



**FNLRS**

FIRST NATIONS  
LEGAL & RESEARCH  
SERVICES

FORMAL RECOGNITION  
AS TRADITIONAL  
OWNERS OF COUNTRY  
IN VICTORIA

# Glossary of Terms

### **Aboriginal Ancestral Remains**

The whole or part of the body of an Aboriginal person from the past, often referred to as Ancestors.

### **Aboriginal Representative Body**

A formally convened group of Aboriginal and Torres Strait Islander people whose members represent larger family, nation or clan communities.

### **Aboriginal Title**

A grant of freehold title of the kind described in section 19 of the *Traditional Owner Settlement Act 2010* (Vic).

### **Commonwealth Government**

The national government of Australia, a federal parliamentary constitutional monarchy.

The Commonwealth Government has a role in overseeing the operation of the native title system and can also be a party to proceedings of native title determination applications.

### **Compensation Claim**

An application made by native title holders seeking compensation for loss or impairment of their native title

### **Compliance and Enforcement Activities**

Activities undertaken in regulating the *Aboriginal Heritage Act 2006* (Vic).

### **Country**

Term often used by Aboriginal and Torres Strait Islander people to describe the lands and waters to which they are connected. The term contains complex ideas about law, place, custom, language, spiritual belief, cultural practice, material sustenance, family and identity.

### **Crown Land and Waters**

Land and waters owned by the government including local parks and reserves and land for major projects such as roads and railways. Also referred to as public land.

### **Cultural Heritage**

The knowledge and lore, practices and people, objects and places that are valued, culturally meaningful and connected to identity and Country.

### **Cultural Heritage Agreements**

A voluntary agreement between two or more parties, including a RAP, relating to the management or protection of Aboriginal cultural heritage.

### **Cultural Heritage Assessment**

A detailed description and statement of significance of the Aboriginal cultural heritage in an Aboriginal Cultural Heritage Land Management Agreement area.

### **Cultural Heritage Management Plan**

A formal assessment of the potential impact of a proposed activity on Aboriginal cultural heritage, detailing the measures to be taken before, during and after an activity to manage and protect Aboriginal cultural heritage in the area.

### **Cultural Heritage Permit**

A Cultural Heritage Permit is required if you plan to:

- disturb or excavate land to uncover or discover Aboriginal Cultural Heritage
- rehabilitate land at an Aboriginal place
- carry out research on an Aboriginal place
- carry out an activity that will, or is likely to, harm Aboriginal cultural heritage
- sell an Aboriginal object (where it was not made for the purpose of sale)
- remove an Aboriginal cultural heritage object from Victoria.

### **Decision Making Structures and Processes**

Structures and processes established and designed by the community themselves, for the purposes of decision making. These may often require individuals to consult with and gain consensus from other members of the community before being able to agree to a view or recommendations about community issues.

### **Department of Premier and Cabinet**

Victorian Government Department that leads whole-of-government policy and performance, and supports the Premier, Deputy Premier, the Ministers for Aboriginal Affairs, Equality, Multicultural Affairs, Industrial Relations, Veterans, Youth and Women, as well as the Cabinet.

### **Native Title Determination**

A decision by the Federal Court of Australia about whether native title exists, and if so who holds it, over an area of land.

### **Economic Development**

Economic decisions and actions that improve areas such as employment, health, housing, education and other societal structures.

### **Extinguishment of Native Title**

Native title can be extinguished, wholly or partially, by creation of an inconsistent right or interest, such as grant of a lease or other title to land, or by an act of parliament.

### **Federal Court of Australia**

Decides disputes on almost all civil matters arising under Australian federal law and some summary and indictable criminal matters. This Court has power to hear, determine and manage native title determination applications.

### **First Peoples – State Relations**

A group within the Victorian Government Department of Premier and Cabinet, responsible for work with First Peoples in the areas of cultural rights, self-determination, Treaty and Truth. (Formerly Aboriginal Victoria and Aboriginal Affairs Victoria).

### **First Peoples' Assembly of Victoria**

The independent and democratically elected body to represent Traditional Owners of Country and Aboriginal and Torres Strait Islander peoples in Victoria.

### **First Respondent (also Defendant)**

A party in a legal case. States and territories are typically the first respondents to a native title determination application.

### **Form 1**

An application under the *Native Title Act 1993* (Cth) for a determination of native title in relation to an area of land and/or water.

### **Formal Recognition**

Legal recognition of Traditional Owners to exercise their rights and responsibilities as recognised Traditional Owners of Country.

