

## Media Statement

Tuesday 8 August 2023

### Let's not pull the Traditional Owner Settlement Act into the Referendum debate

Victoria's Settlement Act was created in response to the unique experiences and connection to Country of Victorian Traditional Owners. It is a fundamental recognition of some of the rights and responsibilities of Traditional Owners identified by the United Nations in its Declaration on the Rights of Indigenous Peoples (**UNDRIP**).

It is not a sweeping provision of unchecked power to Traditional Owners. If only it were!

Over a four-year period from 2006 to 2010, Victorian Traditional Owners successfully developed and negotiated an alternative framework for settling native title claims in Victoria. The conclusion of these efforts saw the commencement of the *Traditional Owner Settlement Act 2010* (Vic) (**Settlement Act**), representing a highpoint of alternative native title settlement processes in Australia.

The Settlement Act provides a framework for negotiating an out-of-court settlement of native title for a Traditional Owner group without the need for the lengthy and costly processes that are usually required under the *Native Title Act 1993* (Cth).

It enables Traditional Owners to enter into agreements with the Victorian State Government to achieve comprehensive settlement of claims with real and lasting benefits such as the grant of freehold land, joint management of public lands and the foundation for sustainable economic development.

Victoria has 11 formally recognised Traditional Owner corporations, representing their communities in decision making for and on Country. Covering 75% of the state, these corporations are recognised through three pieces of legislation, the Native Title Act, Settlement Act and *Aboriginal Heritage Act 2006* (Vic). Their recognition is an important step in reparation for the ongoing injustices imposed through colonisation.

Whilst these legislations do not provide the full range of control that Traditional Owners seek over Country, they go some way to genuine decision making about Country and Culture that a modern society expects. They provide a voice for Traditional Owners to those with decision-making control over their Country but that is as far as the relationship to the Referendum goes.

They do not provide across the board road naming, planning control decision making, and industry stop work responsibilities that are being reported on. And, frankly, would it be so detrimental if they did?

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### **Quote from Tony Kelly, CEO**

*“The suite of legislations that convey statutory recognition on Traditional Owners in Victoria set a high bar for that recognition. It is not an easy process, and we work for many years with Traditional Owners to guide them through the legal requirements. The recognitions they achieve do not go as far as they could to make genuine reparation but they provide some understanding of the unique responsibilities and relationships that our First Nations people hold.”*

### **About Tony Kelly, CEO**

Tony has four decades experience working with Traditional Owners across the country. He is passionately committed to ensuring Traditional Owners have their rights and interests respected and self-determination recognised.

Tony brings together a history of managerial and field experience that encompasses environmental science, community development and law. These are skills that combined with his emotional intelligence; empathy and professionalism create a perfect combination in the role as CEO.

### **About First Nations Legal & Research Services**

First Nations Legal & Research Services works with groups who wish to pursue land justice outcomes in Victoria through formal recognition. We do not make decisions formally recognising Traditional Owners for Country, their work is to assist Traditional Owners in seeking formal recognition.

First Nations Legal & Research Services is the Native Title Service Provider for Victoria. This is a role established by the Native Title Act to provide assistance in relation to native title matters. We are funded by the Commonwealth Government to perform these functions, including to:

- assist Traditional Owners to make native title and compensation applications;
- assist in negotiations, mediations and other processes concerning native title;
- certify applications for native title determinations and for registration of agreements;
- mediate and resolve disputes; and
- notify Traditional Owners of future works proposed on Country.

In the wake of the 2002 High Court decision in *Yorta Yorta v Victoria* there was a common view that native title as a doctrine would have little application in Southern Australia. Since its creation in 2003, First Nations Legal & Research Services (previously Native Title Services Victoria) has proved this view wrong. Victoria now has four successful determinations of native title covering much of the crown land of the State and a settlement under the *Traditional Owner Settlement Act 2010* (Vic).

### **Links**

[First Nations Legal & Research Services](#)

[Traditional Owner Settlement Act Factsheet](#)

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