



FNLRS

FIRST NATIONS
LEGAL & RESEARCH
SERVICES

FORMAL RECOGNITION
AS TRADITIONAL
OWNERS OF COUNTRY
IN VICTORIA

What is the role of
research in formal
recognition processes?

WHAT IS THE ROLE OF RESEARCH IN FORMAL RECOGNITION PROCESSES?

First Nations Legal & Research Services (**First Nations**) works with Victorian Traditional Owners on native title and Traditional Owner settlement processes.

Anthropologists (also sometime called researchers) working for First Nations play an important role in this process by conducting research that supports applications. Our primary function is to conduct research which may be used to describe a Traditional Owner group's connection to Country within the requirements of the *Native Title Act 1993* (Cth) (the **Native Title Act**).

First Nations' anthropologists also conduct research under the *Traditional Owner Settlement Act 2010* (Vic) (**Settlement Act**).

While research conducted under the Native Title and Settlement Acts are substantively similar, the resulting reports are structured differently according to which Act they are addressing.

First Nations' anthropologists work in teams with First Nations community liaison staff and lawyers.



WHAT ARE THE RESEARCH PROCESSES?

First Nations' anthropologists explore the ethno-historical record and use contemporary fieldwork to describe how people assert their rights and interests to and on their Country. We also conduct interviews and spend time with Traditional Owner groups to understand how people express their contemporary cultural identities through their practices both on and away from Country and within their family networks. These research processes are described below.

Ethno-historical research involves a careful examination of records and materials documenting Aboriginal society and connection to Country. Anthropologists use a wide range of primary and secondary source material such as:

- historical documents produced by early settlers, explorers, squatters, pastoralists, missionaries and amateur anthropologists;
- state records such as, births, deaths and marriage certificates and various records of rations and other supplies provided to Aboriginal people;
- manuscripts, maps, photographs and other materials which shed light on the lives of Aboriginal people before and during the start of colonisation.

This document-based research, used in conjunction with contemporary fieldwork, allows anthropologists to gain a deeper understanding of past events and the nature of a group's social and cultural organisation before the start of colonisation. This enables anthropologists to contextualise the group's association to Country.

It is important to note that the ethno-historic record remains incomplete and patchy, and that it often contains materials that are contradictory. It was also, in many instances, written by Europeans who were actively engaged in the colonisation of Aboriginal Country and the disenfranchisement of Aboriginal people. Anthropologists take this into account when doing research and it is part of the reason why contemporary fieldwork is so important.

Contemporary fieldwork-based research involves:

- speaking with Traditional Owners about their culture, families, and relationship to country;
- obtaining consent from Traditional Owners to use their information for the purposes of the formal recognition research being undertaken;
- gathering oral histories from Traditional Owners about their connection to country;
- collecting genealogical information linking contemporary people and families to their apical ancestors;
- visiting significant sites on country with Traditional Owners in order to build an understanding of how people are connected to Country.

Some of our research functions have also been referred to as 'Traditional Owner Mapping'.



WHAT SHOULD BE EXPECTED IN AN INTERVIEW?

Interviews with a researcher are usually informal and follow a semi-structured format. Questions and topics that are discussed during an interview are based on the requirements of the Native Title Act and the Settlement Act, however, the interview is by no means limited to only those selected questions. In fact, researchers will encourage you to feel comfortable to discuss anything you feel is relevant and will support the research being undertaken. This can be information such as, but not limited to:

- family histories;
- genealogical information;
- cultural and traditional knowledge;
- creation stories;
- memories and stories of growing up on Country;
- understandings of Country boundaries (the extent of your Country), and
- contemporary and historical social data.

An interview can take as little as one hour to as long as three hours or more depending on the amount of people involved in the interview and the extent of information that is shared during the session. Interviews can sometimes have defined start and finish times and sometimes (such as during a fieldtrip) they can be more sporadic. During an interview you are welcome to bring photos and other supporting documentation that you believe may assist the researcher to better understand your family's history and connection to a place.

HOW LONG WILL THE RESEARCH TAKE?

The duration and nature of the research process is dependent on several factors, such as:

- the depth and extent of research required for a claim;
- the formal recognition pathway chosen by the Traditional Owner group;
- available funding for research;
- First nations' capacity to conduct fieldwork; and
- Traditional Owner engagement in the research process.

Given these factors, it is important to appreciate that the research process is unique for each claim. Typically, however, the research process is most involved for Traditional Owners at the beginning of the process, before the group lodges a native title claim or a threshold statement to the Victorian Government. The later part of the Native Title Act and the Settlement Act processes are generally more legalistic and less research intensive.

RESEARCH OUTCOMES

During the process of claim research, the claim group will have research findings presented to them and there will be numerous opportunities for community feedback and further discussion. At this point, further research may be required to ensure Traditional Owner voices are accurately captured by formal recognition research.

When the claim research is in the final stages, the anthropologist will prepare a report, which is often called a 'Connection report'. This report will be used by the claim lawyers and the claim group to advance formal recognition of the claim groups rights and interests in both formal Court settings and mediation processes (such as those between Indigenous and non-Indigenous respondents).

LIMITS OF RESEARCH

Research is only one element in the formal recognition process, and it requires consistent engagement and effort from Traditional Owners to be beneficial to the Native Title Act and the Settlement Act processes of formal recognition. Research is an important resource for Traditional Owner groups and their lawyers but it cannot uncover things that are not known or take the place of Traditional Owner voices in resolving disputes.

WHAT HAPPENS TO RESEARCH DURING AND AFTER A CLAIM IS FINALISED?

Once a community member or Traditional Owner has provided First Nations' with research information, via an interview or other means such as a written documents, photographs, or genealogies (family trees), they can then request a copy of this material. Similarly, when a claim is completed, and a final determination has been made under either the Native Title Act or the Settlement Act, the Traditional Owner Corporation formed by the group/s can request a return of the research materials gathered during the course of the claim.

MORE INFORMATION

To view First Nations Legal and Research Services policies regarding the research process, such as our Informed Consent documents and Privacy Policies, please visit

First Nations Legal & Research Services
www.fnlrs.com.au

To find out more about or become involved in research occurring in one of the areas without formal recognition in Victoria, please visit www.fnlrs.com.au/research-services

First Nations Legal & Research Services
606/425 Smith Street,
Fitzroy VIC 3065
(03) 9321 5300
info@fnlrs.com.au
www.fnlrs.com.au

A **Glossary of Terms** used in this document can be found at www.fnlrs.com.au/formal-recognition-resources

The purpose of this information sheet is to provide an overview of the three types of formal recognition available to Traditional Owners of Country in Victoria. It is 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 information sheet is not legal advice and should not be relied upon as legal advice.

October 2022