support self-determination-based approach to working with Aboriginal Victorians. - Actively support the development of Aboriginal community-defined outcomes, rather than measures that reflect community aspirations. - Collaborating with other relevant departments to overcome silos while moving away from deficient approaches to Aboriginal affairs.

Existing commitments	
Strategic context	Responsibilities and obligations
	- Increasing integrity, transparency and accessibility of government data on Aboriginal outcomes.
Department of Environment, Land, Water and Planning <i>Pupangarli Marnmarnepu: 'Owning Our Future' Aboriginal Self-Determination Reform Strategy 2020-2025</i>	- Respecting and recognising the traditional ecological knowledge held by Traditional Owners. - Engaging Traditional Owners in decision-making processes related to land and resource management. This includes seeking input on policies, strategies and projects. - Working with Traditional Owners to protect and preserve cultural heritage sites and artifacts. This includes the development of cultural heritage management plans. - Acknowledging Native Title rights and land use agreements, seeking to facilitate negotiation and agreement-making with Traditional Owners in a respectful and consultative manner. - Collaborating with Traditional Owners on land and natural resource management. This includes joint efforts to enhance biodiversity, fire management, and conservation practices. - Recognising the importance of building trust and long-term partnerships with Traditional Owners. This includes open and transparent communication. - Aiming to engage with Traditional Owners as part of the broader community. This engagement ensures that their voices are heard and respected in various aspects of departmental work. - Providing support and capacity-building opportunities to Traditional Owners. This includes training, education and knowledge-sharing.
<i>Victoria's Social Procurement Framework (2018)</i>	- The Victorian Government has committed to a one per cent Aboriginal business procurement target by 2019-2020. - The Victorian Government defines an Aboriginal business as: - at least 50 per cent Aboriginal and/or Torres Strait Islander-owned - undertaking commercial activity, and - main business location is in Victoria. - Victoria's most recently reported social procurement achievements (2022–2023) include 36 Victorian Aboriginal businesses engaged, with \$2.9 million (exc. GST) of actual expenditure, achieving 2.9 per cent Aboriginal procurement, and exceeding the 1 per cent procurement target for Aboriginal businesses set out in the <i>Tharamba Bugheen: Victorian Aboriginal Business Strategy 2017–2021</i>.³⁵

³⁵ Victoria State Government, *Tharamba Bugheen: Victorian Aboriginal Business Strategy 2017-2021*, available at <https://www.firstpeoplesrelations.vic.gov.au/sites/default/files/2019-10/Tharamba-Bugheen-Victorian-Aboriginal-Business-Strategy-2017-2021.pdf>

The Victorian policy and legislative landscape provide a foundation for recognising Traditional Owner rights and promoting self-determination. However, the implementation of these principles in practice remains a challenge. There is a need for better coordination between various legislative and policy frameworks to create a more coherent and effective approach to enabling self-determination in infrastructure projects.

Appendices 14-18 provide further detail on *UNDRIP*, the *Victorian Self-Determination Reform Framework*, *Aboriginal Heritage Act 2006*, *Charter of Human Rights and Responsibilities Act 2006* and the *International Indigenous Design Charter* respectively.

Main points

- Engagement with Victorian Aboriginal communities is governed by a diverse set of state, national and international legislation and agreements outlining key accountabilities.
- The United Nations Declaration on the Rights of Indigenous Peoples, signed by Australia in 2009, is a comprehensive tool protecting Indigenous rights and ensuring survival, dignity and wellbeing. Its elements continue to be reflected throughout several federal and state level mechanisms.
- The Victorian Self-Determination Reform Framework guides public service action to enable self-determination, aligning with commitments in the Victorian Aboriginal Affairs Framework.
- *The Native Title Act 1993 (Cth)* provides a process for Indigenous Australians to seek determination of Native Title, while the *Traditional Owner Settlement Act 2010 (Vic)* offers an alternative system for resolving Native Title claims in Victoria.
- The *Aboriginal Heritage Act 2006 (Vic)* is crucial in safeguarding Victorian Aboriginal cultural heritage, establishing mechanisms for identification, preservation and management of cultural heritage sites.
- The *Charter of Human Rights and Responsibilities Act 2006 (Vic)* recognises, protects and promotes fundamental human rights, including those of Aboriginal peoples.
- The Department of Environment, Land, Water and Planning's Aboriginal Self-Determination Reform Strategy aims to remove barriers to self-determination and work in genuine partnership with Traditional Owners.
- Victoria's Social Procurement Framework includes Aboriginal business procurement targets, with recent achievements exceeding the initial one per cent target.
- Opportunity exists to continue improving coordination and implementation of the various legislative and policy frameworks, including in the context of infrastructure in Victoria.

Evidence-based, best practice engagement

In Australia's settler-colonial context, Aboriginal communities have asserted sovereignty and self-determination through claims for "greater control over the decision-making processes that control their lives" and "autonomy from the state through decentralised forms of government and institutions".³⁶ This has principally manifested in demands to devolve decision-making power and resources to Aboriginal-controlled organisations and governance structures. Examples include Aboriginal community-controlled health services, Indigenous schools and educational institutions, and joint management over national parks by Indigenous rangers.³⁷

However, most engagement still takes place through the lens of western organisations and decision-making bodies, and while most project proponents and Traditional Owner groups agree that engagement is an important part of establishing a project, both parties may have different expectations about what this means. For example, engagement processes are often relegated to the commencement phase of a project, but community guidance may be helpful (or necessary) across multiple stages of a project.

This section provides evidence-based, best practice considerations that strive to exceed the status quo and aim to lay the right foundations for effective working partnerships.

The evidence shared in this section shows that when engagement is approached through an equity lens, Traditional Owners and government agencies can collaborate to create infrastructure outcomes that are not only well-fitted to community needs, but that also benefit from a deeply rooted sense of ownership. Engagement needs to follow the community's lead in terms of participation, time and expectations, and any relevant cultural protocols.

Sensitivity and consideration are required at all stages of any engagement process. Engagement may involve the sharing of stories that are entrusted to organisations by Traditional Owners. Knowledge shared and gained in the engagement process needs to be translated into the project for it to be meaningful, and the engagement process should continue right through this translation process to ensure that the knowledge shared with designers is then shared with the broader community in an appropriate way.

The International Association for Public Participation's *Spectrum of Public Participation*, shown in Figure 4, outlines participation goals from 'informing' too 'empowering'. Shifting the dial from 'consulting' to 'collaborating' and 'empowering' helps uphold the rights of Traditional Owners and promotes self-determination, as well as free, prior and informed consent.

INCREASING IMPACT ON THE DECISION

	INFORM	CONSULT	INVOLVE	COLLABORATE	EMPOWER
PUBLIC PARTICIPATION GOAL	To provide the public with balanced and objective information to assist them in understanding the problem, alternatives, opportunities and/or solutions.	To obtain public feedback on analysis, alternatives and/or decisions.	To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered.	To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution.	To place final decision making in the hands of the public.
PROMISE TO THE PUBLIC	We will keep you informed.	We will keep you informed, listen to and acknowledge concerns and aspirations, and provide feedback on how public input influenced the decision.	We will work with you to ensure that your concerns and aspirations are directly reflected in the alternatives developed and provide feedback on how public input influenced the decision.	We will look to you for advice and innovation in formulating solutions and incorporate your advice and recommendations into the decisions to the maximum extent possible.	We will implement what you decide.

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Figure 4 - International Association for Public Participation Spectrum of Public Participation

³⁶ L. Behrendt (2003) *Achieving Social Justice: Indigenous Rights and Australia's Future*. Leichhardt: Federation Press.

³⁷ H. Blagg & T. Anthony (2019) *Decolonising Criminology: Imagining Justice in a Postcolonial World*. London: Springer Nature.

Janet Hunt and Toni Bauman of the Australian National University's Centre for Aboriginal Economic Policy Research outline a range of elements that might characterise genuine partnerships with Traditional Owners and Custodians:

- An acceptance of the principle that a local Aboriginal organisation has the right to set the agenda and approach for its own work. This is consistent with self-determination and free, prior and informed consent (FPIC) principles.
- Working to accomplish mutually agreed goals and accepting joint responsibility and accountability for achieving them (assisting if things don't go to plan and reconsidering the approach in an adaptive management style).
- Long-term involvement and flexibility to adapt to circumstances, rather than short-term project engagement with tightly prescribed processes.
- Defined mutual roles and responsibilities of all partners.
- Agreed implementation plans and processes.
- Agreed measures of success and ways to evaluate achievements.
- Trust, respect, integrity, accountability, and equality among partners.³⁸

To pursue partnerships with Traditional Owners directly, Hunt and Bauman note, power must be shared equally and there must be a willingness for transparent communication, mutual responsibilities, and accountabilities. Existing structures do not always allow for an equal distribution of power, and promoting self-determination means dismantling barriers that result in unequal partnerships.³⁹ Hunt and Bauman further argue that co-designing a partnership process requires:

- Indigenous leadership or Indigenous People in key roles
- an emphasis on relationship and trust-building
- recognition of Indigenous knowledges
- equal distribution of voice
- worldviews and paradigms
- unpacking of key concepts
- including a diversity of Indigenous People who have different knowledge
- open and clear communication including the use of Indigenous languages
- allowing plenty of time
- having adequate budget
- being humble and able to let go of control.⁴⁰

To embed partnership development processes effectively, transparency and information sharing need to be in place to ensure Traditional Owners are provided with enough information and insight into the project and its deliverables to make informed decisions. Hunt and Bauman also add the following factors to consider in upholding the FPIC principles when sharing information:

³⁸ J. Hunt & T. Bauman (2022) 'No more business as usual: The need for participatory Indigenous development policy and skilled practice', *Policy Insights Paper No. 06/2022* Centre for Aboriginal Economic Policy Research, available at <https://openresearch-repository.anu.edu.au/handle/1885/262973>

³⁹ C. Haynes (2009). *Defined by contradiction: the social construction of joint management in Kakadu National Park* [Unpublished doctoral dissertation]. Charles Darwin University, cited in Ibid.

⁴⁰ Hunt & Bauman 'No more business as usual'.

- the nature, size, pace, reversibility and scope of any proposed project or activity
- the reason(s) or purpose of the project and/or activity
- the duration of the project and/or activity
- the locality of areas that will be affected
- a preliminary assessment of the likely economic, social, cultural, and environmental impacts, including potential risks and fair and equitable benefit sharing in a context that respects the precautionary principle
- personnel likely to be involved in the proposed project (including Indigenous Peoples, private sector staff, research institutions, government employees and others)
- procedures that the project may entail.⁴¹

The following sections explore the evidence base from which these observations are drawn by benchmarking a range of approaches to engagement with Indigenous Peoples in a range of infrastructure contexts, including lessons drawn from New South Wales, Aotearoa (New Zealand), Canada, the United States of America, and the European Union. Each section provides an outline of an approach—for example a framework, or a research project—and, where possible, reflections of how the approach was viewed by the Peoples consulted.

Connecting with Country: Government Architect New South Wales

*Connecting with Country*⁴² was developed in New South Wales (NSW) for voluntary implementation in projects undertaken on Country, and is intended to support project teams, including design and delivery professionals, to develop connections with Country that can inform the planning, design and delivery of built-environment projects.

It applies to public and private projects, and includes:

- NSW Aboriginal communities
- local and state government agencies
- the design and planning industry
- developers.

At the heart of this document is an ambitious commitment:

“All NSW built environment projects will be developed with a Country-centred approach guided by Aboriginal people, who know that if we care for Country, Country will care for us”.

Government Architect NSW (GANSW) is part of the NSW Department of Planning, Housing and Infrastructure. It has a multidisciplinary team that advocates for and supports great and resilient places to be delivered in NSW. It works across government, the private sector and the community to improve social, environmental and economic outcomes.

Connecting with Country was informed by engagement through interviews and workshop discussions with selected stakeholders, including an advisory panel of Traditional Owners, representatives from community organisations, and government. It was written by and with Aboriginal experts in spatial design in collaboration with GANSW staff.

The first draft was produced in 2020, after which GANSW established a pilot program to test its implementation across several NSW built environment projects, from precinct-scale master planning and infrastructure projects to smaller individual projects.

⁴¹ J. Hunt & T. Bauman (2022) ‘No more business as usual: The need for participatory Indigenous development policy and skilled practice’, *Policy Insights Paper No. 06/2022* Centre for Aboriginal Economic Policy Research, available at <https://openresearch-repository.anu.edu.au/handle/1885/262973>

⁴² New South Wales Government, ‘Connecting with Country’ available at <https://www.planning.nsw.gov.au/government-architect-nsw/policies-and-frameworks/connecting-with-country>

The framework is articulated in four stages:

1. **The Commitment.** All NSW built environment projects will be developed with a Country-centred approach guided by Aboriginal people, who know that if we care for Country, Country will care for us.
2. **Practices.** Reframing our way of working; changing our approach and processes to support a Country-centred approach.
3. **Actions.** Implementing the framework; project life cycle from an Aboriginal perspective.
4. **Outcomes for Country.** Healthy Country; Healthy community; Protecting Aboriginal cultural heritage; Cultural competency; Better places.

It indicates the level of engagement required for a project based on a scale that measures its impact and significance. 'High level' projects may require extensive collaboration with Aboriginal community throughout the project life cycle, with cultural advisers appointed to guide project teams and clients, whereas a 'low level' project may require community involvement, provided the community agrees. Instead, they may receive information about the project on request.

A cornerstone of the framework is the 'practices' section, which reimagines the planning and implementation of infrastructure projects, calling for the integration of Country into the design process from inception to completion.

This section reimagines the project lifecycle around four phases.

1. **Project Formation: Starting with Country:** the phase at which we start to form an understanding of Country. This includes researching and preparing, allocating time and resources, empowering Aboriginal communities to guide and lead the project, collaborating, sharing knowledge, respecting Indigenous Cultural and Intellectual Property, and creating employment opportunities.
2. **Project Design: Imagining with Country:** using first placenames, connecting to broader landscape settings, protecting Aboriginal cultural heritage, acknowledging shared history, learning from traditional Aboriginal architecture, incorporating storytelling, ensuring Aboriginal connection to Country is part of the sustainability approach, exploring in-between spaces, designing with Country at multiple scales.
3. **Project Delivery: Process of Shaping Country:** the phase in which we consider how the building or place will become part of Country once completed, when significant items may be discovered during subsoil investigations, and when we collaborate with Aboriginal community to determine culturally appropriate handling, repatriation, and reburial of any ancestral remains or artifacts. Ceremony is included in the construction process.
4. **Project Maintenance: An Ongoing Continuum of Caring for Country:** ensuring ongoing access to Country, monitoring and evaluating the connection between the built space and Aboriginal community.

The *Connecting with Country* framework also includes a section on how to measure outcomes for Country, which helps practitioners set realistic goals and measurements to hold themselves and their partners to account.

Overall, *Connecting with Country* is a well-informed and inspiring document that goes much deeper than merely stating principles and values, or tracing its own strategic context. It provides clear methods to elevate Traditional Owner engagement. However, as with any comprehensive approach, it provides limited opportunities for ways of working to iterate and evolve based on the experiences of Traditional Owners.

Give the broad scope of this document, many projects will reconnect Traditional Owners with parts of Country they have been excluded from since colonisation. It is fair to assume that the experience of reconnecting with Country, and reintroducing cultural practices that have been excluded for generations, may give rise to new learnings that will influence and affect the way *Connecting with Country* works going forward.

It is highly likely that a more flexible, evolutionary and iterative approach would produce more tangible outcomes toward the goal of self-determination. Further engagement is required to understand its success.

Māori engagement in infrastructure report

Te Waihangā, the New Zealand Infrastructure Commission, commissioned a research project exploring how government infrastructure providers and Māori engage, and work, with each other on the planning and development of infrastructure, including collaboration, co-design, and empowerment. The need for this research was identified in *Rautaki Hanganga o Aotearoa, the New Zealand Infrastructure Strategy 2022–2052*,⁴³ which was also produced by Te Waihangā.

The research includes a literature review exploring Māori engagement in infrastructure, including literature that outlines Māori involvement in proposals initiated by others, as well as their involvement in infrastructure projects and programs more generally. It also includes two further reports—one that explores how infrastructure providers and Māori groups have engaged across a range of infrastructure projects in the past, and one that investigates the impacts of transport, energy, wastewater, education, and health infrastructure development.

The aim of this research was to better understand strengths and weaknesses in current methods of collaboration and engagement between Māori and infrastructure agencies.

This research was borne from a recognition that increasing engagement with Māori groups on infrastructure projects commensurately increases demands on Māori time and resources. It was undertaken in the context of New Zealand's infrastructure framework, which has varying requirements regarding engagement with Māori.

The Treaty of Waitangi does not directly confer a duty to consult or engage with Māori, but legislation enacted more recently has built principles and legal requirements around the foundations of the Treaty.⁴⁴ For example, various legislation requires the government of New Zealand not to act inconsistently with the principles of the Treaty of Waitangi, or to consider those principles in application. In some cases, this means considering Māori historical, cultural, or spiritual interests, or providing opportunities for Māori to exercise decision-making authority on matters of importance to them.

What does the literature say?

The literature review identified several common themes regarding Māori engagement on infrastructure proposals initiated by others:

- Good engagement is driven by strong relationships and regular contact with Māori groups, and this takes time and effort.
- Government needs to be adaptable or flexible in how they engage to meet a particular Māori group's needs and aspirations, but there also needs to be greater coordination and less inefficiency in how engagement occurs.
- Drivers of infrastructure projects need to understand the history, *tikanga*⁴⁵, and aspirations of Māori groups they engage with.

