

Overview of native title and joint management arrangements for protected areas in Victoria

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VICTORIA

Overview

Co-operative Management Agreements have been implemented in Victoria, arising from the three Victorian native title determinations; *Lovett on Behalf of The Gunditjmara People v the State of Victoria* [2007] FCA 474, *Clarke on behalf of the Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagulk Peoples v State of Victoria* [2005] FCA 1795, and *Members of the Yorta Yorta Aboriginal Community v Victoria* [2002] HCA 58.

Two of the Co-operative Management Agreements were executed as part of the final settlement for the consent determinations, for the Gunditjmara and Wotjobaluk Peoples' native title claims. However, the Yorta Yorta People entered into an Agreement with the State, outside of the native title process, following the dismissal of their claim. Further details of the determinations are provided below.

There is no prescribed format as to when such Agreements can be executed, or as to what provisions they should contain. Although each of the Agreements differ in their structures and contents, they are all similar in their purpose of creating representative bodies (comprising of a majority of Indigenous peoples) to provide advice and recommendations to relevant Ministers, Departments and Bodies, on the management of agreed areas of land in Victoria.

Not all copies of the relevant Indigenous Land Use Agreements and Co-operative Management Agreements are publicly available. Summary information for each Agreement is provided below where possible.

Victorian Native Title Settlement Framework

In June 2009, the Victorian Government announced the establishment of a new Native Title Settlement Framework. The proposed Framework aims to streamline Native Title resolution and provide alternative means of settling Native Title claims. The negotiation of the Framework was guided by a Joint Steering Committee in 2008. The Steering Committee included Traditional Owner groups and senior Victorian Government officials, and was chaired by Professor Mick Dodson.

The Framework proposes to give Indigenous groups the power to jointly manage Crown land. This is to be achieved by allowing traditional owners to negotiate directly with the Victorian Government rather than pursuing their claims in court. Under the new Framework, Traditional Owners will not have to prove the usual Native Title requirements. Instead, Traditional Owners will need to satisfy the Victorian Government that:

- (a) They are the right people for country (i.e. linkage to pre-contact ancestors and that they represent all Traditional Owners for the area), and
- (b) They have sufficient organisational capacity to enter and sustain an agreement with the State

The proposed Framework has been praised for its potential to increase the joint management of Crown land. Under the proposal, Crown land could be transferred to Traditional Owners, handed back to Traditional Owners under a joint management scheme, or retained under State control but jointly managed. Where National Parks are returned to Traditional Owners, the land will be leased back to the Government on conditions negotiated in cooperative management plans. Among other things, these leaseback arrangements would provide for Traditional Owner representation on management boards, and the negotiation of benefit sharing agreements (for example in relation to mining and forestry). Consultation protocols with Traditional Owners will be necessary for the joint management of culturally significant land.

Framework agreements can deliver tangible outcomes for Traditional Owners such as land transfers and land management rights, access to natural resources, and support for economic and cultural development opportunities. The new Settlement Framework could potentially make Native Title outcomes in Victoria more certain, and provide clearer and more streamlined processes for stakeholder engagement. The process of engagement is also intended to contribute to reconciliation in Australia.

Further information on the Victorian Native Title Settlement Framework can be found by following the links below:

- (1) Discussion Paper: "Towards a Framework Agreement between the State of Victoria and the Victorian Traditional Owner Land Justice Group". 26 August 2006.

<http://www.landjustice.com.au/document/Framework-Discussion-Paper-26-August-2006.pdf>

- (2) "Report of the Steering Committee for the Development of a Victorian Native Title Settlement". December 2008.

<http://www.justice.vic.gov.au/wps/wcm/connect/DOJ+Internet/resources/file/ebf9a00adc6c233/FINAL%20SC%20Report%2013May09.pdf>

- (3) Victorian Department of Justice: "Key Components of a Framework Agreement"

<http://www.justice.vic.gov.au/wps/wcm/connect/DOJ+Internet/Home/Your+Rights/Indigenous+Victorians/Native+Title/JUSTICE+-+Key+Components+of+a+Framework+Agreement>

Various responses to the Framework are available by following the links below:

- (1) Victorian Traditional Owners Land Justice Group: "Settlement Framework".