### **Freehold Parcels (also Freehold Title / Fee Simple / Freehold Property Title)**

Land ownership that allows the landowner to own land in perpetuity and to deal with the land as they wish, subject to compliance with applicable laws. Native title cannot be claimed on freehold land, as freehold title extinguishes native title. However, protection is required on freehold land under State and federal legislation for any sacred sites that exist on this land.

### **Funding Agreement**

One of the agreements that comprise the Recognition and Settlement Agreement reached between the State of Victoria and a Traditional Owner Group under the *Traditional Owner Settlement Act 2010* (Vic).

### **Future Act Regime**

The process that must be followed when a proposed action or development (such as the grant of a lease or licence or construction of a public work) affects native title under the *Native Title Act 1993* (Cth). This involves affording procedural rights to native title holders, and proponents of future acts following established procedures so that the future act can be validly done.

### **Heritage Advisors**

Either an individual, or a firm or practice conducting Aboriginal Cultural Heritage work.

### **Indigenous Land & Sea Corporation**

A corporate Commonwealth entity established under the *Aboriginal and Torres Strait Islander Act 2005* (ATSIA Act) to provide for the contemporary and future land needs of Indigenous Australians, particularly those unlikely to benefit from Native Title or Land Rights. It assists Indigenous Australians to acquire and manage land and water-related rights through funds held in trust.

### **Indigenous Land Use Agreement (ILUA)**

A voluntary agreement between native title parties and other people or bodies about the use and management of areas of land and/or waters, made between one or more native title groups and others (such as, for example, miners, pastoralists or governments).

### **Intangible Heritage**

Cultural heritage, including traditions, songs, art, dance, songlines, communicated from generation to generation and providing communities and individuals with a sense of identity and continuity.

### **Joint Management**

A legal arrangement between the State and Traditional Owners in the management of public land.

### **Land Agreement & Land Management Agreement**

An agreement between a native title group and others about the use and management of land and waters.

### **Land Justice Unit**

Previously known as the Native Title Unit, this unit sits within the Victorian Government's Department of Justice and Community Safety and is the lead agency with responsibility for native title matters, including negotiations under the *Traditional Owner Settlement Act 2010* (Vic).

### **Land Use Activity Agreement**

The equivalent of the future act regime under the Native Title Act 1993 (Cth), this Agreement affords procedural rights to Traditional Owners and establishes processes for Traditional Owner corporations to be involved in decision making about land use activities on public land, under the *Traditional Owner Settlement Act 2010* (Vic).

### **Mabo Decision**

Decision handed down by the High Court of Australia on 3 June 1992 that overturned the concept of 'terra nullius' (land belonging to no one) as declared by James Cook in 1770. This decision established the principle of native title rights in Australian common law and led to the development of the *Native Title Act 1993* (Cth).

### **Native Title**

Recognition in Australian law of Aboriginal and Torres Strait Islander people's rights and interests in land and waters.

### **National Native Title Register**

A repository of native title determinations made in Australia.

### **National Native Title Tribunal**

An independent statutory body established under the *Native Title Act 1993* (Cth) to assist people to resolve native title issues, by:

- mediating between the parties to native title applications at the direction of the Federal Court
- acting as an arbitrator in situations where the people cannot reach agreement about certain future acts, such as mining projects
- helping people to negotiate Indigenous land use agreements and determining any valid objection to the registration of an Alternative Procedure Agreement
- assessing for registration native title applications and ILUA.

### **Native Title Application**

An application for a determination of native title, a revised determination of native title or a compensation application under s 61 of the *Native Title Act 1993* (Cth).

### **Native Title Claim**

A claim made for the legal recognition of native title rights and interests.

### **Native Title Claimants**

A group of Traditional Owners who assert native title rights and interests in an area of land and/or water, according to their traditional laws and customs.

### **Native Title Compensation**

Compensation awarded for the loss, diminution, impairment or other effect of an act on native title rights and interests over an area, made by a registered native title body corporate for the area, or a group of people who claim to be entitled to compensation.

### **Native Title Holder**

The person or persons who hold the native title, or, if a Prescribed Body Corporate (PBC) is registered on the National Native Title Register as holding the native title rights and interests on trust, then the PBC is the native title holder.

### **Natural Resource Agreement**

An agreement that sets out how Traditional Owners can carry out agreed activities, including to take, use and manage natural resources on their land and waters, developed under the *Traditional Owner Settlement Act 2010* (Vic).

### **Negotiating Team**

Nominated members of a Traditional Owner group who work together to negotiate an agreement under the *Traditional Owner Settlement Act 2010* (Cth) with the State of Victoria.

### **Prescribed Body Corporate (PBC)**

A corporation that is set up by native title holders to hold and manage native title on their behalf.