The literature review also looked at challenges identified when Māori groups seek to engage on infrastructure proposals initiated by others, including:

- capacity and costs issues
- challenges (around matters such as mandate) that particularly arise when Māori groups are engaged in co-development or co-design
- tensions between the role of *iwi*⁴⁶ and the role of *hapū*⁴⁷

⁴³ New Zealand Infrastructure Commission, 'Māori engagement in infrastructure', 2024, available at <https://tewaihanga.govt.nz/our-work/key-topics/maori-engagement-in-infrastructure#past>

⁴⁴ Ministry of Justice, New Zealand, Te Puni Kōkiri (2001) *He Tirohanga o Kawa kē te Tiriti o Waitangi—A guide to the principles of the Treaty of Waitangi as expressed by the Courts and the Waitangi Tribunal*, available at <https://waitangitribunal.govt.nz/assets/WT-Principles-of-the-Treaty-of-Waitangi-as-expressed-by-the-Courts-and-the-Waitangi-Tribunal.pdf>

⁴⁵ *Tikanga* is a Māori concept based around customary practices or principles. The word *tikanga* is a derivation of the word *tika* meaning 'right' or 'correct'. See <https://aotearomade.co.nz/blogs/journal/what-is-tikanga>

⁴⁶ *Iwi* is the largest political grouping in pre-European Māori society. See Encyclopedia of New Zealand, 'Tribal organisation', available at <https://teara.govt.nz/en/tribal-organisation/page-1>

⁴⁷ *Hapū* is a Māori-controlled and defined portion of tribal territory. See Encyclopedia of New Zealand, 'Tribal organisation', available at <https://teara.govt.nz/en/tribal-organisation/page-1>

- lack of clarity regarding if, when, or how to engage with *mātāwaka*⁴⁸
- issues relating to changing leadership within Māori groups
- deficits in Māori groups' digital and data infrastructure hampering efforts by those groups to understand the needs and aspirations of their members.

Māori-infrastructure provider engagement report

This section of the research looks at how infrastructure providers and Māori groups engage on infrastructure projects. It demonstrates that the best approach for engagement between *mana whenua*⁴⁹ groups and the infrastructure sector is to establish and maintain enduring relationships that are based on trust.

Key findings include:

1. While engagement between Māori groups and infrastructure providers is happening, it is important to recognise the diversity of engagement and the complexity of the landscape. No two Māori groups or government projects are alike, and each engagement needs to be assessed on its own merits.
2. Māori groups and infrastructure providers each have different reasons for engaging with each other. While Māori groups may be motivated by fulfilling inherited responsibilities, upholding their status, enabling *te ao* Māori values to be integrated into infrastructure initiatives, and/or achieving broader outcomes for the group, government is likely to be motivated by legislative duties, commitments, and treaty obligations.
3. Both Māori groups and government agencies believe they have a duty under the Treaty of Waitangi to establish and maintain ongoing trust-based relationships.
4. There are many different mechanisms currently being used which, to varying degrees, mean that Māori groups have a share in the decision-making around government infrastructure initiatives.
5. There are defined approaches that are common in engagement between Māori groups and infrastructure providers across different types of infrastructure and across the country.

Past Māori experiences of infrastructure development

This report shares some of the impacts that infrastructure development has had on Māori. When Māori engage on infrastructure projects, their input is often influenced by historical experiences of infrastructure development. It includes an extensive overview of infrastructure history from a Māori perspective from pre-contact to 2019.

Reflections

- There is a significant and fundamental distinction between the Victorian Traditional Owner context and the Māori context (at least, for now). In a word, the big difference is Treaty.
- Mana whenua groups, infrastructure sector participants, and local authorities all see engagement as an essential part of their broadly defined roles negotiated under the longstanding Treaty of Waitangi.
- With Treaty negotiations forthcoming in Victoria, this research provides an interesting comparison and example of how Treaty might come to underpin engagement in future infrastructure projects. It highlights the need to consider and plan for the impact of increased demands on Traditional Owners time and resources because of increased expectations for engagement associated with Treaty obligations as Traditional Owners continue to progress towards the goal of self-determination.

⁴⁸ *Mātāwaka* refers to a kinship group, tribe, clan, race, ethnic group. See Te Aka at <https://maoridictionary.co.nz/word/3759>

⁴⁹ *Mana whenua* refers to the territorial rights, power from the land, authority over land or territory, jurisdiction over land or territory - power associated with possession and occupation of tribal land. See Māori Dictionary, available at: <https://maoridictionary.co.nz/word/3452>

Government of Canada: Aboriginal consultation and accommodation

Updated guidelines for federal officials to fulfill the duty to consult

Canadian common law has an established duty to consult and, where appropriate, accommodate, when contemplating conduct that might adversely impact potential or established Aboriginal or treaty rights. This duty stems from Section 35 of the *Canadian Constitution Act 1982*,⁵⁰ which recognised and affirmed the “existing Aboriginal and treaty rights of the Aboriginal peoples of Canada”, including Indian, Inuit and Métis peoples.

The duty to consult was further defined via three decisions in the Supreme Court of Canada, which held that treaty rights include a duty to consult and, where appropriate, to ‘accommodate’, whenever the government contemplates conduct that might adversely impact potential or established Aboriginal or treaty rights. This duty, however, does not give Indigenous groups a veto over what may be done, nor does it impose a duty on the government to reach an agreement with an Indigenous group about a proposal.

The duty to consult has been left to government, and this is seen as part of the overall reconciliation process. However, from 2004, the government began engaging in dialogue with First Nations, Inuit and Métis communities and organisations as well as provinces, territories and industry representatives to address key consultation and accommodation issues. From these discussions, the *Updated Guidelines for Federal Officials to Fulfill the Duty to Consult* (the Updated Guidelines) were developed and released in 2011.⁵¹

Since the release of the Updated Guidelines, the government has enacted the *United Nations Declaration on the Rights of Indigenous Peoples Act 2021*⁵², and the *Action Plan to implement the United Nations Declaration on the Rights of Indigenous Peoples*⁵³ in 2023. In recognition of these updated laws, and to support their implementation, the 2023 federal budget provided \$11.4 million over three years to Crown-Indigenous Relations Northern Affairs Canada to engage with Indigenous communities and inform the development of new federal guidelines for officials to fulfil the Crown's duty to consult Indigenous Peoples and accommodate impacts on their rights.

The Updated Guidelines are based around eight guiding principles and consultation directives for agencies and departments to use when working through the duty to consult and, where appropriate, accommodate. The principles and directives are designed to provide practical advice and guidance to federal departments and agencies in determining when the duty to consult may arise and how it may be fulfilled, while recognising that governments cannot apply a one-size-fits-all approach to consultation. The Updated Guidelines acknowledge that differences in history, geography, demographics, governance, relationships and other circumstances need to be considered in each consultation.

Using the guiding principles and consultation directives as a base, the remainder of the Updated Guidelines provide detailed guidance for departments and agencies on getting ready for consultations, outlining a step-by-step guide to consultation and accommodation. While the step-by-step guide emphasises that the consultation and accommodation process will differ based on the activity, the Indigenous community, the history, other governing documents and more, it is nevertheless a practical guide for departments and agencies to use as a foundational document in preparing for, and implementing, the consultation and accommodation process. Please refer to appendices 13 for further insights into the Guidelines.

⁵⁰ *The Constitution Act 1982*, available at <https://caid.ca/ConstAct010208.pdf>

⁵¹ Government of Canada, ‘Updated guidelines for federal officials to fulfill the duty to consult’ March 2011 available at https://www.rcaanc-cirnac.gc.ca/eng/1100100014664/1609421824729#chp1_2

⁵² Government of Canada (Department of Justice), ‘Implementing United Nations Declaration on the Rights of Indigenous Peoples Act: Next phase of co-development’, available at <https://www.canada.ca/en/department-justice/news/2023/03/implementing-united-nations-declaration-on-the-rights-of-indigenous-peoples-act-next-phase-of-co-development.html>

⁵³ Government of Canada, ‘The Action Plan’ available at <https://www.justice.gc.ca/eng/declaration/ap-pa/index.html>

Reflections

- Canada is widely considered to lead the way in Indigenous self-determination in infrastructure, with this key right clearly enshrined in legislation and effective action plans that aim to operationalise the UN Declaration on the Rights of Indigenous Peoples in practice. By comparison, Australia's commitments and obligations are more diffuse, existing in a range of international agreements and covenants, national and state policies, and departmental guidelines across all levels of government.
- In the infrastructure context, cooperative Indigenous agencies such as the First Nations Major Projects Coalition provide members with access to the tools, knowledge, and advice needed to make free, prior, and informed business decisions about First Nation involvement and participation in major natural resource and infrastructure projects. These agencies provide services that focus on supporting the economic, environmental, and public policy interests of members in a non-political and business focused way.⁵⁴
- The Canadian approach supports Indigenous groups by providing opportunities for capital investment. This positions Indigenous groups as true business partners and places their priorities at the heart of the conversation. By contrast, Victorian Traditional Owner groups are primarily funded to provide cultural heritage management, instead of being funded for broader engagement in infrastructure projects, which remains an external requirement.

United States of America: Legal requirements and directives to consult with Indian tribes

A range of laws, regulations, executive orders, and federal policies outline the requirements for government bodies to consult or coordinate with Indian tribes around infrastructure projects. Different federal departments and legal bodies have created guidelines that help their teams understand the legal requirements, but there is no singular framework or set of guidelines that directs engagement activities.

The primary duty to consult lies within the *National Historic Preservation Act* (NHPA).⁵⁵ Section 106 of the NHPA requires federal agencies to consider the effects of their actions on historic properties and consider public views and concerns about historic preservation issues when making final project decisions. Section 101(d)(6)(A) of the NHPA clarifies that historic properties of religious and cultural significance to Indian tribes may be eligible for listing in the National Register of Historic Places, and Section 101(d)(6)(B) requires that federal agencies, in carrying out their Section 106 responsibilities, consult with any Indian tribe that attaches religious and cultural significance to historic properties that may be affected by an undertaking. Taken together, these laws have been interpreted as a duty for federal agencies to consult with Indian tribes when a proposed project may have an impact on a site that has cultural significance to the Indian tribe, regardless of whether that site is located on formally recognised Tribal lands.

In addition to the NHPA, the *National Environmental Policy Act 1969*⁵⁶ (NEPA) requires the preparation of an environmental impact statement (EIS) for any proposed major federal action that may significantly affect the quality of the human environment. While the NEPA does not specifically mention Indian tribes, the Council on Environmental Quality regulations require federal agencies to contact Indian tribes and provide them with opportunities to participate in various stages of EIS preparation.

The *American Indian Religious Freedom Act 1978* also establishes a Federal Government duty

“to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including, but not limited to, access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.”⁵⁷

⁵⁴ First Nations Major Projects Coalition, *Stronger together*, available at fnmpc.ca

⁵⁵ Advisory Council on Historic Preservation, *National Historic Preservation Act 1966*, available at <https://www.achp.gov/digital-library-section-106-landing/national-historic-preservation-act>

⁵⁶ *National Environmental Policy Act 1969*, available at <https://ceq.doe.gov>

⁵⁷ *American Indian Religious Freedom Act 1978*, available at <https://coast.noaa.gov/data/Documents/OceanLawSearch/Summary%20of%20Law%20-%20American%20Indian%20Religious%20Freedom%20Act.pdf>

A series of executive orders have further solidified the duty to consult with Indian tribes in infrastructure projects. Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments” (2000) directs federal agencies to respect tribal self-government and sovereignty, tribal rights, and tribal responsibilities in the formulation of policies “significantly or uniquely affecting Indian tribal governments.” The executive order applies to all federal agencies, encouraging “meaningful and timely” consultation with tribes, and consideration of compliance costs imposed on tribal governments when developing policies or regulations that may affect Indian tribes.

Executive Order 13007, “Indian Sacred Sites” (1996), applies to all federally owned lands except “Indian trust lands.” It encourages land-managing agencies to:

- accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners, and
- avoid adversely affecting the physical integrity of such sites.

Finally, Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” (1994), is designed to focus federal attention on the environmental and human health conditions in minority communities and low-income communities. It is also designed to promote non-discrimination in federal programs substantially affecting human health and the environment.

Directives on the duty to consult

There are limited directives for how the duty to consult operates in practice. The NHPA defines *Consultation* as “the process of seeking, discussing, and considering the views of others, and where feasible, seeking agreement with them on how historic properties should be identified, considered, and managed.” It further defines *Indian tribe* as

“an Indian tribe, band, nation, or other organized [sic] group or community, including a native village, regional corporation or village corporation...eligible for the special programs and services provided by the United States to Indians because of their status as Indians.”

Advisory Council on Historic Preservation (ACHP) regulations⁵⁸ provide further direction and detail for what is required for consultation. Section 800.2(c)(2) of the regulations outlines the following principles and directions to federal agencies regarding consultation with tribes:

- The agency official shall ensure that consultation under the Section 106 review process provides the Indian tribe or Native Hawaiian organization [sic] a reasonable opportunity to identify its concerns about historic properties; advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance; articulate its views on the undertaking's effects on such properties; and participate in the resolution of adverse effects.
- Historic properties of religious and cultural significance to an Indian tribe may be located on ancestral, Aboriginal, or ceded lands of that tribe. Accordingly, agencies must make a reasonable and good-faith effort to identify Indian tribes that may attach such significance but may now live away from the undertaking's area of potential effect, sometimes at a great distance.
- Federal agencies should be respectful of tribal sovereignty in conducting consultation and must recognize the government-to-government relationship that exists between the Federal Government and federally recognized Indian tribes.
- An Indian tribe may enter into an agreement with a federal agency regarding any aspect of tribal participation in the review process. The agreement may specify a tribe's geographic area of interest, types of projects about which they wish to be consulted or provide the Indian tribe with additional participation or concurrence in agency decisions under Section 106 provided that no modification is made to the roles of other parties without their consent.

⁵⁸ Advisory Council on Historic Preservation, *Section 106 Regulations*, available at <https://www.achp.gov/digital-library-section-106-landing/section-106-regulations>

However, the ACHP's directives only provide instructions on what to do and when in the process to consult. They do not direct how to carry out consultation or how to identify relevant Indian tribes, establish relationships and trust, or maintain the consultation and relationship beyond the initial consultation. There is also no guidance for outcomes beyond consultation, including and guidance related to self-determination.

Reflections

- US Indian tribes exercise self-determination through representative institutions. These institutions are a product of self-determination principles embedded in policy at multiple levels.
- The US experience of self-determination is governed by statutes and other normative instruments for self-government and territorial management, as well as underlying processes for the creation of territorial, municipal and other political and administrative entities based on indigenous autonomy. The institutions give rise to Tribal justice and jurisdiction systems, protection and security systems, autonomous consultation protocols, and other instruments of consultation and consent.⁵⁹
- The US context is quite different from Victoria's—it's colonial history, policy context and civil rights journey have been shaped by unique factors. One thing Indigenous groups in America and Traditional Owners in Australia have in common is a strong connection to traditional lands and waters, and a dark history of displacement from those lands.
- In the US this displacement took place through the system of Indian Reservations. Although later policy shifts brought Tribal governments into the national economy, economic and cultural shocks from displacement continue affecting Indian Country. So, while self-determination is pursued in the US through self-government, territorial management, and an emerging Indigenous economy, the struggle for Indigenous Peoples remains focused on addressing geographical displacement, and the burden of bureaucracy that hinders Indigenous-led systems of self-governance.

European Union engagement with Indigenous communities

There are limited historical and legal protections for Indigenous communities in Europe. Article 3(2) of the *Treaty of the European Union* holds the Union to:

“offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.”⁶⁰

However, implementation of these measures lies with national laws of member states. There are no specific European Union laws or regulations that govern the rights of Indigenous communities. Furthermore, the *Critical Raw Materials Act 2024*⁶¹ makes no mention of consultation with, or consideration of, Indigenous communities.

⁵⁹ P. H. Kunesh, 'The power of self-determination in building sustainable economies in Indian Country' *Economic Policy Institute*, available at <https://www.epi.org/publication/the-power-of-self-determination-in-building-sustainable-economies-in-indian-country>

⁶⁰ *Treaty of the European Union*, Article 3, available at <https://www.legislation.gov.uk/eut/teu/article/3>

⁶¹ European Union, 'Critical Raw Materials Act', available at https://single-market-economy.ec.europa.eu/sectors/raw-materials/areas-specific-interest/critical-raw-materials/critical-raw-materials-act_en#documents

The Inuit People of Greenland

The Inuit people make up most of the population of Greenland, a territory of Denmark. In 2009, Greenland was granted self-governance under the *Act on Greenland Self-Government* (the Act).⁶² The Act gives the government of Greenland the right to self-govern over most areas except foreign affairs, defence and security policy.

The Act does not specifically require consultation with the Inuit people, but there is an implied self-determination given such a large proportion of the population is Inuit. However, as recently as February 2023, the United Nations Special Rapporteur on the Rights of Indigenous Peoples noted, following a visit to Greenland and Denmark, his concern that both military activities and planned mining operations, as well as tourism and infrastructure projects, were going ahead without proper consultation with the Inuit people affected by these activities. The Special Rapporteur noted:

“I would like to express concern for the lack of established mechanisms to implement the Inuit people’s right to free prior and informed consent, including in the case of granting of tourist concessions, implementation of business projects and adoption of legislative and administrative acts.”⁶³

The Sámi People

The Sámi People live across Norway, Sweden, Finland and Russia and therefore have complex and varied legal rights. Recognising their geographic diversity, Sámi populations in the Nordic countries formed the Nordic Sámi Council⁶⁴ in 1956 to advocate for national legal rights.