<http://www.landjustice.com.au/?t=3>

(2) Australians for Native Title and Reconciliation: "Native Title reform a positive opportunity for all Victorians". 6 January 2009.

http://www.antar.org.au/native_title_reform_a_positive_opportunity

(3) National Native Title Tribunal: "Victorian framework promises faster, better native title outcomes". 4 June 2009.

http://www.nntt.gov.au/News-and-Communications/Media-Releases/Pages/Victorian_framework_promises_faster_better_native_title_outcomes.aspx

(4) The Premier of Victoria: "Victoria leads the nation in native title settlement". 4 June 2009.

<http://www.premier.vic.gov.au/attorney-general/victoria-leads-the-nation-in-native-title-settlement.html>

(5) The Sydney Morning Herald: "Native title proposal wins praise". 6 January 2009.

<http://news.smh.com.au/national/native-title-proposal-wins-praise-20090106-7b1x.html>

(6) The Age: "Native title reform bid". 6 January 2009.

<http://www.theage.com.au/national/native-title-reform-bid-20090105-7aik.html?page=-1>

Parks Victoria- Indigenous Partnership and Strategy Plan

National Parks in Victoria are protected under the *National Parks Act 1975* (Vic) and the State Forests are protected under the *Forests Act 1958* (Vic). Parks Victoria is responsible for the management of these areas.

In July 2005, Parks Victoria implemented an 'Indigenous Partnership and Strategy Plan', which provides for Traditional Owners having input into the management of National Parks.

The Plan encourages consultation between Parks Victoria and Indigenous groups, and also encourages the implementation of arrangements to support Indigenous partnerships.

Consultative and Co-operative Arrangements have resulted from this strategy, such as; the Dharnya Centre (Barmah State Park), Brambuk (the National Park and Cultural Centre in the Grampians National Park) and the Budj Bim Visitor Centre (Mount Eccles National Park.) However, it should be noted, that many of these arrangements have not directly derived from native title agreement making.

The Indigenous Partnership and Strategy Plan which also includes initiatives undertaken with traditional owner and indigenous groups other than those mentioned here can be accessed on the Parks Victoria website:

- http://www.parkweb.vic.gov.au/resources07/07_1610.pdf

A. AGREEMENTS BETWEEN THE GUNDITJ MIRRORING TRADITIONAL OWNERS CORPORATION AND THE STATE OF VICTORIA

Native title consent determination

A consent determination was made on 30 March 2007 for the Native Title claim; *Lovett on Behalf of The Gunditjmarra People v the State of Victoria* [2007] FCA 474. It was concluded that native title did exist over part of the area being claimed by the Gunditjmarra People. The determination also recognised that the Gunditjmarra People hold the following native title rights in parts of the determination area:

- o The right to have access to or to enter or remain on the land and waters
- o The right to camp on the land and waters landward of the high water mark
- o The right to use and enjoy the land and waters
- o The right to protect places and areas of importance

These rights co-exist with other rights and interests in the land.

Information about the determination is available on the following websites:

- http://www.austlii.edu.au/au/cases/cth/federal_ct/2007/474.html
- http://www.nntt.gov.au/Applications-And-Determinations/Search-Determinations/Pages/Gunditjmarra_VC997.aspx
- <http://www.atns.net.au/agreement.asp?EntityID=3828>

The *Gunditjmarra Land Justice Story* written by Dr Jessica Weir was published by Aboriginal Studies Press in June 2009. A DVD-Rom filmed and produced by Ms Amy Williams of AIATSIS is included in the publication.