### **Procedural Rights**

The right to be notified, to object, be consulted, to comment or the right to negotiate as part of the procedures to be followed under the future acts regime in the *Native Title Act 1993* (Cth).

### **Protection Declarations**

A declaration made by the Victorian Minister for Aboriginal Affairs to preserve important Aboriginal cultural heritage places as 'protected areas'.

### **Recognition and Settlement Agreement**

An agreement between the State and a Traditional Owner group that provides formal recognition of their rights and interests in land and waters under the *Traditional Owner Settlement Act 2010* (Cth).

### **Registered Native Title Body Corporate**

See Prescribed Body Corporate (PBC).

### **Right to Negotiate**

A procedural right afforded to Traditional Owners under the future acts regime of the *Native Title Act 1993* (Cth) applicable to certain activities.

### **Secret and/or Sacred Objects**

Objects that are secret or sacred according to Aboriginal tradition and defined by their Traditional Owners.

### **Self-Determination Fund**

Administered by the First Peoples' Assembly of Victoria, the fund will enable Traditional Owners to enter into Treaty negotiations with the Government and also empower First People communities to build wealth and greater capacity for future generations.

### **Alternative Settlement**

Indigenous land interests can be recognised through other means than under the *Native Title Act 1993* (Cth) (NTA) through alternative settlements. Alternative settlements are negotiated out-of-court agreements that can be achieved in many different ways, including through state based legislation or voluntary agreements made between individuals/corporations and Traditional Owners.

### **Sponsor**

The owner of land requiring a Cultural Heritage Management Plan under the *Aboriginal Heritage Act 2006*.

### **The State**

State or territory government.

### **Timber Creek decision**

The decision of the High Court of Australia handed down on 13 March 2019 that established a precedent for how to assess native title compensation claims. It includes principles of assessing compensation payable for economic loss and cultural loss.

### **Threshold Guidelines**

These guidelines provide information about certain criteria that Traditional Owner groups need to address, in order to pursue a Recognition and Settlement Agreement with the State of Victoria under the *Traditional Owner Settlement Act 2010*.

### **Threshold Process**

A process established by the State that Traditional Owners undertake in order to participate in negotiations under the *Traditional Owner Settlement Act 2010* (Vic).

### **Threshold Statement**

An application submitted by a Traditional Owner group intending to enter negotiations under the *Traditional Owner Settlement Act 2010* (Vic), to the State of Victoria. There are two parts to a threshold statement application.

### **Traditional Owner Corporation**

A Traditional Owner organisation registered with Office of the Registrar of Indigenous Corporations (ORIC) under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act).

### **Traditional Owner Group Entity**

A Traditional Owner Corporation established to represent Traditional Owners in negotiations under the *Traditional Owner Settlement Act 2010* (Vic) and ultimately hold rights and interests on behalf of its membership of Traditional Owners.

### **Traditional Owner Nation-building Support Package**

A Victorian government program to support Traditional Owners across Victoria to engage in nation-building and prepare for formal recognition outcomes.

### **Traditional Owners**

Aboriginal and Torres Strait Islander people with rights and interests over their country.

### **Treaty**

A formal, legally binding agreement between two or more international states. In the context of a treaty between First Peoples and the State of Victoria, this involves negotiating the transfer of power and resources for First Peoples to control matters which impact their lives.

### **Treaty Authority**

Entity established under the Treaty Authority Agreement to act as an independent umpire in Victorian Treaty negotiations between the State and First Peoples.

### **Treaty Negotiation Framework**

In Victorian Treaty negotiations, the framework sets out the rules and process for treaty negotiations.

### **Victorian Aboriginal Heritage Council**

The Aboriginal Heritage Council is made up of 11 Victorian Traditional Owners appointed by the Victorian Government Minister for Aboriginal Affairs and was created in May 2007 under the *Aboriginal Heritage Act 2006*. Its central functions are to appoint Registered Aboriginal Parties to manage and protect Cultural Heritage on their country, and the custody of Ancestral Remains and Secret and/or Sacred Objects not with the Traditional Owners.

### **Victorian Government**

The state-level government authority for Victoria, Australia.

### **Yoorrook Justice Commission**

The first formal truth-telling process into injustices experienced by First Peoples in Victoria, documenting and making recommendations on past and ongoing injustices experienced by Traditional Owners and First Peoples in Victoria in all areas of life since colonisation.

## MORE INFORMATION

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The purpose of this Glossary of Terms is to assist in reading the Formal Recognition Information Sheets, providing an overview of the three types of formal recognition available to Traditional Owners of Country in Victoria. They are intended to provide an overview of what you can expect the process to involve, understanding that the process will be different for each group. This Glossary of Terms is not legal advice and should not be relied upon as legal advice.

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