However, legal protections across countries vary:

- In Norway the constitution was amended in 1988 to protect Sámi culture, but did not officially recognise the Sámi as a people. This was updated in May 2023 to recognise that “the authorities of the state shall create conditions enabling the Sámi people, as an Indigenous People, to preserve and develop its language, culture and way of life.”⁶⁵ The *Finnmark Act 2005*⁶⁶ transferred most of the area in the Finnmark county of Norway to the Sámi people and, in doing so, recognised the Traditional Ownership of the land and water in the area. This act recognises the existing rights of ownership and use of the land, but does not cover fishing rights in saltwater, nor does it cover mining or oil rights.
- In Finland, the constitution was amended in 1995 to recognise that the Sámi, as an Indigenous People, have the right to maintain and develop their own language and culture.⁶⁷ It also recognises Sámi linguistic and cultural autonomy in the Sámi homeland. Legislation also requires authorities to negotiate with the Sámi Parliament on matters that may affect the status of the Sámi as an Indigenous People. Such matters may include the drafting of acts or the implementation of administrative decisions. Finland’s *Strategy for Arctic Policy*,⁶⁸ published in 2021, includes promotion of wellbeing and the rights of the Saami as an Indigenous People as a key pillar.
- In 2011, Sweden amended its constitution to affirm the obligation of Swedish government to promote opportunities for the Sámi people to preserve and develop a cultural and social life of their own. Although the Sámi have their own Parliament, they do not have full rights to self-

⁶² International Energy Agency, *Greenland Self-Government Act*, available at <https://www.iea.org/policies/18078-greenland-self-government-act>

⁶³ United Nations Special Rapporteur on the Rights of Indigenous Peoples, Mr. Francisco Cali-Tzay, Visit to Denmark and Greenland, 1-10 February 2023, End of Mission Statement, available at <https://www.ohchr.org/en/documents/country-reports/ahrc5431add1-visit-denmark-and-greenland-report-special-rapporteur-rights>

⁶⁴ Sámiráđđi, ‘About the Saami Council’, available at <https://www.saamicouncil.net/en/the-saami-council>

⁶⁵ Library of Congress, ‘Norway: Parliament includes Indigenous People designation in Constitution’, available at <https://www.loc.gov/item/global-legal-monitor/2023-06-07/norway-parliament-includes-indigenous-people-designation-in-constitution>

⁶⁶ *Finnmark Act (Act No. 85 of June 17, 2005 relating to Legal Relations and Management of Land and Natural Resources in the County of Finnmark)*, Norway, available at <https://www.wipo.int/wipolex/en/legislation/details/11129>

⁶⁷ Ministry of Justice Finland, ‘Rights of the Sámi people’, available at <https://oikeusministerio.fi/en/rights-of-the-sami-people>

⁶⁸ *Finland’s Strategy for Arctic Policy*, available at <https://julkaisut.valtioneuvosto.fi/handle/10024/163247>

governance and self-determination and their Parliament acts more like a government agency than an independent government.⁶⁹

- There is no recognition of the rights of the Sámi in Russia.

In recognitions of the benefits presented by a uniform set of legal protections and stronger rights to consultation, Sámi parliaments in Finland, Norway and Sweden have drawn up a joint Nordic convention to strengthen their position as an Indigenous People and influence decisions on Sámi-related matters. If adopted, it could become the first regional treaty concerning Indigenous Peoples and would enshrine various rights, including the right to self-determination, Sámi language and culture, and land and water, endorsing the principle of free, prior and informed consent. Nordic governments have not yet approved the convention.

Reflections

- A key challenge to Sámi self-government is the fact that they must operate within and across national borders, and inside and outside of the European Union. While self-determination is recognised as a legislative right in the three Nordic jurisdictions, there is no mechanism to create transnational agreements or forms of legal recognition that are enforceable in the territories that don't recognise the right, namely Russia. The Inuit people of Greenland, by contrast, only must deal with one jurisdiction, meaning path towards a legislated right to self-determination was relatively straightforward compared to the Sámi.
- Despite these challenges, the Inuit people of Greenland, and the Sámi of Sweden, Norway and Finland, enjoy a legal right to self-determination that is more explicitly and foundationally established than in the Australian context, though the UN assessment of mining, defence and tourism infrastructure programs in Greenland shows that, even with a legally enshrined right to self-determination, governments and government partners still have a long way to go before true self-determination is realised for northern European Indigenous Peoples.
- Best practice engagement goes beyond mere consultation to true collaboration and empowerment. It requires early and ongoing involvement of Traditional Owners, cultural competency, and a willingness to adapt processes to suit community needs. International examples, particularly from Canada and New Zealand, offer valuable insights into successful models of participation in infrastructure projects. These practices demonstrate that when done right, engagement can lead to mutually beneficial outcomes and contribute to the advancement of self-determination.

⁶⁹ Sámediggi, 'Background: The State and the Sami Parliament' available at <https://www.sametinget.se/9688>

Main points

- Current engagement practices often fall short of true collaboration, with differing expectations between project proponents and Traditional Owners.
- Best practice engagement should be approached through an equity lens, following the community's lead in terms of participation, time and cultural protocols.
- Genuine partnerships with Traditional Owners require equal power sharing, transparent communication and mutual accountability.
- Co-designing partnership processes involves Indigenous leadership, relationship-building and recognition of Indigenous knowledge systems.
- The *Connecting with Country* framework in New South Wales offers a model for designing with Country with Traditional Owner throughout the project lifecycle.
- New Zealand's research on Māori engagement highlights the importance of strong, trust-based relationships and recognising the diversity of Indigenous groups.
- Canada's approach to Indigenous consultation is enshrined in legislation and provides opportunities for investment, positioning Indigenous groups as true business partners.
- International examples demonstrate that successful engagement leads to mutually beneficial outcomes and advances self-determination, but challenges remain in fully realising Indigenous rights in infrastructure projects.

Current practices in Victoria

This section explores how Victoria's existing legislation, policies and frameworks translate into practice insofar as they promote and enable self-determination for Victoria's Traditional Owners. It identifies successes and challenges, and highlights opportunities for improvement based on a combination of lessons learned and best practice advice.

As outlined in the previous sections, self-determination is an inalienable right, and this is embedded in the Victorian context through state and federal legislation, via international conventions and declarations, and through several guiding strategies, frameworks and policies.

In practice, self-determination principles are most evident in the overlapping disciplines of cultural heritage compliance, Designing with Country, and social procurement. However, for many Traditional Owner groups, true self-determination means that projects on Country are Traditional Owner-led and guided by Traditional Owner objectives and aspirations for Country, community and culture. Currently, embedding self-determination in project and program governance remains a key area of opportunity.

Below are some key lessons learned from a Victoria-wide review of self-determination in practice.

Self-determination and Country

Across all regions of Victoria, Traditional Owners express a strong connection to Country and emphasise its importance to community in terms of wellbeing and cultural identity. While the aspirations and objectives of Victorian Traditional Owners are incredibly diverse, all share an aspiration to practice culture through relationships to Country, whether by caring for waterways, managing living cultural heritage, traditional burning, accessing culturally significant places, or harvesting foods and medicines.

Where projects impede Traditional Owners' access to Country, or their ability to engage in cultural practices on Country, there is a high likelihood that the project will also impinge on the right to self-determination. Additionally, projects and programs that fail to consider the environmental impacts of infrastructure activities on Country risk damaging both the ecological balance and cultural practice. Conversely, infrastructure projects that collaborate with Traditional Owners in their design and implementation are more likely to lead to positive, sustainable outcomes that contribute to the goals and objectives that pave the path to self-determination.

Traditional Owners are not only deeply connected to the lands and waters, but are stewards of its care, meaning that to respect the right to self-determination, infrastructure projects *must* make efforts to align outcomes with the long-term vision of Traditional Owners in relation to sustainability and respect for the Country.

“For the Wurundjeri community the natural world is also a cultural world; therefore the Wurundjeri people have a special interest in preserving not just their cultural objects, but the natural landscapes of cultural importance.”

Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation⁷⁰

Infrastructure and living cultural heritage

When infrastructure projects encounter Aboriginal cultural heritage—whether in the form of belongings (artifacts), culturally significant places (tangible and intangible) —government departments have a duty to tread carefully, and to defer to the wisdom, experience and expertise of Traditional Owners as the self-determined custodians of culture and Country. Unfortunately, there are countless examples across Australia of infrastructure projects leading to the destruction or desecration of culturally significant places.

⁷⁰ Wurundjeri Woi Wurrung Cultural Heritage Aboriginal Corporation, 'Significant Places' available at <https://www.wurundjeri.com.au/our-story/significant-places>

Requirements like Cultural Heritage Management Plans (CHMPs) should be enforced and respected, ensuring that infrastructure projects do not violate the ancestral, spiritual or physical integrity of living cultural heritage. There is a critical need for governments to recognise cultural rights, and to take them into consideration when designing and implementing projects on Country.

When to engage

At a minimum, enabling self-determination means making efforts to understand and embed Traditional Owner aspirations and objectives from the outset. This means that Traditional Owners should be actively involved from the earliest planning phases. Early, meaningful engagement better aligns projects with Traditional Owner goals and values and reduce project risk, and rework.

Traditional Owner voices should be heard, and should influence decisions about land and water use, ensuring that these developments do not compromise connection to Country while actively working to reduce impact to Country. In the past, projects have progressed without sufficient recognition and respect for significant places, impacts to Country and waterways and impacts to cultural connections to Country and waterways.

Early engagement also means that the full spectrum of rights associated with self-determination can be discussed. For example, a Traditional Owners may have specific economic aspirations to address community needs, and/or expectations around realising social benefits for community. Early stages of project initiation, such as procurement, and the selection of Aboriginal practitioners, are crucial for the realisation of these goals, and by engaging at the right time, infrastructure projects can enable Traditional Owners in nation building towards true self-determination.

“We are responsible to our future generations,
as they depend on what we do today
to make the change tomorrow.”

Monica Morgan, CEO
Yorta Yorta Nation Aboriginal Corporation⁷¹

Self-determination as an intergenerational issue

Traditional Owners are not just keepers of cultural wisdom in the present tense. The relationship between culture and Country extends since time immemorial, and Traditional Owner responsibilities extend into the future to preserve that connection and passing down of wisdom for future generations.

In efforts to preserve Country and culture for future generations, Traditional Owners need the opportunity assert rights and to determine what happens on lands and waters. Government needs to respect Traditional Owner authority about land and water use.

Project governance

If the principle of self-determination is to be taken seriously, Traditional Owners should have a leading role in co-designing infrastructure projects. A collaborative approach to project delivery may involve ongoing partnerships between developers and Traditional Owners to ensure projects reflect the cultural, environmental, and economic aspirations of community. In practice, this might mean adjusting project plans to protect sacred sites, ensuring the sustainable use of natural resources, or integrating Traditional Owner-led solutions into infrastructure strategies.

Infrastructure projects are often initiated with promises of engagement and respect for cultural rights, but these promises are not always followed through in practice. Engagement rarely moves beyond consultation to partnership in practice. Traditional Owners want to see mechanisms in place that hold developers and government agencies accountable for how projects are managed and ensure that their concerns are addressed throughout the project lifecycle. This includes transparency in decision-making processes, consistent feedback loops and mechanisms for redress.

⁷¹ Yorta Yorta Nation Aboriginal Corporation, *Whole of Country Plan 2021-2030*, available at <https://yynac.com.au/community/yynac-official-documents/yynac-whole-of-country-plan-2021-2030>

Challenges and opportunities

The below tables group together some of the key challenges and opportunities that have been encountered by Traditional Owners in working towards self-determination in infrastructure projects.

These insights draw on the experience of The Indigenuity Lab through a variety of prior engagements, as well as learnings from the case studies that follow and desktop research. The challenges and opportunities largely relate to:

- cultural competency and respect
- procurement and planning
- project delivery
- barriers to effective engagement.

In some cases, these observations give rise to opportunities to remove barriers to self-determination and enable more opportunities for Traditional Owner-led solutions. These opportunities are captured in the following section.

Cultural competency and respect	
A lack of cultural competency and/or respect can lead to significant problems and cause breakdowns in relationships, whether it be because of a lack of understanding about commitments and obligations on the government/developer side of the relationship, or inadequate information provided to Traditional Owners for informed decision making. Reaching a two-way understanding is a government obligation under the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).	“Governments should make sure there is a two-way understanding when dealing with our peoples.” - Articles 25-32, UNDRIP⁷²
Issue	Description
Limited understanding of existing commitments	When infrastructure developers have a limited understanding around the existing commitments to Traditional Owners in Victoria (outlined above), this often translates into a limited implementation of the right to self-determination on projects.
Cultural competency	Limited cultural awareness and understanding impedes effective communication and collaboration, particularly with respect to understanding cultural protocols. Specifically: - inadequate recognition and understanding of the tangible and intangible values of lands and waters - inadequate value and respect for cultural knowledge, wisdom, and caring for Country practices that promote sustainability. Cultural awareness and engagement training has the potential to improve: - cultural competency, capacity, and capability to follow protocols and engage appropriately with Traditional Owners - performance and comfort levels in the engagement space.

⁷² Australian Human Rights Commission, ‘Respect for and protection of culture’ available at <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/respect-and-protection-culture>

Cultural competency and respect	
Ways of working	Infrastructure agencies, developers, and Traditional Owners should collaborate to settle on agreed ways of working based on Traditional Owners' cultural protocols, with the aim of ensuring expectations and obligations are aligned.
Ethical and moral responsibilities	When infrastructure agencies and developers fail to understand that Traditional Owners have a cultural and moral obligation to care for Country, this can result in an underestimation of their own ethical responsibility to Traditional Owners.
Understandings of self-determination	As outlined in the section titled 'What is self-determination', the term's definition differs between Traditional Owners, and across different contexts. Similarly, infrastructure agencies and developers may have different understandings about what it is and how it is best achieved. This can include a lack of understanding that self-determination is context-specific, dependant on the needs and aspirations of Traditional Owners, and requires the transfer of power, and equal decision-making.
Enabling free, prior, informed consent	Free, prior, informed consent (FPIC) is a specific right of Indigenous Peoples under the UNDRIP. FPIC is not satisfied unless Traditional Owners are not provided the full range of information required to provide informed consent, and it is the government agency and developer's joint responsibility to ensure that a two-way understanding is achieved, with interpreters to be engaged if required.

Procurement and planning	
When government departments and Traditional Owners form strong, ongoing relationships that extend beyond project-specific engagements, Traditional Owners tend to be more empowered, better informed and better prepared to engage meaningfully in the moments that matter most. By building trust and transparency in communication channels, Traditional Owners can forecast their involvement, enabling better allocation of resources, as well as earlier engagement.	"Aboriginal economic participation and development is ... a vital foundation for self-determination." - Buying for Victoria guidance⁷³
Issue	Description
Appointment of Aboriginal practitioners to guide engagement	Infrastructure agencies and developers often take steps to ensure engagements are Aboriginal led, which can reduce the potential for power imbalances, help deliver social and economic benefits and ensure comfort and cultural safety in the process.

⁷³ Buying for Victoria, 'Detailed guidance for opportunities for Victorian Aboriginal people' available at <https://www.buyingfor.vic.gov.au/detailed-guidance-opportunities-victorian-aboriginal-people>

Procurement and planning	
	However, if Traditional Owners aren't consulted or can identify a practitioner of their choosing to lead the engagement, these benefits may not be realised, and the wrong practitioner may in fact have a negative impact on the engagement. At a minimum, Traditional Owners expect that Aboriginal Engagement Practitioners should be subject to an endorsement process upon project commencement. Early engagement in the procurement phase can help mitigate this risk.
Evaluation criteria in tender processes	At present, Traditional Owner voices are generally given equal weight with other stakeholders and panellists engaged in tender processes to select practitioners, contractors and suppliers associated with infrastructure projects. However, the right to self-determination suggests that more weight should be given to Traditional Owner voices in relation to decisions that affect Country and culture.
Scope development	There are numerous examples of infrastructure scopes of work being released to market without including Traditional Owner engagement in project scope of services, even when engagement is required under existing obligations. Conversely, scopes of work can also be overly prescriptive in terms of Traditional Owner engagement, either by limiting involvement to specific tasks (e.g. cultural heritage management planning), or by pre-supposing outcomes or preferences. Alternatively, Traditional Owner engagement can be present in scopes of work as a 'value add', which diminishes its importance in relation to overarching project outcomes. This can lead to Traditional Owner insights being considered a 'nice to have', or as voluntary guidance. The scope of works to market is one of the first and key opportunities for government agencies to present Traditional Owner engagement to the marketplace as a mandatory requirement.
Aboriginal businesses and social procurement	Opportunities to realise social and economic benefits for community begin at the procurement stage, social procurement strategies and Indigenous Procurement Plans (IPPs) do not necessarily deliver benefits to Traditional Owners of the Country on which a project is being undertaken. In terms of self-determination, the flow of resources away from Country to other Aboriginal businesses from interstate represents a missed opportunity to contribute to local nation building, agency and authority.
Project governance	When establishing projects, there is a clear opportunity to embrace self-determination and design appropriate governance structures to enable Traditional Owner voice throughout the project hierarchy. Traditional Owners should be adequately resourced for active involvement.
Following the letter rather than the spirit of guidelines	Reliance on one-size-fits-all guidelines to determine evaluation criteria for scopes of work related to Traditional Owner involvement can limit the impact and extent of engagement opportunities. In most instances true co-design and meaningful engagement surpasses the minimum standards set out in guidelines.

Procurement and planning	
Establishing Aboriginal-led teams	Project Managers and Evaluation Panel may not have a clear understanding of what best practice self-determination looks like and may therefore fail to consider engaging Aboriginal-led delivery teams.
Timing of engagement	There are significant opportunities to realise social and economic benefits, and to build towards self-determination, if Traditional Owners are engaged early enough in the planning process to set objectives. Gaining Traditional Owner input from the business case stage can ensure greater social and economic benefits are realised through a project, including transforming communities, advancing nation building and self-determination. Where infrastructure teams do not observe best practice engagement, and do not engage Traditional Owners in early works (including procurement processes), this can result in unsuitable appointments of service delivery teams, including Aboriginal practitioners, and missed opportunities to advance self-determination.