Download publication:

Weir, J [*The Gunditjmarra Land Justice Story*](#), Native Title Research Unit, Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra, 2009 (Pdf format 2.34MB)

Gunditj Mirring Traditional Owners Corporation

The Gunditj Mirring Traditional Owners Aboriginal Corporation was established in 2005 to meet the needs of the Gunditjmarra People in a number of ways, including; to assist in economic development and to be a Registered Aboriginal Party under

the *Aboriginal Heritage Act 2006* (Vic). The Gunditj Mirring Traditional Owners Aboriginal Corporation was also incorporated as a Prescribed Body Corporate to hold and manage the native title rights and interests on behalf of the Gunditjmarra People.

Co-operative Management Agreement

On 30 March 2007, as part of the consent determination, a Co-operative Management Agreement was executed between the Gunditj Mirring Traditional Owners Aboriginal Corporation and the State of Victoria, over Mount Eccles National Park where it was determined that the Gunditjmarra People hold non-exclusive native title rights and interests. No native title rights exist on any private freehold land in the Agreement Area.

The Co-Operative Management involves Mount Eccles National Park, the establishment of the Budj Bim Council which provides advice and recommendations to the state, on any matter relating to the Agreement Area and the planning and management of agreed areas.

The broad purpose of the Agreement is to facilitate the active involvement of the Gunditjmarra People in decisions about the management of land within agreed areas in partnership with the Victorian Government through Parks Victoria.

The Co-operative Management Agreement is not publicly available.

Download:

- Walker, J [Cooperative Management Agreement between Gunditj Mirring Traditional Owners and State of Victoria](#), PowerPoint presentation to the National Native Title Conference, Perth, June 2008

Indigenous Land Use Agreement

The Co-operative Management agreement was accompanied by an Indigenous Land Use Agreement which covers a greater area than Mount Eccles.

The Indigenous Land Use Agreement is not publicly available.

Some information on the Indigenous Land Use Agreement can be found at the following websites:

- <http://www.atns.net.au/agreement.asp?EntityID=4240>
- http://www.nntt.gov.au/Indigenous-Land-Use-Agreements/Search-Registered-ILUAs/Pages/Gunditj_Mirring_and_State_of_Victoria_VI.aspx

A map of the Indigenous Land Use Agreement area is available on the National Native Title Tribunal website:

- http://www.nntt.gov.au/Indigenous-Land-Use-Agreements/Search-Registered-ILUAs/Documents/VI2006_004.pdf

B. CO-OPERATIVE MANAGEMENT AGREEMENT BETWEEN THE BARENGI GADJIN LAND COUNCIL AND THE STATE OF VICTORIA

Native title

A consent determination was made on 13 December 2005 for the case; *Clarke on behalf of the Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagulk Peoples v State of Victoria* [2005] FCA 1795.

The case consisted of three native title claims by the Wotjobaluk Peoples. In claims two and three (*Clarke on behalf of the Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagulk Peoples v State of Victoria No. 2* [2005] FCA 1795 and *Clarke on behalf of the Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagulk Peoples v State of Victoria No. 3* [2005] FCA 1795) it was determined that no native title rights existed.

However, in claim one (*Clarke on behalf of the Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagulk Peoples v State of Victoria No. 1* [2005] FCA 1795) it was determined that native title exists in parts of the area claimed (determination area A.)

The Federal Court recognised the Wotjobaluk People as native title holders of various areas of public land along the Wimmera River in North West Victoria. The Wotjobaluk People were granted the non-exclusive rights to hunt, fish, gather and camp for personal, domestic and non-commercial communal needs in the determined area. The native title rights do not extend to any waters or on any land on which public works are constructed.

Information about the determination is available on the following websites:

- http://www.austlii.edu.au/au/cases/cth/federal_ct/2005/1795.html
- http://www.nntt.gov.au/Applications-And-Determinations/Search-Determinations/Pages/Wotjobaluk_Jaadwa_Jadawadjali_Wergaia_and_Jupagulk_Peoples_No1_VC952.aspx
- <http://www.atns.net.au/agreement.asp?EntityID=3138>

Indigenous Land Use Agreement

As part of the resolution of the three native title claims, an Indigenous Land Use Agreement was executed between the Barengi Gadjin Land Council, the native title claimants and the State and Commonwealth on 11 November 2005 (prior to the consent determination.) The ILUA provided for the surrender of native title rights, in exchange for the Crown granting three parcels of freehold title to the Barengi Gadjin Land Council.

Further information about the Indigenous Land Use Agreement is available on the Agreements, Treaties and Negotiated Settlements website and the National Native Title Tribunal website.

- <http://www.atns.net.au/agreement.asp?EntityID=3126>

- http://www.nntt.gov.au/Indigenous-Land-Use-Agreements/Search-Registered-ILUAs/Pages/Wotjobaluk_Jaadwa_Jadawadjali_Wergaia_and_Jupagulk.aspx

A map of the Indigenous Land Use Agreement area is available on the National Native Title Tribunal website.

- http://www.nntt.gov.au/Indigenous-Land-Use-Agreements/Search-Registered-ILUAs/Documents/VI2006_004.pdf

Agreement Details

As part of the settlement of the native title claim, the State was also required to execute an Access Agreement, Consultation Agreement, Contract of Sale for three parcels of Crown land, and a Funding Agreement, with the Barengi Gadjin Land Council (the native title body corporate, on behalf of the Wotjobaluk Peoples.)

A Co-operative Management Agreement was also executed between the Barengi Gadjin Land Council and the State of Victoria. The Agreement involves the areas of Crown land in North-West Victoria, where the Wotjobaluk Peoples hold non-exclusive native title rights.

Download:

- [Co-operative management agreement between Barengi Gadjin Land Council Aboriginal Corporation and State of Victoria](#) (PDF format 209.54kb)

Tenure

In respect to the areas defined in the Co-operative Management Agreement, the non-exclusive native title interests are held in trust by the Barengi Gadjin Land Council, on behalf of the Wotjobaluk People as the common law holders.

The determination area includes; parts of the Little Desert National Park, Mount Arapiles- Tooan State Park, Lake Albacutya Park and Lake Hindmarsh Reserve and reserves along the Wimmera River. The National Parks within the Agreement Area are protected under the *National Parks Act 1975* (Vic). Parks Victoria is responsible for the management of the areas.

Governance arrangements

Key provisions of the Co-operative Management Agreement include the establishment of a Winyula Council, with a majority of Traditional Owner representatives. The Winyula Council has the task of providing advice and recommendations to State Land managers about the management of the 'determined areas' under the agreement. The Winyula Council is also to provide advice on all new public works referred to it by the State.

Employment and training

Under the Co-operative Management Agreement, the Winyula Council has the task of identifying employment, training and economic development opportunities for the Wotjobaluk Peoples.

C. CO-OPERATIVE MANAGEMENT AGREEMENT BETWEEN THE YORTA YORTA NATION ABORIGINAL CORPORATION AND THE STATE OF VICTORIA

Native Title

The Yorta Yorta native title claim consisted of the initial litigated determination in the Federal Court (*Members of the Yorta Yorta Aboriginal Community v Victoria* [1998] FCA 1606), in which the court determined that native title did not exist in the claimed area, on 18 December 1998. This decision was appealed, but the appeals were dismissed in both the Full Federal Court (*Members of the Yorta Yorta Aboriginal Community v Victoria* [2001] FCA 45) and the High Court of Australia (*Members of the Yorta Yorta Aboriginal Community v Victoria* [2002] HCA 58).

After the Full Federal Court's rejection of the Yorta Yorta People's native title appeal, and before the High Court's final determination, the State offered to enter into negotiation, governed by 'Negotiation Principles' approved by the Victorian Cabinet in May 2002. Negotiations were finalised between the State and the Yorta Yorta People, five months after the High Court's dismissal.