Project delivery	
Self-determination means that Traditional Owners hold the power to make decisions about issues that affect Country, culture and community, and these decisions are present across the entire project delivery lifecycle. Key decision-making begins before project conception and continues beyond construction. Traditional Owners' responsibilities to care for Country extend far beyond the project lifecycle.	“[We will] seek more opportunities to partner with Traditional Owner groups earlier and throughout the project lifecycle, from project inception to procurement, design, delivery and legacy.” - Development Victoria RAP⁷⁴
Issue	Description
Project feasibility	There have been a range of instances in which Traditional Owner time and resources have been invested in a project that has failed to proceed, e.g. the 2026 Commonwealth Games. In assessing which projects to prioritise, Traditional Owners require an honest assessment of each project's feasibility from its proponents to make informed decisions about resourcing. Remedies should be provided for lost opportunities.
Traditional Owner input into engagement processes	Co-designing engagement processes from the outset of projects ensures that Traditional Owners have the capacity and resources to contribute to projects. Seeking advice around engagement approaches (including cultural protocols) allows Traditional Owners an opportunity to self-determine ways of working, which is an important step towards self-determination.

⁷⁴ Development Victoria, *Reconciliation Action Plan Nov 2023 – Nov 2025*, available at https://www.development.vic.gov.au/data/assets/pdf_file/0024/29346/Development-Victoria-RAP-Innovate-2023.pdf

Project delivery	
Remuneration	Remuneration for cultural advice and engagement is often charged at an hourly rate, which significantly undervalues the shared value and benefits created through collaboration—particularly the value of Indigenous Cultural Intellectual Property (ICIP) including cultural knowledge and wisdom. There is an opportunity here for Traditional Owners to develop and deliver innovative services that add value.
Compliance vs. engagement	Even when acting in good faith, service deliverers and infrastructure developers have often confused their obligations in relation to cultural heritage compliance with their obligations in relation to engagement and self-determination. Having sought advice and completed a Cultural Heritage Management Plan (CHMP), providers may consider their obligations to Traditional Owners satisfied. However, as outlined in this report, the right to self-determination extends far beyond the CHMP.
Acknowledgement of Traditional Owner involvement	Traditional Owners' time and resources are valuable, and our contributions in projects should always be appropriately acknowledged.
Communication and transparency	Inappropriate communication styles may hinder effective engagement, and the use of technical language is not inclusive of people without professional expertise in infrastructure projects, including Traditional Owners. Communication should be clear, and pertinent information should be provided proactively to meet the standard of Free, Prior and Informed Consent.
Project programs and timelines	Compressed timelines are the enemy of effective engagement. Program timelines are often condensed due to a range of external factors and may not allow adequate time to engage with Traditional Owners. Not every decision can be made by the Registered Aboriginal Party entity, and often broader community engagement might be needed. If timelines are only built around RAP engagement, essential community voices may be missed. If the timing of engagement isn't flexible to meet the needs of community, there is a risk that the engagement might overlap or collide with other engagement obligations, contributing to engagement fatigue and potential disengagement. Appropriate lead times should always be factored in, and when in doubt, Traditional Owners should be consulted to determine appropriate timeframes for genuine and meaningful engagement.
Coordination between government agencies	Lack of coordination between government and industry during the pre-planning phases of a project introduces the risk of duplication of conversations, and over-consultation. These factors can create a barrier to productive partnerships.
Grievance procedures	Appropriate grievance procedures are essential to ensure Traditional Owners can confidently raise issues about processes and experiences. Procedures should be handled promptly by project decision-makers, with appropriate remedies stipulated by Traditional Owners.

Project delivery	
Seeking cultural advice that fits a particular narrative	There are a range of businesses that provide cultural advice but relying on these providers without going through the RAP, or to Traditional Owners with cultural authority to make decisions, potentially diminishes the right to self-determination. This issue is compounded when project managers ‘shop around’ for cultural advice that helps meet project objectives, rather than cultural advice that helps meet the objective of self-determination.
Application of the International Indigenous Design Charter	The International Indigenous Design Charter was developed with broad input from a range of international groups, with a focus on northern European Indigenous Peoples, and comparatively limited input from Victorian Traditional Owners. The Charter was originally developed to guide the use of cultural wisdom in commercial design applications like brand, graphic design and fashion, and did not have a specific focus on designing for the built form and infrastructure projects, which have much deeper implications for Country. With growing demand for cultural design elements in the urban built form, the Charter has been used more and more in the infrastructure context. However, adapting the Charter for this purpose has not been tested widely with Traditional Owners in the specific context of Country, and does not take into consideration preferred ways of working and cultural protocols. While some of the principles around shared benefits and shared knowledge are lightly adaptable to the built form context, other elements do not translate as easily. For example, the Charter does not cover ways of embedding cultural practices on Country, nor does it consider Traditional Owners responsibilities and opportunities for caring for Country. In short, a one-size-fits-all approach to culture informed design does not consider key cultural considerations, local cultural protocols that differ depending on communities.

Barriers to engagement	
When government departments have ongoing relationships and full transparency about future projects on Country, this provides Traditional Owners with the time to grow capacity and obtain resources to service the needs of projects. There is a critical role for government departments in co-ordinating with government agencies and industry partners to reduce consultation fatigue and the duplication of conversations	“We are being overwhelmed by engagement by government, but we are not involved upfront in preparing the vision.” - Participant, Traditional Owner Self-Determination Scheme consultation⁷⁵

⁷⁵ Aboriginal Victoria, “To be heard and for the words to have actions” – Traditional Owners voice: improving government relationships and supporting strong foundations, available at <https://www.firstpeoplesrelations.vic.gov.au/sites/default/files/2019-11/Traditional-owner-voices-improving-government-relationships-and-supporting-strong-foundations.pdf>

Barriers to engagement	
Issue	Description
Historical mistrust	Historical injustices, including the wide-reaching effects of colonisation and dispossession, have created a legacy of mistrust between Aboriginal communities and government entities, including their partners. Failure to consider this properly can limit project outcomes.
Power imbalances	If decisions are imposed, rather than made in collaboration with Traditional Owners, this creates a power balance that is at odds with forming an equitable partnership. When government and developers hold onto decision-making powers, or hold back critical information from their counterparts, Traditional Owners are at an unfair disadvantage, which poses a significant risk of compromising working relationships.
Consultation fatigue	Consultation fatigue affects any group that is regularly consulted, and its effects are compounded when the consulted party does not see positive progress because of the time and effort invested by participating in the consultation process. It can be expressed as scepticism, cynicism, or disengagement. Victorian Traditional Owner groups are not exempt from consultation fatigue. With the combination of the Victorian Government's commitment to self-determination, along with its ambitious infrastructure program, and current Treaty negotiations on the taking place, this should be considered a genuine risk for projects in the near-term.
Resource limitations	Traditional Owner groups have limited resources, and with Treaty negotiations forthcoming, and a range of obligations on government agencies in a variety of contexts, including cultural heritage compliance, these resources are expected to come under increasing pressure. While Registered Aboriginal Parties (RAPs) are funded by government, this funding is primarily directed towards cultural heritage compliance, meaning there is limited opportunity to direct scarce resources towards the kinds of engagement that represent the most progress towards self-determination. Remuneration should be considered beyond baseline consultation fees in order to enable Traditional Owners to build capacity and capabilities.

The implementation of self-determination principles in Victorian infrastructure projects reveals both progress and persistent challenges. While cultural heritage compliance, Designing with Country, and social procurement have seen advancements, true self-determination—where projects are Traditional Owner-led and aligned with their aspirations for Country, community, and culture—remains an aspiration rather than a reality. The strong connection Traditional Owners have with Country underscores the need for early, meaningful engagement in project planning and decision-making processes. This engagement is crucial not only for protecting cultural heritage and practices but also for ensuring sustainable outcomes that respect the long-term vision of Traditional Owners.

The intergenerational nature of self-determination further emphasises the importance of preserving cultural wisdom and connection to Country for future generations. However, the gap between promised consultation and actual partnership in project governance highlights a key area for improvement. Moving forward, embedding self-determination in project governance, ensuring accountability, and creating mechanisms for ongoing collaboration will be critical in realising the full potential of self-determination in Victorian infrastructure projects.

Main points

- Self-determination principles in Victoria are most evident in cultural heritage compliance, Designing with Country, and social procurement, though true self-determination remains an aspiration.
- Traditional Owners across Victoria express a strong connection to Country, emphasising its importance for wellbeing and cultural identity. Projects that impede Traditional Owners' access to Country or cultural practices risk infringing on the right to self-determination. Self-determination is an intergenerational issue, with Traditional Owners responsible for preserving cultural wisdom and connection to Country for future generations.
- Effective engagement requires early and meaningful engagement with Traditional Owners, ideally from the earliest planning phases.
- Project governance should involve Traditional Owners in co-designing infrastructure projects to reflect cultural, environmental, and economic aspirations.
- Cultural competency and respect are crucial for effective engagement, with a lack thereof often leading to relationship breakdowns.
- Procurement and planning processes present opportunities for embedding self-determination principles, including the appointment of Aboriginal practitioners and evaluation of tenders.
- Project delivery challenges include issues of distinction between compliance and genuine engagement, and the need for flexible timelines.

Case studies

The case studies in this section demonstrate the application of self-determination principles in infrastructure policy, planning and delivery in both Victorian and international infrastructure projects.

Case study 1: Level Crossing Removal Project

The *Level Crossing Removals Project – Indigenous Design Guidelines*⁷⁶ (the Guidelines) apply to all Level Crossing Removal Project (LXRP) works that the Victorian Government is delivering across Wurundjeri Woi-wurrung, Wadawurrung and Bunurong Countries. That is, the removal of 110 level crossings across metropolitan Melbourne by 2030, plus other rail network upgrades such as new train stations, track duplication and train stabling yards. 84 level crossings have been removed to date.

Within this massive scope of works, each level crossing removal represents its own discrete project that draws on a range of disciplines including urban design, architecture, landscape design, wayfinding and engineering. Overall, the LXRP represents countless opportunities to engage with Traditional Owners and contribute towards self-determination.

“The Guidelines support LXRP in upholding the Victorian Government’s commitment to enabling self-determination.”

Level Crossing Removals Project
Indigenous Design Guidelines⁷⁷

Policy context

The Guidelines are designed to ensure the LXRP upholds the Victorian Government’s commitment to enabling self-determination as described in the Victorian Aboriginal Affairs Framework (VAAF), noting that the VAAF “describes the process of enabling self-determination as a continuum that moves from informing Aboriginal communities through to transferring control.”⁷⁸ The Guidelines also draw from the Victorian Department of Transport’s whole-of-portfolio *Transport Portfolio Aboriginal Self-Determination Plan*.⁷⁹

The Guidelines prioritises inclusive practices and engagement that put Traditional Owner voices at the centre of discussions, noting that this “is only a first step, but a critical one in transferring decision-making control to Aboriginal Victorians on matters that affect their lives and community.” In other words, the goal of the Guidelines is not to immediately devolve or transfer decision-making power to Traditional Owners, but to take measurable steps towards the goal of self-determination by investing time and effort in engagement.

Project context

Indigenous design provides an effective vehicle to address VAAF, particularly culture and Country, and the Guidelines set out expectations for engagement with Traditional Owners on projects seeking to represent local knowledge in the built environment. This process details how LXRP projects initiate and carry out conversations with Registered Aboriginal Parties about design opportunities.

Development

The Guidelines were developed with contributions and advice from Aboriginal people with professional experience in Traditional Owner engagement and design. Aboriginal service professionals working on LXRP projects also contributed, as well as industry, government and delivery partners.

The Guidelines use the *International Indigenous Design Charter* (the Charter) as a guiding document to understand best practice for sharing Aboriginal knowledge via design. The Charter highlights “a lack of information, guidance and professional leadership regarding the appropriate creation and commercial expression of Indigenous knowledge in design practice” and the Guidelines attempt to bridge this gap in the context of design and implementation across the entire LXRP project.

⁷⁶ Victoria’s Big Build, *Level Crossing Removal Project: Indigenous design guidelines*, available at https://bigbuild.vic.gov.au/data/assets/pdf_file/0005/643415/LXRP-Indigenous-Design-Guidelines-Oct21.pdf

⁷⁷ Ibid.

⁷⁸ First Peoples – State Relations, ‘Victorian Aboriginal Affairs Framework’ available at <https://www.firstpeoplesrelations.vic.gov.au/victorian-aboriginal-affairs-framework>

⁷⁹ Victoria State Government, *Transport Portfolio Aboriginal Self-Determination Plan*, available at https://www.vic.gov.au/sites/default/files/2023-09/Aboriginal-Self-Determination-Plan_2020.pdf

Intended benefits

The Guidelines describe the design opportunities and broader benefits of incorporating Indigenous design.

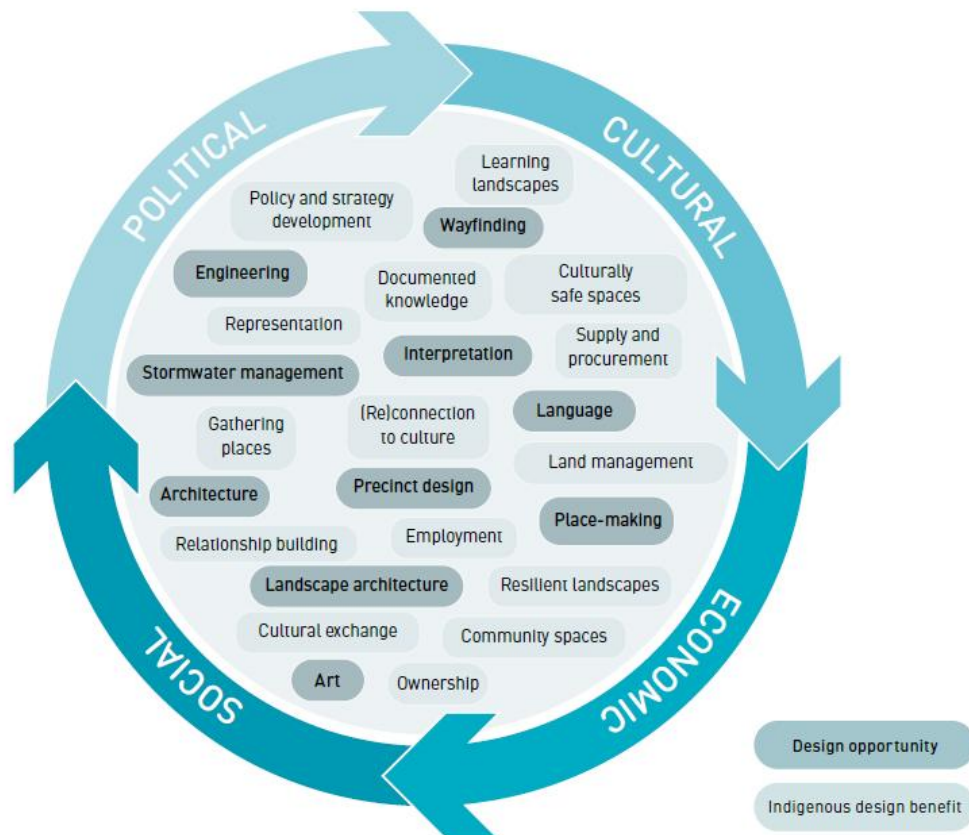


Figure 5 - Examples of design opportunities and broader benefits of indigenous design⁸⁰

The six engagement principles outlined in the LXP guidelines are intended to facilitate Indigenous design that raises awareness and promotes reconciliation.

- Transparent
- Equitable
- Culturally competent
- Embedded
- With the right people
- On Country.

The Guidelines' suggested engagement process utilises an experienced Aboriginal practitioner as facilitator and involves direct collaboration between Traditional Owners and the design team.

⁸⁰ Victoria's Big Build, Level Crossing Removal Project: Indigenous design guidelines, available at https://bigbuild.vic.gov.au/data/assets/pdf_file/0005/643415/LXP-Indigenous-Design-Guidelines-Oct21.pdf, p. 9.

Reflections

- The LXRP has won awards and is considered by industry to be a gold standard in Traditional Owner engagement. However, the three Kulin Nations Traditional Owner groups directly impacted by this enormous program of works were not consulted on the development of the engagement process. While the guidelines promote self-determination, the development of these guidelines was a missed opportunity to engage early and establish preferred ways of working based on Traditional Owner preferences and priorities.
- The Guidelines were an attempt to provide a consistent approach to engagement and co-design, ensuring that the Registered Aboriginal Parties were engaged to provide cultural oversight into design solutions.
- Project timelines for the LXRP are driven by the government, and these timelines have the potential to impact meaningful engagement processes with Traditional Owners. The Guidelines ensure there is a strong drive to involve Traditional Owners, but tight timelines can result in engagement activities being rushed, which can in turn add pressure to Elders if they are not given the time to provide informed feedback. Similar pressures and/or missed opportunities can be observed where budget limitations impact on project outcomes.
- As with any 'one size fits all' guideline whose primary purpose is to drive timely development outcomes, there is a distinct lack of flexibility to consider new ways of working and engaging with Traditional Owners. As a result, there are also potential missed opportunities to refine the engagement approach throughout the engagement itself, which may help drive better outcomes for Traditional Owners and the way culture is embedded in project outcomes.
- An iterative approach, with built-in opportunities to reflect and recalibrate, would provide Traditional Owners a greater opportunity to engage on their own terms, time and scope to navigate the complex dimensions of their roles. This includes negotiating shared benefits arrangements, protecting ICIP, and ensuring the integrity of cultural wisdom shared during engagement processes – all key elements contributing to self-determination.

Case study 2: North East Link Project

As part of Victoria's Big Build, the Victorian Government is delivering three major road projects, one of which is the North East Link Project (NELP) which will see 6.5km of tunnels delivered between Watsonia and Bulleen to reduce travel times by up to 35 minutes. Associated upgrades to the Eastern Freeway and M80 Ring Road will include new lanes, smart technology, and seamless connection to the Northeast Link tunnel.

Project context

In 2018, in recognition of their inherent custodianship of Wurundjeri Country, Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation (Wurundjeri) was invited to participate directly with the Victorian Government on what will be the largest road infrastructure project in Victoria's history and the largest ever undertaken on Wurundjeri Country.⁸¹ NELP has implemented a program-wide design philosophy and approach that seeks to recognise, protect and promote Aboriginal living cultural heritage values.

The Birrarung (Yarra River) and surrounding environment
is central to the identity of the Wurundjeri Woi-wurrung.
We're ensuring Indigenous culture and values are embedded
across the Northeast Link Program.
Victoria's Big Build⁸²

⁸¹ Victoria's Big Build, 'Embedding Indigenous heritage in our designs' available at <https://bigbuild.vic.gov.au/projects/north-east-link/about/environment/sustainability/communities>

⁸² Ibid.

Community engagement

Direct collaboration with Wurundjeri informed the program's design. The pillars of Connection to Country, Caring for Country, and Connecting People were applied across the project to embed cultural interpretation, language, history, and design solutions into the project, and into the fabric of the built form.

The project developed a multi-layered partnership approach with Wurundjeri to:

- facilitate active participation in the development and planning of the project
- enable Wurundjeri to have an informed voice when providing comment on parts of the project
- represent the interests of the Wurundjeri as the Traditional Owners of the land and waterways
- support the protection and enhancement of Wurundjeri traditional knowledge and values.

Outcomes

The collaborative process and involvement of the Wurundjeri has created the opportunity to meaningfully contribute to the project's Environment Effects Statement, Urban Design Strategy, Cultural Heritage Management Plan, and cultural values mapping exercises. Indigenous design themes developed and being implemented with Wurundjeri Elders have formed the basis of the overall design vision for the project.

Design outcomes include ventilation structures at Simpson Barracks and the Yarra Link green bridge inspired by traditional Wurundjeri eel traps. NELP also has plans develop a Cultural Landscape Precinct along the eastern banks of the Yarra River in Bulleen, reestablishing a vital cultural landscape for Wurundjeri and creating opportunities to share Traditional Owner knowledge.⁸³

Reflections

- While the NELP acknowledged the impact of works on Country early and worked to ensure deep engagement and the realisation of positive benefits and outcomes for Wurundjeri, the right of self-determination involves the right to exercise decision-making power. With reference to the VAAF approach to self-determination, this approach could be seen as a positive step on the journey towards self-determination, though a truly self-determined approach would transfer power more directly to Wurundjeri.

Case study 3: Cascade Power Plant Project, Alberta Canada

The Cascade Power Plant Project⁸⁴, worth \$1.5 billion and currently under construction, will see a 900-megawatt combined-cycle natural gas fired power generation facility established near Edson, Alberta in Canada. Combined-cycle plants generate power from both natural gas-fuelled turbines, as well as a heat recovery steam generator that captures the exhaust heat. They generate approximately 50% more power per unit of fuel than a conventional natural gas fired power plant.

Policy context

In 2019 the legislature of British Columbia adopted the *Declaration on the Rights of Indigenous Peoples Act*, which is supported by an associated five-year Action Plan governing priorities and initiatives over the period 2022-27. The Action Plan's primary goal around self-determination is:

“Indigenous Peoples exercise and have full enjoyment of their rights to self-determination and self-government, including developing, maintaining and implementing their own institutions, laws, governing bodies, and political, economic and social structures related to Indigenous communities.”⁸⁵

⁸³ Infrastructure Sustainability Council, 'North East Link Program – Social outcomes' available at <https://www.iscouncil.org/north-east-link-program-social-outcomes>

⁸⁴ Power Technology, 'Cascade combined-cycle gas turbine power plant, Alberta, Canada' available at <https://www.power-technology.com/projects/cascade-combined-cycle-gas-turbine-ccgt-power-plant-alberta>

⁸⁵ British Columbia, *Declaration on the Rights of Indigenous Peoples Act action plan 2022-2027*, available at https://www2.gov.bc.ca/assets/gov/government/ministries-organizations/ministries/indigenous-relations-reconciliation/declaration_act_action_plan.pdf

With a clear focus on self-determination, the Action Plan recognises Indigenous nation-building as both a priority, and as the work of Indigenous Peoples, endeavouring to ensure that its program of work is to be conducted in accordance with “Indigenous legal processes, rights, cultures, languages, protocols, traditions and standards.”

Project context

In contrast to the Victorian case studies above, local Indigenous Peoples hold a direct economic interest in the delivery of the Cascade Power Plant Project. The Alexis Nakota Sioux Nation, Enoch Cree Nation, Kehewin Cree Nation, O’Chiese First Nation, Paul First Nation, and Whitefish Lake First Nation all own equity stakes in the project through a consortium (Indigenous Communities Syndicate).

“First Nations peoples are becoming masters of the institutions.

We take elements from the western world and combine our cultural teachings to maximise our benefit from the institutional structures in place while staying grounded and true to who we are. This includes building a team of allies who are experts to help us learn, build and grow on our path to wealth creation”

Chief Tony Alexis
Alexis Nakota Sioux Nation⁸⁶

Government investment

Indigenous part-ownership of the Cascade Power Plant Project was backed by a \$93 million loan guarantee from the Alberta Indigenous Opportunities Corporation (AIOC), a Crown Corporation created by the Alberta Provincial Government, whose investment support is available for ‘natural resource projects in Canada that have at least one Alberta-based Indigenous group as an investor.’

The AIOC was created to support commercially viable partnerships with First Nations and Métis Settlements on energy-related infrastructure (in renewables, and oil and gas), mining, and forestry. The AIOC supports Indigenous investments by way of loan guarantees backed by the Alberta Provincial Government.

Self-determination outcomes

For provincial Crowns such as the Government of Alberta, a history of poor consultation experiences with First Nations groups regarding projects on their lands contributed to a climate of uncertainty around the likelihood of adequate consultation, and doubts around the conditions for providing free, prior, informed consent.

When First Nations governments are financially invested in an equity ownership arrangement for development projects, this consultation ceases to be an external requirement and becomes an essential part of the project’s commercial viability. This protocol sees First Nations governments empowered to determine whether a given project meets their own environmental standards and values, and whether its members are supportive of the project. The First Nations government reserves the right to consent and invest, or not.

Self-determination as a ‘win-win’

The Canadian experience demonstrates that when First Nations groups have an equity stake in a project, the investors can have more confidence that those groups are less likely to oppose the project externally, for example through legal channels. In the case of the Cascade Power Plant Project, investors’ risk exposure is reduced even further by the Alberta Government’s \$93 million loan guarantee on the project.

⁸⁶ Ibid.

Case study 4: Atlin Hydro Expansion Project

Another Canadian example, the proposed Atlin Hydro Expansion Project⁸⁷ in British Columbia would expand the infrastructure and power production capacity on Pine Creek from 2.1 megawatts to approximately 10 megawatts. The additional energy generated would be exported entirely to Yukon to increase the territory's supply of renewable electricity and dependable capacity when needed most – in the cold northern winter.

The project is expected to add 8.5 megawatts of dependable capacity to Yukon's grid, the equivalent of increasing the size of Yukon's overall electricity system by around 8 per cent. It is also expected to generate approximately 45 gigawatt hours of hydroelectric energy annually, representing the same amount of electricity used by around 3,750 Yukon homes each year.

Project context

Like the Cascade Power Plant Project outlined above, the Atlin Hydro Expansion Project includes significant First Nations investment. While the Cascade Project is part-owned by a consortium of First Nations groups, the Atlin Project, is 100 per cent built and owned by the Taku River Tlingit First Nation (TRTFN) who are representative of Traditional Territories in the Yukon Territories, northern British Columbia, Canada and Alaska, United States.

“We are grateful for the unique gift
the land provides our people,
abundant water and a significant
change in elevation that makes
this hydro opportunity possible.”

Peter Kirby, CEO
Tlingit Homeland Energy Limited Partnership⁸⁸

Community engagement

Run by First Nations group TRTFN, engagement was often focused on information-sharing, with public meetings used as a venue for presenting the project design and baseline studies undertaken, as well as high-level overviews of the project's Clean Energy Development Plan.

In total, TRTFN have led four open house events, two boat tour opportunities in 2021 and 2022, five community meetings, a public display booth, and numerous meetings with stakeholders, including private individuals and the Atlin District Board of Trade.

Community benefits

The project promotes economic development and multi-generational socio-economic benefit as well as stimulating the local economies. Direct, indirect employment and dividend benefits to result in local ownership, economic independence and control over resources. Community investment projects such as social and local initiatives, commitments to improving the local environment as well as contributions to local taxes to improve infrastructure.

“This investment in stewardship represents
an opportunity to learn more about the land
and educate a new generation of environmental
voices about the unique gifts the land provides.”

Project Website⁸⁹

⁸⁷ Yukon Energy, 'Atlin Hydro Expansion' available at <https://yukonenergy.ca/energy-in-yukon/projects-facilities/atlin-hydro-expansion>

⁸⁸ Government of Yukon, 'Atlin Hydro Expansion Project to receive \$32.2 million from Natural Resources Canada' available at <https://yukon.ca/en/news/atlin-hydro-expansion-project-receive-322-million-natural-resources-canada>

⁸⁹ Atlin Hydro, 'Benefits of Atlin's hydro opportunity' available at <https://www.atlinhydro.ca/the-benefits>

Case study 5: Renewable energy transition insights

Recent developments in Victoria's renewable energy sector provide additional context to the practical implementation of self-determination principles.

The renewable energy transition in Victoria is set to significantly transform land and sea Country, bringing billions of dollars of investment. This presents both challenges and opportunities for Traditional Owners' self-determination. The Victorian Government's commitment to partnering with Traditional Owners in co-designing benefit models acknowledges their unique relationship with Country and the potential impacts of renewable energy infrastructure on traditional lands and cultural rights. Key considerations emerging from this context include:

- **Benefit sharing mechanisms.** The proposed Renewable Energy Zone Community Benefits Plan includes dedicated funds for Traditional Owners impacted by generation, storage, and transmission infrastructure. This represents a step towards ensuring Traditional Owners receive an equitable share of benefits from renewable energy projects.
- **Land tenure complexities.** The limited formal recognition of land rights in Victoria (approximately 10% of the landmass) poses challenges in determining benefit distribution. There's a push for a 'tenure blind' approach to ensure benefits flow to Traditional Owners regardless of the current land tenure status.
- **Project-specific engagement.** While centralised benefit-sharing mechanisms are being developed, there's recognition of the need to maintain incentives for project-based engagement and agreement-making between renewable energy proponents and Traditional Owners
- **Capacity building.** The rapid development of renewable energy projects highlights the urgent need for resourcing Traditional Owner groups to build capacity for meaningful engagement in project consultations and negotiations.
- **Evolving recognition.** The renewable energy transition is unfolding against a backdrop of evolving formal recognition of Traditional Owner rights, including through the Treaty process. This emphasizes the need for flexible frameworks that can adapt to changing circumstances.⁹⁰

These insights reinforce the existing findings on the practical implementation of self-determination principles in Victorian infrastructure projects, while highlighting the complexities and opportunities presented by the renewable energy sector.

While there are examples of good practice in Victorian infrastructure projects, there remain significant opportunities for improvement. Key challenges include ensuring consistent and meaningful engagement throughout project lifecycles, addressing resource limitations of Traditional Owners, and embedding self-determination principles in project governance. The experiences highlighted in this section underscore the need for a more systematic approach to implementing self-determination principles across all infrastructure projects in Victoria.

⁹⁰ Federation of Victorian Traditional Owner Corporations, *Submission on the Draft Renewable Energy Zone Community Benefits Plan*, available at <https://fvtoc.com.au/documents/submission-on-the-draft-renewable-energy-zone-community-benefits-plan>

Main points

- The Level Crossing Removal Project (LXRP) Guidelines aim to uphold the Victorian Government's commitment to self-determination, though they were developed without direct consultation with impacted Traditional Owner groups.
- The Northeast Link Project (NELP) involved direct collaboration with Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation, embedding cultural interpretation and design solutions into the project.
- The Cascade Power Plant Project in Canada demonstrates a model where Indigenous Peoples hold direct economic interests through equity stakes in the project.
- Indigenous part-ownership in the Cascade project was supported by government loan guarantees, demonstrating a commitment to Indigenous economic participation.
- The Canadian approach positions Indigenous groups as true business partners, contrasting with the Victorian model where Traditional Owner groups are primarily funded for cultural heritage management.
- The Atlin Hydro Expansion Project in Canada is 100 per cent owned by the Taku River Tlingit First Nation, showcasing full Indigenous ownership and control.
- Canadian examples demonstrate that Indigenous equity stakes can reduce project opposition and align environmental and cultural values with project outcomes.
- While Victorian projects show progress, the Canadian case studies highlight more advanced models of Indigenous self-determination in infrastructure projects, particularly in terms of economic participation and decision-making power.

Opportunities

The table below outlines a series of high-level opportunities that correspond to the observations and opportunities outlined in the section titled 'Victoria in Practice'. These opportunities are drawn from best practice evidence as outlined in the case studies and international benchmarking exercises included in this report, as well as the experience and expertise of The Indigenuity Lab, developed through deep engagement with Traditional Owner groups across a range of Victorian infrastructure projects and programs.

No.	Observation	Opportunities
Education and awareness		
1	Developers often have a limited understanding of existing commitments and obligations to Country, community and culture, leading to poorer self-determination outcomes.	Infrastructure developers and industry participants should be educated about existing commitments and obligations in relation to self-determination and provided with case studies and best practice advice to drive compliance and encourage appropriate engagement.
2	Limited cultural awareness and understanding of engagement protocols impedes effective communication and collaboration.	All project delivery teams should be undertaking localised cultural awareness training prior to project commencement. Localised cultural awareness training provides greater insight and understanding of specific Traditional Owner protocols, culture, and ongoing connection to lands and waters in the region where the project is taking place. It builds relationships, trust and kicks off the project on the right foot.
Consultation and engagement		
3	Engagement and consultation are often constrained to limited sections of the project lifecycle.	Engagement with Traditional Owners should occur at project inception and continue throughout the project lifecycle, and beyond. All engagement processes should be co-designed to ensure capacity and resources are available for Traditional Owners to be actively involved decision making.
4	Traditional Owners are not routinely engaged in the appointment of Aboriginal practitioners to lead engagement.	Project managers and evaluation panels often appoint Aboriginal practitioners in the planning and procurement phase before consulting with Traditional Owners. The right to self-determination means that Traditional Owners should have a leading role in making this decision. In instances where this does not occur, practitioners should be subject to a Traditional Owner endorsement process to ensure their suitability.
Procurement and planning		
5	Traditional Owner decision making procurement processes.	The right to self-determination means that Traditional Owners are in control of the decisions that affect culture and Country, and there is a strong argument to be made that this includes the appointment of contractors.

No.	Observation	Opportunities
	Evaluation criteria in tender processes are inconsistent, or inconsistently weighted.	In instances where Traditional Owners are involved in identifying preferred suppliers, the right to self-determination may be reflected in the weighting allocated to Traditional Owners compared to other participants. Additionally, tender criteria may be developed to ensure the appointed contractor will engage appropriately with Traditional Owners. Such criteria may include a requirement to deliver social and economic benefits to community, and this criterion should be appropriately weighted to drive outcomes.
6	Social procurement plans do not necessarily deliver benefits to Traditional Owners of the Country on which a project is being undertaken.	Even when agencies or developers are following a social procurement strategy or Indigenous Procurement Plan (IPP), Traditional Owners should be engaged for advice about potential engagements with local Aboriginal businesses, and to discuss how economic benefits such as employment can flow through to community. To contribute to self-determination, the flow of resources associated with a project should be directed towards Aboriginal businesses on Country, providing an opportunity to contribute to Traditional Owners' economic independence, agency and authority.
7	Cultural heritage management assessments are generally compliance-driven activities.	Undertaking voluntary cultural heritage management assessments above and beyond the minimum requirements can provide significant insights into tangible and intangible cultural values, helping project teams take steps to protect them from the outset. These should be conducted by appropriately experienced and credentialed providers.
Project delivery		
8	Inadequate budget allocated to Traditional Owner engagement can limit project outcomes, as well as self-determination outcomes.	Value management in the engagement context, e.g. reducing planned Traditional Owner input due to overarching constraints across the project budget, should be seen as a threat to the right of self-determination. Budgets for Traditional Owner consultation, designing with Country etc. should be commensurate to the scale of the overall project.
9	Project timelines can place unreasonable deadlines on Traditional Owner involvement, or can lead to project overlap, contributing to consultation fatigue.	Project timelines should be flexible and adaptable and should take Traditional Owner commitment into consideration to allow for genuine and meaningful consultation. This is essential to ensure the standard of Free, Prior, Informed Consent is upheld, and that program pressures do not adversely impact Traditional Owner rights to make informed decisions.
10	Cultural knowledge and wisdom shared through consultation processes can be misappropriated or misrepresented in project outcomes.	The integrity of any cultural knowledge or wisdom shared via consultation must be upheld throughout the project lifecycle – self-determination means that Traditional Owners are in control of how their Indigenous Cultural Intellectual Property (ICIP) is shared.

No.	Observation	Opportunities
		When ICIP is used in public outcomes such as design, Traditional Owners have the right to stipulate and sign off on how those designs are implemented. The same should apply to any social and economic benefits agreed through negotiations or social procurement processes. Any amendments to design solutions or intended social procurement benefits require further consultation to meet the FPIC standard.
11	The impetus for embedding cultural wisdom, knowledge and design into infrastructure projects should be about advancing self-determination.	The use of ICIP in public design outcomes is a privilege, not a right. Care and consideration should be taken to protect the cultural wisdom shared throughout the process, and to deeply acknowledge these contributions. The impetus for incorporating Aboriginal design shouldn't be to capitalise on the culture, but to educate and enable the social fabric changes required to move toward a Treaty state and to promote appreciation, recognition of local cultures, and ongoing connections to Country and community.
12	Consultation approaches have been identified by industry as 'best practice' without confirmations from the Traditional Owner groups involved.	Whenever government and/or industry undertake case studies of Traditional Owner engagement processes, assess submissions and nominations for awards, or otherwise highlight best practice in this field, Traditional Owner references should be a minimum requirement. This will help government and industry nominate best practice projects that genuinely advance self-determination. It will also help prevent the improper promotion of programs and projects that may have achieved visible results, but which might have compromised cultural integrity or otherwise failed to meet Traditional Owner expectations.
Governance		
13	Traditional Owners frequently encounter governance approaches that lack detailed endorsement, grievance and reporting mechanisms.	At the end of an engagement process, there should be a formal Traditional Owner endorsement to confirm that cultural knowledge, design input and consultation outputs have been accurately recorded, interpreted, and ultimately embedded in the built form. Appropriate grievance procedures should be in place for Traditional Owners to raise issues about processes and experiences. Procedures should be handled promptly and by project decision-makers, with appropriate remedies stipulated by Traditional Owners. Include Traditional Owner engagement updates into required project reporting, with sign-off mechanisms in place for Traditional Owners.

No.	Observation	Opportunities
Future research		
14	Stage 3 opportunity	A final and 14th opportunity exists to more closely scrutinise this Review's findings and translate its nuances into actionable outcomes and policy changes. Such a body of work would represent a third stage in this Review's methodology. This third stage would consider how the opportunities identified throughout this Review are useful in specific contexts for policy and practice. It would involve engagement among the organisation's stakeholders including Traditional Owners and would enable Infrastructure Victoria to reflect and maintain Traditional Owner-informed self-determination principles in the Australian project context, and in line with best practices.

The opportunities offer a roadmap for improving the implementation of self-determination principles in Victorian infrastructure projects. They emphasise the need for cultural competency, early and ongoing engagement, economic participation, and embedding Traditional Owner voices in decision-making processes. Addressing these opportunities will require commitment from all stakeholders, including government agencies, project developers, and Traditional Owners. The potential benefits, however, are significant: more equitable, sustainable, and culturally appropriate infrastructure developments that advance self-determination of Traditional Owners.

Note: These opportunities have not been tested directly with Traditional Owners and are not endorsed by any groups or individuals whose perspectives have been reproduced as part of this desktop review exercise.

Appendix 1: Barengi Gadjin Land Council

The Barengi Gadjin Land Council (BGLC)⁹¹ represents the Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagulk Peoples, the Traditional Owners of the Wimmera region in western Victoria.

The BGLC plays a crucial role in preserving and promoting the cultural heritage, rights and responsibilities of the Wotjobaluk Nations. Their Country Plan sets out the vision and strategic priorities for the sustainable management and protection and care of Country and community.

Wotjobaluk Country embodies a deep connection between Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagulk Peoples and their land.

Below are the agreements in place with BGLC. The responsibilities under each agreement set out the rights to Country, culture and community. Each agreement should be considered for projects within Barengi Gadjin boundaries.

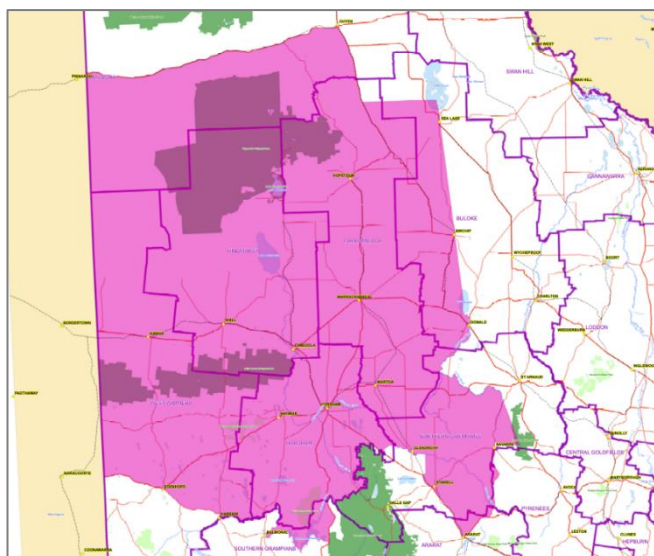


Figure 6 - Location of Wotjobaluk Peoples' Country in Victoria
www.aboriginalheritagecouncil.vic.gov.au

Agreement	Status
Registered Aboriginal Party (RAP) under Victorian Aboriginal Heritage Act 2006	Yes
Federal <i>Native Title Act</i> 1993 (NT Act) determination	Native Title Determined - Native title exists in the entire determination area
Registered Land Use Agreements under NT Act	N/A
Victorian Traditional Owner Settlement Act 2010 (TOSA Act) approved claim	Yes
Registered Indigenous Land Use Activity Agreements under TOSA Act	N/A

⁹¹ Barengi Gadjin Land Council Aboriginal Corporation, available at <https://www.bglc.com.au>

Appendix 2: Bunurong Land Council Aboriginal Corporation

The Bunurong Land Council Aboriginal Corporation (BLCAC)⁹² are the Registered Aboriginal Party representing Bunurong Peoples, Traditional Owners of the lands and waterways in the southeastern region of Victoria. Bunurong Country extends from Werribee River east around Port Phillip Bay, Mornington Peninsula, Western Port and South Gippsland coastline to Wilson's Promontory, shared Country with Boon Wurrung and Gunaikurnai.

Inland Bunurong boundaries are the watersheds that flow into Port Phillip, Western Port and Bass coastline.

Key Values of the Bunurong Land Council Aboriginal Corporation:

Respect for Ancestral Knowledge. The Bunurong hold their Ancestors and their interactions with the environment in high regard. They view all evidence of their communities and cultural stories as sacred, acknowledging over 1,000 generations of connection to the land.

Preservation and Protection of Cultural practices and Sacred Places. The Bunurong People are dedicated to preserving and protecting sacred places, traditional ecological knowledge, cultural practices, and stories. This commitment ensures that the rich heritage of Bunurong Country is maintained and gathered for future generations.

Care for Country. The Bunurong advocate for the protection and care of Country, with a focus on the importance of nurturing rivers and creeks the land's lifeblood. They support initiatives like the Regional Catchment Strategy enhance environmental conservation and encourage joint management for Care of Country.⁹³

Below are the agreements in place with BLCAC. The responsibilities under each agreement set out the rights to Country, culture and community. Each agreement should be considered for projects within Bunurong boundaries.

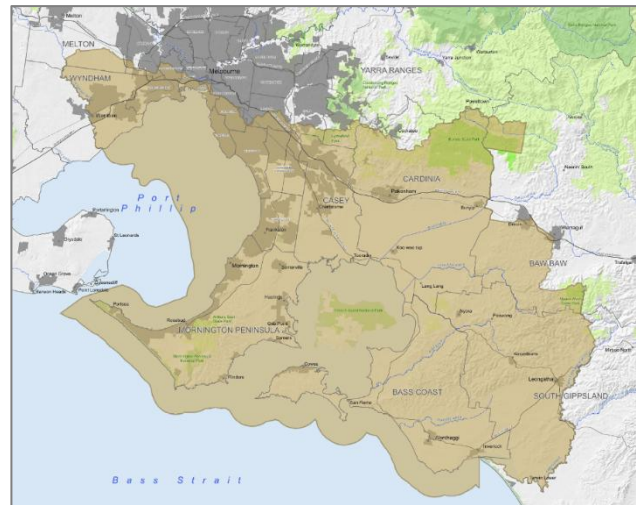


Figure 7 - Location of Bunurong Country in Victoria
www.aboriginalheritagecouncil.vic.gov.au

Agreement	Status
Registered Aboriginal Party (RAP) under Victorian Aboriginal Heritage Act 2006	Yes
Federal Native Title Act 1993 (NT Act) determination	N/A
Registered Land Use Agreements under NT Act	N/A
Victorian Traditional Owner Settlement Act 2010 (TOSA Act) approved claim	N/A
Registered Indigenous Land Use Activity Agreements under TOSA Act	Yes

⁹² Government of Victoria (Port Phillip and Western Port Regional Catchment Strategy), 'Welcome to Country' available at <https://portphillipwesternport.rcs.vic.gov.au/welcome-to-country>

⁹³ Bunurong Land Council Aboriginal Corporation, available at <https://www.bunuronglc.org>

Appendix 3: Dja Dja Wurrung Clans Aboriginal Corporation

The Dja Dja Wurrung Clans Aboriginal Corporation (DJAARA)⁹⁴ are the Registered Aboriginal Party representing of the Dja Dja Wurrung peoples, Traditional Owners of Dja Dja Wurrung Country in central Victoria.

Dja Dja Wurrung Country include approximately 2700 square kilometres, including Mount Franklin and the towns of Creswick and Daylesford in the southeast, to Castlemaine, Maldon, and Bendigo in the east, Boort in the north, Donald in the northwest, to Navarre Hill and Mount Avoca marking the southwest boundary.

Dja Dja Wurrung territory encompasses the Bendigo and Clunes goldfields, and the Loddon and Avoca River watersheds.

The Dja Dja Wurrung protect and manage their cultural and natural heritage, ensuring future generations can continue to thrive on their ancestral lands. From the waterways to the woodlands, the Dja Dja Wurrung preserve and protect their cultural heritage through dreaming stories, lore, and ancestral spirits.

Below are the agreements in place with DJAARA. The responsibilities under each agreement set out the rights to Country, culture and community. Each agreement should be considered for projects within Dja Dja Wurrung boundaries.

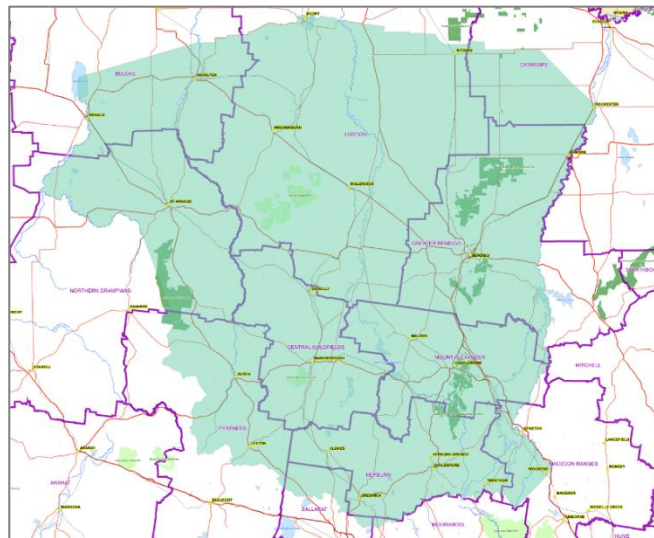


Figure 8 – Location of Dja Dja Wurrung Country in Victoria
www.aboriginalheritagecouncil.vic.gov.au

Agreement	Status
Registered Aboriginal Party (RAP) under Victorian Aboriginal Heritage Act 2006	Yes
Federal <i>Native Title Act</i> 1993 (NT Act) determination	Native Title Determined - Native title exists in the entire determination area
Registered Land Use Agreements under NT Act	N/A
Victorian Traditional Owner Settlement Act 2010 (TOSA Act) approved claim	Yes
Registered Indigenous Land Use Activity Agreements under TOSA Act	Yes

⁹⁴ Victoria Aboriginal Heritage Council, 'Dja Dja Wurrung Clans Aboriginal Corporation' available at <https://www.aboriginalheritagecouncil.vic.gov.au/dja-dja-wurrung-clans-aboriginal-corporation>

Appendix 4: Eastern Maar Aboriginal Corporation

Eastern Maar Aboriginal Corporation (EMAC) are the Registered Aboriginal Party for Eastern Maar Traditional Owners of south-western Victoria.

According to the EMAC website⁹⁵, “Eastern Maar” is a name adopted by the people who identify as Maar, Eastern Gunditjmara, Tjap Wurrung, Peek Whurrung, Kirrae Whurrung, Kuurn Kopan Noot and/or Yarro waetch (Tooram Tribe) among others who are Aboriginal people, and who are:

- descendants, including by adoption, of the identified ancestors
- members of families associated with the former Framlingham Aboriginal Mission Station
- recognised by other members of the Eastern Maar People as members of the group.

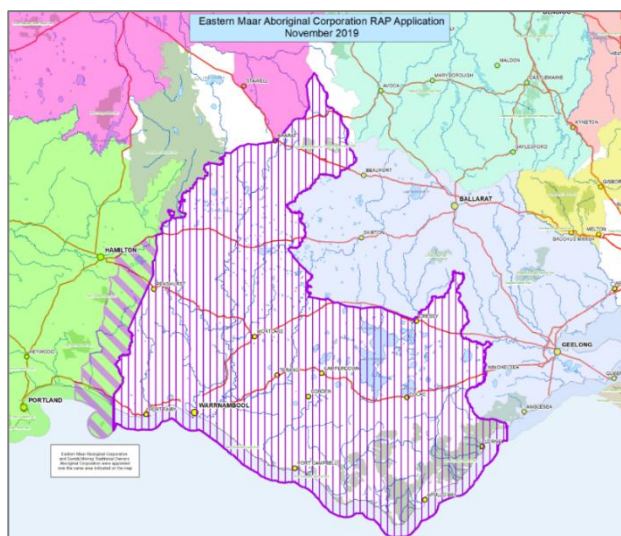


Figure 9 - Location of Eastern Maar Country in Victoria
www.aboriginalheritagecouncil.vic.gov.au

The Eastern Maar Aboriginal Corporation represents the Eastern Maar People. Eastern Maar Country extends from Ararat and includes the Warrnambool, Port Fairy and Great Ocean Road areas. Eastern Maar Country also stretches 100m offshore at low tide. EMAC manages Native Title rights and interests, and the board of directors is recognised under the *Corporations Act 2006*.

Below are the agreements in place with EMAC. The responsibilities under each agreement set out the rights to Country, culture and community. Each agreement should be considered for projects within Eastern Maar boundaries.

Agreement	Status
Registered Aboriginal Party (RAP) under <i>Victorian Aboriginal Heritage Act 2006</i>	Yes
Federal <i>Native Title Act 1993</i> (NT Act) determination	Native Title Determined - Native title exists in the entire determination area
Registered Land Use Agreements under NT Act	N/A
<i>Victorian Traditional Owner Settlement Act 2010</i> (TOSA Act) approved claim	Under negotiation
Registered Indigenous Land Use Activity Agreements under TOSA Act	N/A

⁹⁵ Eastern Maar Aboriginal Corporation, available at <https://easternmaar.com.au>

Appendix 5: Gunaikurnai Land and Waters Aboriginal Corporation

Gunaikurnai Land and Waters Aboriginal Corporation⁹⁶ (GLaWAC) are the Registered Aboriginal Party for Gunaikurnai Traditional Owners.

Gunaikurnai Country includes the coastal and inland areas to the southern slopes of the Victorian Alps. Gunaikurnai Country is diverse and fertile and includes the southern slopes of Victoria's alpine ranges.

Sea Country is equally important, with a huge diversity of marine life that supports rich tourism and fishing industries.

Below are the agreements in place with GLaWAC. The responsibilities under each agreement set out the rights to Country, culture and community. Each agreement should be considered for projects within Gunaikurnai boundaries.

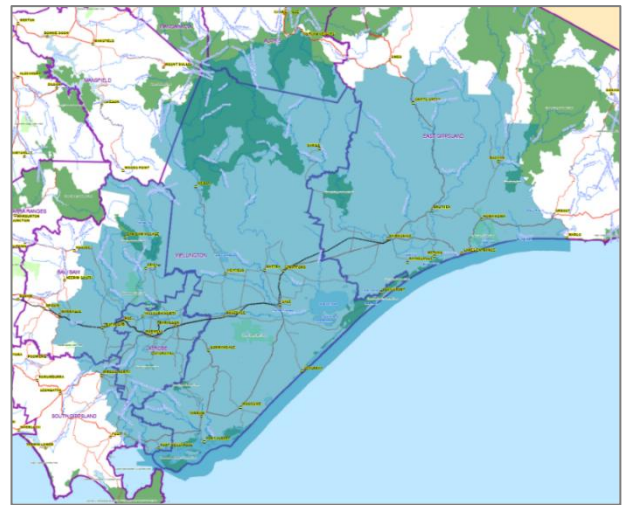


Figure 10 - Location of Gunaikurnai Country in Victoria
www.aboriginalheritagecouncil.vic.gov.au

Agreement	Status
Registered Aboriginal Party (RAP) under Victorian Aboriginal Heritage Act 2006	Yes
Federal <i>Native Title Act</i> 1993 (NT Act) determination	Native Title Determined - Native title exists in parts of the determination area
Registered Land Use Agreements under NT Act	Yes
Victorian Traditional Owner Settlement Act 2010 (TOSA Act) approved claim	Yes
Registered Indigenous Land Use Activity Agreements under TOSA Act	Yes

⁹⁶ Gunaikurnai Lands and Waters Aboriginal Corporation, available at <https://gunaikurnai.org>

Appendix 6: Gunditj Mirring Traditional Owners Aboriginal Corporation

The Gunditj Mirring Traditional Owners Aboriginal Corporation (GMTOAC)⁹⁷ are the Registered Aboriginal Party representing Gunditjmarara Traditional Owners.

GMTOAC's intention was to continue their connection to Gunditjmarara Country and to progress their rights and interests from the perspectives of social justice, Native Title, cultural heritage, and land justice.

Gunditjmarara Country reflects place, people, plants, and animals as interconnected. Country for the Gunditjmarara is the relationship between those elements; the ties that direct how they care for Country and fulfil their obligations to it. It embraces the seasons, stories and spirits of the Creation. The flowing connected cultural landscape has sacred places, proud languages, vibrant ceremonies, strong totems, ancient art, unique clan groupings, and both *law* and *lore*. Gunditjmarara spirit is in this Country, from Tungatt (the stones), entwined in Woorrowarook (forests), along Bocara (Glenelg River) to the roaring Nyamat (sea).

The table below outlines the agreements in place with Gunditj Mirring.

The responsibilities under each agreement set out rights to Country, culture and community, and each agreement should be considered for all infrastructure projects planned or undertaken within Gunditj Mirring boundaries.

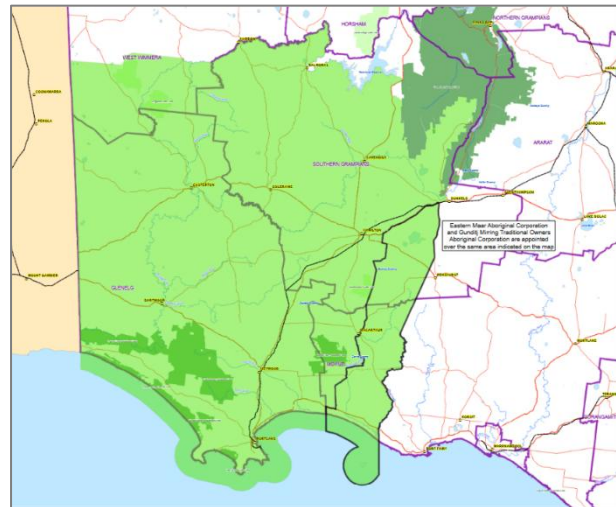


Figure 11 - Location of Gunditj Mirring Country in Victoria
www.aboriginalheritagecouncil.vic.gov.au

Agreement	Status
Registered Aboriginal Party (RAP) under Victorian <i>Aboriginal Heritage Act 2006</i>	Yes
Federal <i>Native Title Act 1993</i> (NT Act) determination	Native Title Determined - Native title exists in parts of the determination area Additional Claim: Native Title Claim Active (Not Determined)
Registered Land Use Agreements under NT Act	Yes
<i>Victorian Traditional Owner Settlement Act 2010</i> (TOSA Act) approved claim	Under negotiation
Registered Indigenous Land Use Activity Agreements under TOSA Act	N/A

⁹⁷ Gunditj Mirring Traditional Owners Aboriginal Corporation, available at <https://www.gunditjmirring.com>

Appendix 7: First People of Millewa – Mallee Aboriginal Corporation

The First People of the Millewa-Mallee Aboriginal Corporation (FPMMAC)⁹⁸ are the Registered Aboriginal Party representing Traditional Owners, comprised of family groups who identify as Latji Latji and Ngintait.

To protect, enrich and strengthen their cultural presence, FPMMAC is dedicated to:

- **Developing employment and economic opportunities on Country.** Focusing on job creation and economic growth within their traditional lands
- **Supporting cultural activities for community.** Preserving and promoting awareness of traditional cultural practices and traditions through community initiatives and involvement
- **Gathering traditional language knowledge.** Promoting and increasing the use of traditional languages within the community to protect and preserve their stories and Cultural Heritage
- **Building community.** Strengthening connections and creating reasons for community to gather and share language, stories and cultural traditions.

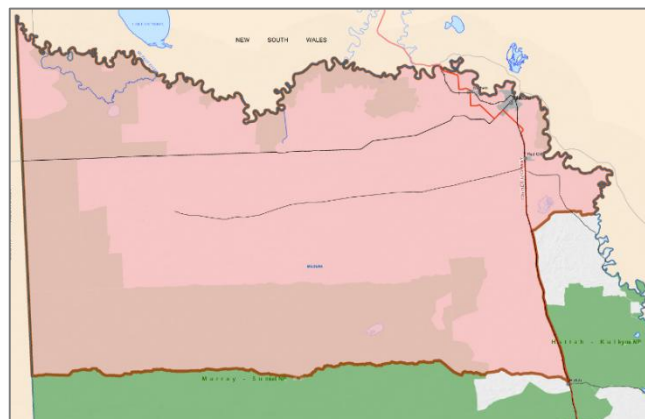


Figure 12 - Location of Millewa-Mallee in Victoria
www.aboriginalheritagecouncil.vic.gov.au

The FPMMAC Native Title claim encompasses a large area, beginning at the intersection of the Mallee Highway and the South Australia-Victoria border, extending through various landmarks and roads, and returning to the starting point.

Below are the agreements in place with FPMMAC. The responsibilities under each agreement set out the rights to Country, culture and community. Each agreement should be considered for projects within First People of Millewa-Mallee boundaries.

Agreement	Status
Registered Aboriginal Party (RAP) under Victorian Aboriginal Heritage Act 2006	Yes
Federal Native Title Act 1993 (NT Act) determination	N/A
Registered Land Use Agreements under NT Act	N/A
Victorian Traditional Owner Settlement Act 2010 (TOSA Act) approved claim	N/A
Registered Indigenous Land Use Activity Agreements under TOSA Act	N/A

⁹⁸ First People of the Millewa-Mallee Aboriginal Corporation, available at <https://fpmmac.com.au/about-fpmm>

Appendix 8: Taungurung Land and Waters Council

Taungurung Lands and Waters Council (TLaWC)⁹⁹ are the Registered Aboriginal of Taungurung peoples, Traditional Owners of lands and waters encompassing of a significant part of the central and northern regions of Victoria.

Taungurung Country extends across a range of diverse landscapes, including river valleys, rolling hills and extensive plains, Taungurung Country is characterised by its rich biodiversity, including rivers, forests, and wetlands that play a crucial role in cultural and natural heritage. The Taungurung people are composed of several clans with distinct cultural practices and histories.

With guidance from community, TLaWC are rebuilding Taungurung Nation. TLaWC has developed their Strategic Plan (2021-2025) to outline a clear direction forward.

TLaWC services aim to develop projects for the economic, social and cultural well-being of Taungurung people. The organisations provide opportunities for engagement in cultural events by facilitating camps, activities, and educational workshops for Taungurung people and minimise the barriers to participation.

TLaWC also provides services for natural resource management. The organisation liaises with governmental bodies, private landowners, developers, and other stakeholders to assist with applying protocol for best land and water management practices to ensure environmental and cultural heritage preservation.

Below are the agreements in place with TLaWC. The responsibilities under each agreement set out the rights to Country, culture and community. Each agreement should be considered for projects within Taungurung boundaries.

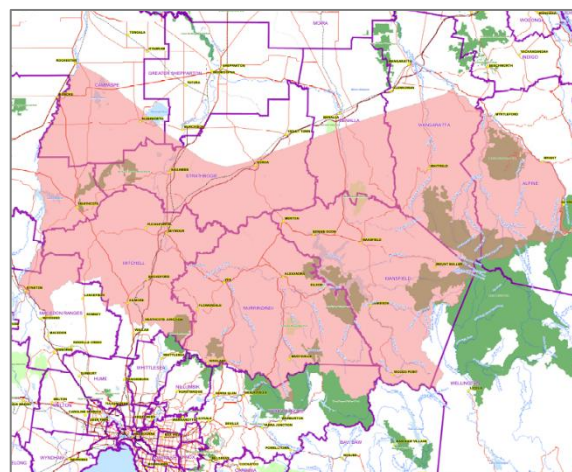


Figure 13 - Location of Taungurung Country in Victoria
www.aboriginalheritagecouncil.vic.gov.au

Agreement	Status
Registered Aboriginal Party (RAP) under Victorian Aboriginal Heritage Act 2006	Yes
Federal Native Title Act 1993 (NT Act) determination	N/A
Registered Land Use Agreements under NT Act	N/A
Victorian Traditional Owner Settlement Act 2010 (TOSA Act) approved claim	Yes
Registered Indigenous Land Use Activity Agreements under TOSA Act	Yes

⁹⁹ Taungurung Land and Waters Council, available at <https://taungurung.com.au>

Appendix 9: Wadawurrung Traditional Owners Aboriginal Corporation

Wadawurrung Traditional Owners Aboriginal Corporation (WTOAC)¹⁰⁰ are the Registered Aboriginal Party for Wadawurrung Traditional Owners. Wadawurrung organisation aims to maintain their deep connection to Wadawurrung Country, and to advocate for their rights and interests in cultural, social, cultural heritage, and land justice matters. WTOAC is committed to advancing the cultural heritage and wellbeing of Wadawurrung people through the following guiding pillars:

- Protecting and healing Wadawurrung Country
- Celebrating and preserving Wadawurrung culture and heritage
- Providing strong, collective leadership for the Wadawurrung community.

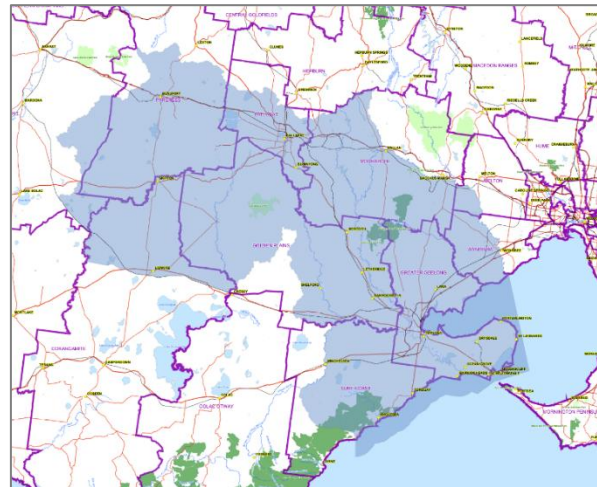


Figure 14 - Location of Wadawurrung Country in Victoria
www.aboriginalheritagecouncil.vic.gov.au

Wadawurrung Country spans from the Great Dividing Range near Ballarat to the coast between the Werribee River and Mangowak (Airey's Inlet), including areas like Djilang (Geelong), Ballaarat (Ballarat), Jan Jook (Torquay), the Bellarine Peninsula, and the Surf Coast, covering over 10,000 square kilometres.

This interconnected cultural landscape holds the imprints of Wadawurrung ancestors, with significant sites such as the Mt Rothwell and Litter River stone arrangements, basalt stone huts, ovens, Wurdi Youang and ancient water management systems.

Below are the agreements in place with WTOAC. The responsibilities under each agreement set out the rights to Country, culture and community. Each agreement should be considered for projects within Wadawurrung boundaries.

Agreement	Status
Registered Aboriginal Party (RAP) under Victorian Aboriginal Heritage Act 2006	Yes
Federal <i>Native Title Act</i> 1993 (NT Act) determination ¹⁰¹	Application in progress
Registered Land Use Agreements under NT Act	N/A
Victorian Traditional Owner Settlement Act 2010 (TOSA Act) approved claim	N/A
Registered Indigenous Land Use Activity Agreements under TOSA Act	N/A

¹⁰⁰ Wadawurrung Traditional Owners Aboriginal Corporation, available at <https://www.wadawurrung.org.au>

¹⁰¹ Ibid.

Appendix 10: Wamba Wemba Aboriginal Corporation

The Wamba Wemba Aboriginal Corporation (WWAC)¹⁰² was appointed Registered Aboriginal Party in August 2024.

Wamba Wemba Country encompasses the area around the Murray River and its tributaries, including Loddon, Avoca, and Richardson Rivers.

WWAC plays a crucial role in the protection and management of Wamba Wemba cultural heritage, ensuring that the cultural values, stories and traditions of the Wamba Wemba people are preserved and passed on to future generations as expressed in cultural lore.

WWAC also works to strengthen the Wamba Wemba community, and views the health and wellbeing of Country, and the Wamba Wemba people as intrinsically linked.

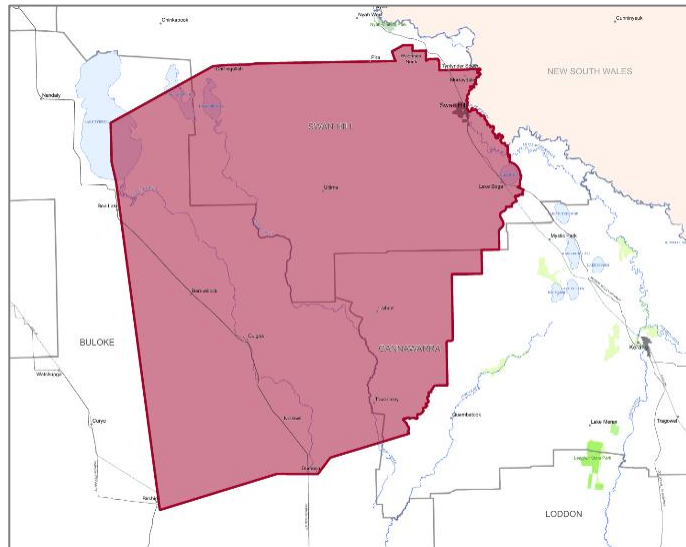


Figure 15 - Location of Wamba Wemba Country within Victoria
www.aboriginalheritagecouncil.vic.gov.au

Below are the agreements in place with WWAC. The responsibilities under each agreement set out the rights to Country, culture and community. Each agreement should be considered for projects within Wamba Wemba boundaries.

Agreement	Status
Registered Aboriginal Party (RAP) under Victorian Aboriginal Heritage Act 2006	Yes
Federal <i>Native Title Act</i> 1993 (NT Act) determination	N/A
Registered Land Use Agreements under NT Act	N/A
Victorian Traditional Owner Settlement Act 2010 (TOSA Act) approved claim	N/A
Registered Indigenous Land Use Activity Agreements under TOSA Act	N/A

¹⁰² Victoria State Government (North Central Regional Catchment Strategy), 'Barapa Barapa and Wamba Wemba' available at <https://northcentral.rcs.vic.gov.au/themes/traditional-owners/barapa-barapa-and-wamba-wemba>

Appendix 11: Wurundjeri Woi Wurrung Cultural Heritage Aboriginal Corporation

The Wurundjeri Woi Wurrung Cultural Heritage Aboriginal Corporation (WWCHAC)¹⁰³ is the Registered Aboriginal Party representing the Wurundjeri Woi Wurrung peoples, the Traditional Owners of the lands and waters encompassing the greater Melbourne area and parts of central Victoria.

WWCHAC plays a vital role in preserving the cultural heritage and upholding the rights and responsibilities of the Wurundjeri Woi Wurrung people, their key initiatives and strategies are centred around the following key principles:

Protection and management of cultural heritage

The safeguarding of cultural heritage and the preservation of historical sites. This involves not only the preservation of historical sites but also the revitalisation of cultural practices and the protection and sharing of traditional knowledge.

Support future leaders

Ensuring the gathering and continuity of Wurundjeri cultural practices and knowledge. The development and mentoring of young leaders who will carry forward the responsibilities of caring for Country and community.

Strengthening the Wurundjeri community

Building a cohesive and resilient community. This involves creating opportunities for cultural education, community gatherings, and the celebration of Wurundjeri cultural heritage and Country.¹⁰⁴

Below are the agreements in place with WWCHAC. The responsibilities under each agreement set out the rights to Country, culture and community. Each agreement should be considered for projects within Wurundjeri boundaries.

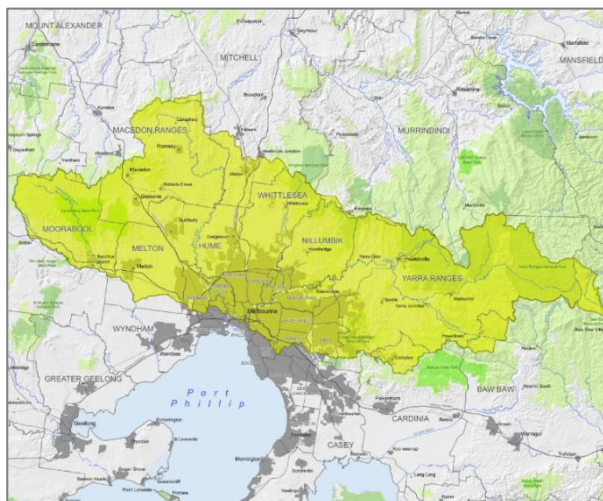


Figure 12 - Location of Wurundjeri Country within Victoria
www.aboriginalheritagecouncil.vic.gov.au

Agreement	Status
Registered Aboriginal Party (RAP) under Victorian Aboriginal Heritage Act 2006	Yes
Federal Native Title Act 1993 (NT Act) determination	N/A
Registered Land Use Agreements under NT Act	N/A
Victorian Traditional Owner Settlement Act 2010 (TOSA Act) approved claim	N/A
Registered Indigenous Land Use Activity Agreements under TOSA Act	N/A

¹⁰³ Victorian Aboriginal Heritage Council, 'Wurundjeri Woi Wurrung Cultural Heritage Aboriginal Corporation' available at <https://www.aboriginalheritagecouncil.vic.gov.au/wurundjeri-land-and-compensation-cultural-heritage-council-Aboriginal-corporation>

¹⁰⁴ Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation, available at <https://www.wurundjeri.com.au>

Appendix 12: Yorta Yorta Nation Aboriginal Corporation

Yorta Yorta Nation Aboriginal Corporation (YYNAC) are the Registered Aboriginal Party representing Yorta Yorta Traditional Owners. Yorta Yorta lands and waters are in the central Murray-Goulburn region of Victoria and southern New South Wales.¹⁰⁵

The Yorta Yorta Country holds significant cultural and environmental significance. The Yorta Yorta people continue to manage and protect living cultural heritage, ensuring that Traditional wisdom and stories are preserved and passed down to future generations.

YYNAC is committed to the following aspirations to preserve the cultural identity and heritage:

- empowering Yorta Yorta resources
- honouring Yorta Yorta community and traditions
- building the strength of community and leadership.

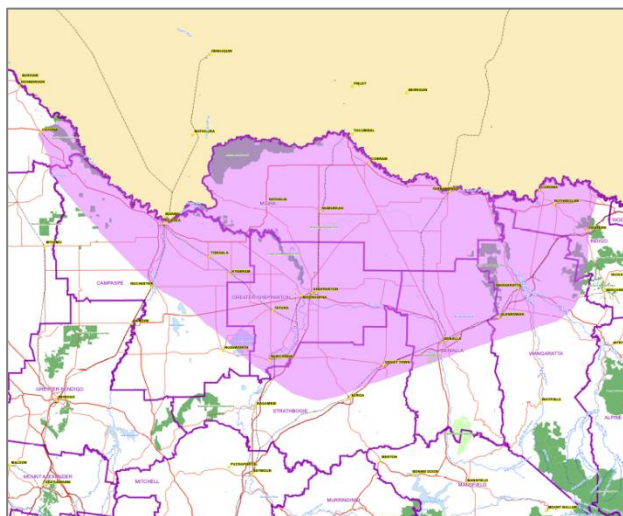


Figure 16 - Location of Yorta Yorta Country within Victoria and NSW
www.aboriginalheritagecouncil.vic.gov.au

Below are the agreements in place with YYNAC. The responsibilities under each agreement set out the rights to Country, culture and community. Each agreement should be considered for projects within Yorta Yorta boundaries.

Agreement	Status
Registered Aboriginal Party (RAP) under Victorian Aboriginal Heritage Act 2006	Yes
Federal Native Title Act 1993 (NT Act) determination	N/A
Registered Land Use Agreements under NT Act	N/A
Victorian Traditional Owner Settlement Act 2010 (TOSA Act) approved claim	N/A
Registered Indigenous Land Use Activity Agreements under TOSA Act	N/A

¹⁰⁵ Yorta Yorta Nation Aboriginal Corporation, available at <https://yynac.com.au>

Appendix 13: Guiding Principles and Consultation Directives

Further context and information on Canada's approach to self-determination is available in section 'Government of Canada: consultation and accommodation'.¹⁰⁶

Principle	Directive
The Government of Canada, in carrying out its activities, will respect the potential or established Aboriginal or Treaty rights of First Nation, Métis and Inuit people by consulting with Aboriginal groups whose rights and related interests may be adversely impacted by a proposed Government of Canada activity.	The Government will seek to identify potential adverse impacts of federal activities on potential or established Aboriginal or Treaty rights and related interests and find ways to avoid or minimize these adverse impacts. If potential adverse impacts are identified, the government must undertake consultation.
The Government of Canada will assess how proposed federal activities may adversely impact on potential or established Aboriginal or Treaty rights, Aboriginal groups and their related interests. As part of this assessment, the Government of Canada will identify when consultation should form part of their operations and ensure that consultations are initiated early in the planning, design or decision-making processes.	The Government must assess activities, policies and programs that may adversely impact potential or established Aboriginal or Treaty rights and related interests. Based on this review, federal officials will ensure that appropriate consultation activities with Aboriginal groups are carried out. Key departments involved in Aboriginal consultation should develop a consultation approach that is responsive to the needs of the department or agency and reflects its operational realities.
Early consultations will assist the Government of Canada in seeking to identify and address Aboriginal concerns, avoid or minimise any adverse impacts on potential or established Aboriginal or Treaty rights because of a federal activity and assess and implement mechanisms that seek to address their related interests, where appropriate.	The Government must be able to demonstrate in decision making processes that Aboriginal concerns have been addressed or incorporated into the planning of proposed federal activities. The government should therefore engage with all relevant Aboriginal groups in early discussions.
Consultation and accommodation will be carried out in a manner that seeks to balance Aboriginal interests with other societal interests, relationships and positive outcomes for all partners. A meaningful consultation process is one which is: - carried out in a timely, efficient and responsive manner. - transparent and predictable. - accessible, reasonable, flexible and fair.	The Government of Canada and its officials are required to carry out a fair and reasonable process for consultations. A meaningful consultation process is characterized by good faith and an attempt by parties to understand each other's concerns and move to address them. Federal officials can begin a consultation process by applying the Updated Guidelines in concert with any tools, policies or guidelines developed by their department or agency. Federal officials, during a consultation process, must reasonably ensure that Aboriginal groups have an opportunity to express their interests and concerns, and that they are seriously considered and, wherever possible, clearly reflected in a proposed activity. Aboriginal groups also have a reciprocal responsibility to participate in consultation processes.

¹⁰⁶ Government of Canada, 'Updated guidelines for federal officials to fulfill the duty to consult' March 2011 available at https://www.rcaanc-cirnac.gc.ca/eng/1100100014664/1609421824729#chp1_2

- founded in the principles of good faith, respect and reciprocal responsibility. - respectful of the uniqueness of First Nation, Métis and Inuit communities; and, - includes accommodation (e.g. changing of timelines, project parameters), where appropriate	- The Government of Canada will conduct consultation activities, in a timely and efficient manner, including, when appropriate, the development of a consultation plan and the provision of relevant information to Aboriginal groups, to inform and support decision-making processes. Federal officials must seek to develop processes that move beyond a project-by-project approach to consultation and move towards one that facilitates the inclusion of Aboriginal perspectives, timely decision making, integrates with and strengthens regulatory processes and promotes economic benefits for all Canadians.
The Government of Canada recognises that Aboriginal consultation is a Crown responsibility that flows from Government activities. The Government of Canada will ensure that a lead federal department or agency is identified and made accountable for any consultation processes that may be carried out for federal government activities. Should a consultation process move a department or agency beyond their mandate, mechanisms will be in place to address additional issues raised in a consultation process.	To manage Aboriginal consultation and accommodation, the Government of Canada will facilitate efficient and effective cooperation among and within federal departments and agencies via senior federal official governance structures which will assign a lead in a consultation process where the lead is not clear. When consultation and accommodation activities move a department or agency beyond their identified mandate, memorandum of understanding and other processes will be developed to coordinate other departments and agencies and processes whose function, and expertise can support an effective consultation process.
The Government of Canada will use and rely on, where appropriate, existing consultation mechanisms, processes and expertise, such as environmental assessment and regulatory approval processes in which Aboriginal consultation will be integrated, to coordinate decision making and will assess if additional consultation activities may be necessary.	Federal officials must align consultation processes to existing regulatory or legislative processes, to the extent possible. Officials should, however, consider that: - issues that arise during the consultation may be beyond the mandate of the existing process therefore additional consultation activities may need to occur. - the existing process must allow for appropriate, meaningful consultation; and - consultation may be required throughout the lifecycle of an activity; thus, they must ensure that any existing process is appropriate for all stages of the activity.
The Government of Canada will coordinate consultation and accommodation activities with its partners (e.g. Aboriginal groups, provinces, territories and industry). While the Crown cannot delegate its obligation, the Government of Canada will, where appropriate, use consultation processes and accommodation measures carried out by its partners to assist it in meeting its commitments and responsibilities.	The Government of Canada and its officials can rely on its partners, such as Aboriginal groups, industry and provinces and territories, to carry out procedural aspects of a consultation process (e.g. information sessions or consultations with Aboriginal groups, mitigation measures and other forms of accommodation, etc.). The information collected during these processes can be used by the Government of Canada and its officials in meeting its consultation obligations.

The Government of Canada will carry out its activities and related consultation processes in accordance with its commitments and processes involving Aboriginal groups. The Government of Canada will seek out opportunities to develop and maintain a meaningful dialogue with Aboriginal groups in support of building relationships with its partners.

The Government of Canada, in carrying out consultation processes, must act in accordance with its existing commitments and processes (e.g. Treaties, Treaty land entitlement agreements, settlements and consultation agreements). Federal officials need to inform themselves and be aware of Canada's policy approach and legal commitments to Aboriginal groups and how these commitments and processes may be aligned with department and agency consultation processes. Federal officials should also seek to develop positive, long-term relationships with Aboriginal groups. These positive relationships and the dialogue that results from them will assist the federal government in moving forward on future activities.

Appendix 14: United Nations Declaration on the Rights of Indigenous Peoples

Adopted by the General Assembly in 2007 and endorsed by Australia in 2009, the United Nations Declaration on the Rights of Indigenous Peoples (the Declaration, or UNDRIP) is the most comprehensive tool on the rights of Indigenous Peoples. The Declaration is significant as it was developed through a democratic and open process of negotiation between Indigenous Peoples and governments to protect Indigenous rights and ensure survival, dignity and wellbeing.

Self-determination is central to the Declaration. It ensures that Indigenous Peoples have control over economic, social and cultural development.

'Indigenous Peoples have the right of self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development'. Article 3.

Importantly, recognising self-determination contributes to reconciliation efforts, redressing historical injustices and fostering more equitable partnerships between Indigenous Peoples and governments. Upholding this principle both international human rights and establishes a framework that values the agency, consent, and unique contributions of Indigenous communities in the negotiation process.

Articles 10, 11, 19, 28, 29 and 32 outline how free, prior and informed consent (FPIC) is embedded within the universal right to self-determination. FPIC is the principle of respecting the rights and autonomy of Indigenous communities in decision-making processes that affect them and that will affect Country, culture and communities. It safeguards against exploitation, protects cultural integrity, and contributes to building trust between Indigenous communities and governments. Ultimately, FPIC establishes a more ethical and equitable foundation for negotiations, recognising the dignity and rights of Indigenous Peoples.

- Articles 18, 20, 23 underscore the significance of Indigenous Peoples' participation in decision-making and of FPIC. These three Articles recognise the right of Indigenous communities to safeguard cultural, political, and social interests and protect cultural heritage and intellectual property rights. The articles collectively highlight the importance of respecting and upholding the rights and autonomy of Indigenous Peoples in various spheres of life and governance.
- Several articles recognise the importance of cultural expression, Country, resources and cultural continuity.
- Article 5 emphasises the importance of maintaining and strengthening the spiritual relationships that Indigenous Peoples have with their lands, territories, waters, and resources. It highlights the significance of customs, traditions, and legal systems in governing these resources. This article underscores the rights of Indigenous Peoples to uphold and practice their cultural heritage and spiritual beliefs within their territories.
- Article 11 stresses the importance of safeguarding Indigenous cultures and traditions.
- Article 25 emphasises rights to maintain and strengthen distinct institutions.
- Article 36 addresses concerns forced assimilation, highlighting the need to respect Indigenous autonomy
- Article 29 recognises the right to control and protect intellectual property.
- Article 31 underscores the preservation of cultural heritage.
- Article 32 affirms the right of Indigenous Peoples to determine their own development priorities.

Together, these articles contribute to the broader goal of acknowledging and respecting the rights, identity and sustainable development of Indigenous communities. They recognise the importance of

cultural identity, connection and continuity. Australia has signed several international agreements and treaties, including:

- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
- Convention on the Rights of the Child (CROC)
- Convention on the Rights of Persons with Disability (DisCo).

Further information and context on UNDRIP regarding self-determination is available in the section entitled 'What is self-determination?'¹⁰⁷

¹⁰⁷ United Nations Human Rights: Office of the High Commissioner, *UN declaration on the rights of Indigenous peoples*, available at <https://www.ohchr.org/en/indigenous-peoples/un-declaration-rights-indigenous-peoples>

Appendix 15: Victorian Self-Determination Reform Framework

With reference to the *Victorian Aboriginal Affairs Framework 2018-2023*.

The Victorian Self Determination Reform Framework guides public service action to enable self-determination. It aligns with the Government's commitments in the *Victorian Aboriginal Affairs Framework 2018-2023*.

The Victorian Self Determination Reform Framework is an architecture for government departments to report annually on progress towards transforming government systems and structures to enable self-determination.

Eleven self-determination guiding principles were developed under the Victorian Self Determination Reform Framework following extensive community engagement with Victorian Aboriginal communities:

- human rights
- cultural integrity
- commitment
- Aboriginal expertise
- partnership
- decision-making
- empowerment
- cultural safety
- investment
- equity
- accountability.

The guiding principles set the minimum standards for all existing and future work with Victorian Aboriginal communities. They should guide government work to progress self-determination going forward.¹⁰⁸

¹⁰⁸ First Peoples – State Relations, 'Self-Determination Reform Framework' available at <https://www.firstpeoplesrelations.vic.gov.au/self-determination-reform-framework>

Appendix 16: Aboriginal Heritage Act 2006

With reference to the *Native Title Act 1993* and the *Traditional Owner Settlement Act 2010*.

The *Victorian Aboriginal Heritage Act 2006*¹⁰⁹ is pivotal in safeguarding the cultural heritage of Aboriginal communities in Victoria. In conjunction with the *Native Title Act 1993* and the *Traditional Owner Settlement Act 2010*, it forms a comprehensive legal framework recognising and protecting the rights of Traditional Owners. The *Aboriginal Heritage Act 2006* is particularly significant as it establishes mechanisms for the identification, preservation, and management of Aboriginal cultural heritage sites. This reinforces the cultural connection between Indigenous communities and their lands.

Section 1, a-d

The main purposes of this Act are:

- a) to provide for the protection of Aboriginal cultural heritage and Aboriginal intangible heritage in Victoria.
- b) to empower Traditional Owners as protectors of their cultural heritage on behalf of Aboriginal people and all other peoples.
- c) to strengthen the ongoing right to maintain the distinctive spiritual, cultural, material and economic relationship of Traditional Owners with the land and waters and other resources with which they have a connection under traditional laws and customs.
- d) to promote respect for Aboriginal cultural heritage, contributing to its protection as part of the common heritage of all peoples and to the sustainable development and management of land and of the environment.

Alongside the *Native Title Act* and the *Traditional Owner Settlement Act* (which address broader land rights and Native Title issues) the *Victorian Aboriginal Heritage Act* ensures a comprehensive approach to recognising and respecting the rights of Traditional Owners.

Together, these legislative instruments contribute to a legal environment that acknowledges the cultural significance of the land to Aboriginal communities, promoting reconciliation and supporting the preservation of cultural heritage.

¹⁰⁹ *Aboriginal Heritage Act 2006* (Vic), available at <https://www.legislation.vic.gov.au/in-force/acts/Aboriginal-heritage-act-2006/027>

Appendix 17: *Charter of Human Rights and Responsibilities Act 2006*

The Victorian *Charter of Human Rights and Responsibilities Act 2006*¹¹⁰ is a foundational document in Victoria. Its overarching purpose is recognising, protecting, and promoting fundamental human rights. It guides public authorities to behave consistently with these rights, fostering a culture of respect and dignity.

The Charter explicitly acknowledges and protects the human rights of all individuals, including Aboriginal Peoples, ensuring that their inherent dignity and freedoms are respected. This includes recognising and safeguarding cultural rights, land rights, and the right to self-determination. The Charter seeks to empower and protect the rights of Aboriginal peoples within the legal and administrative structures of Victoria, fostering a more equitable society.

Section 19 Cultural rights

- (1) All persons with a particular cultural, religious, racial or linguistic background must not be denied the right, in community with other persons of that background, to enjoy their culture, to declare and practise their religion and to use their language.
- (2) Aboriginal persons hold distinct cultural rights and must not be denied the right, with other members of their community:
 - (a) to enjoy their identity and culture
 - (b) to maintain and use their language
 - (c) to maintain their kinship ties
 - (d) to maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs.

Broader context on the Charter and Act is in the section entitled 'Review of the current Victorian context'.

¹¹⁰ *Charter of Human Rights and Responsibilities Act 2006* (Vic), available at <https://www.legislation.vic.gov.au/in-force/acts/charter-human-rights-and-responsibilities-act-2006/015>

Appendix 18: International Council of Design: The International Indigenous Design Charter

Developed by a group of international designers and practitioners, including Indigenous representatives, the *International Design Charter 2018*¹¹¹ (the Charter) is intended to guide best practice for both Indigenous and non-Indigenous designers working with Indigenous knowledge on commercial design projects. It aims to ensure a wide range of project types deliver informed, authentic and respectful outcomes.

The Charter says it “should not be viewed as a ‘how-to’ guide for creating Indigenous designs, but instead a guide to develop open and respectful cross-cultural engagement and exchange.” It is aimed at professions including communication design, digital design, environmental design, architecture and the built environment, landscape design, fashion design, advertising and strategic design practice.

The development of the Charter was led by Deakin University and authored by a ‘multidisciplinary’ team, including Indigenous designers:

- Dr. Russell Kennedy and Dr. Meghan Kelly from Deakin University
- Mr. Jefa Greenaway (Wailwan, Gamillaraay) from Indigenous Architecture and Design Victoria (IADV), Greenaway Architects and the University of Melbourne
- Professor Brian Martin (Muruwari, Bundjalung, Gamillaraay).

This team, along with a range of international contributors, researched and engaged with communities around the world. Through a DFAT International Cultural Diplomacy Grant, Deakin University held discussions and workshops in Greenland, Denmark and Sweden, including with Indigenous designers and artists, with the University of Greenland, and the Copenhagen School of Design and Technology.

Seven Indigenous Australian artists visited Greenland and met Greenlandic Inuit designers and artists.

The Charter defines ten best practice protocols:

- Indigenous-led
- Self-determined
- Community specific
- Deep listening
- Indigenous knowledge
- Shared knowledge (collaboration, co-creation, procurement)
- Shared benefits
- Impact of design
- Legal and moral
- Charter implementation

It also purports to reinforce the rights of Indigenous Peoples to achieve cultural self-determination as recognised by the United Nations.

¹¹¹ Indigenous Design Charters, ‘Australian Indigenous Design Charter’ available at <https://indigenousdesigncharter.com.au/australian-indigenous-design-charter>