Information about the determinations and appeals are available on the following websites:

- http://www.nntt.gov.au/Applications-And-Determinations/Search-Determinations/Pages/Yorta_Yorta_VC941.aspx
- <http://www.atns.net.au/agreement.asp?EntityID=1533>

- http://www.austlii.edu.au/au/cases/cth/federal_ct/1998/1606.html
- http://www.austlii.edu.au/au/cases/cth/federal_ct/2001/45.html
- http://www.austlii.edu.au/au/cases/cth/high_ct/2002/58.html

Agreement Details

As part of the negotiations between the State and the Yorta Yorta people (outside of the native title process), a Co-operative Management Agreement was executed on 10 June 2004. The Agreement was entered into by the State of Victoria and the Yorta Yorta Nation Aboriginal Corporation (created under the *Aboriginal Councils and Associations Act* (Cth) 1976, to represent all Yorta Yorta family groups.)

The main purpose of the Agreement was to create a forum to co-manage approximately 50,000 hectares in north-central Victoria (the Barmah and Goulburn Valley regions), including; Barmah State Park, Barmah State Forest, Kow Swamp and

specific parcels of public lands and waters along the Murray and Goulburn Rivers (as outlined in Schedule 2 of the Agreement.)

The objectives of the Agreement are to facilitate the involvement of the Yorta Yorta People in decisions about the management of the designated areas (Clause 13.1), and to develop "mutual recognition and trust between the Yorta Yorta People and the State" (Clause 13.2). These are achieved through the creation of a body representing the Yorta Yorta People (the Yorta Yorta Joint Body) providing advice to the Minister for Environment in relation to the designated land.

Further details on the Co-operative Management Agreement can be found on the Agreements, Treaties and Negotiated Settlements website:

- <http://www.atns.net.au/agreement.asp?EntityID=2508>

A copy of the Co-Management Agreement is publicly available at the Department of Sustainability and Environment website:

- <http://www.dse.vic.gov.au/DSE/nrenlwm.nsf/LinkView/7FA349BEAE0F5A3FCA256E8D00210309A4AD52AC7C448F1A4A256DEA0024EDD2>

Tenure

Schedule 2 of the Agreement, outlines the designated co-managed area, which includes the following:

- Barmah State Park, Barmah State Forest, The Ranch, Top Island Reference Area, Top End Reference Area, Murray River Reserved Forest, Murray River Reserve to and including Ulupna Creek Reserve (Schedule 2, Clause 1(a))
- Kow Swamp Water Supply Reserve (Schedule 2, Clause 1(b))
- Goulburn River State Forest, Kanyapella Timber Reserve, Kanyapella State Forest, Redgum Swamp State Forest, Monroes Reserved Forest, Loch Gary Wildlife Reserve, Reedy Swamp Wildlife reserve, Youngs Bend State Forest, Gemmill Swamp Wildlife Reserve, Goulburn River Reserved Forest, Goulburn River Reserve, Murchison North Crown Land (Schedule 2, Clause 1(c))

As previously indicated, the Yorta Yorta people do not have any native title rights on these areas.

The National Parks within the Agreement Area are protected under the *National Parks Act 1975* (Vic) and the State Forests are protected under the *Forests Act 1958* (Vic). Parks Victoria is responsible for the management of the areas.

Governance Arrangements

Under the Agreement, a Yorta Yorta Joint Body is established, comprising of 8 members; five members representing the Yorta Yorta People and three members representing the State (Clause 9.) The relevant Minister or Secretary intends to refer particular matters to the Yorta Yorta Joint Body for its consideration (Clause 5).

The role of the Yorta Yorta Joint Body is to “act as the vehicle for facilitation of co-operative management of the designated areas” (Clause 1.1), facilitate the sharing of knowledge between the Yorta Yorta People and the State (Clause 1.2) and to develop a partnership to improve the management of the designated areas of the Agreement (Clause 1.3).

The Yorta Yorta Joint Body is to achieve the objectives of the Agreement by providing advice and recommendations on the designated areas, to the relevant State Minister or Secretary, in relation to the following issues:

- Development and review of Strategic Management Plans (Clause 2.1)
- Development and review of Site Specific Management Plans (Clause 2.2)
- Development of works programs (Clause 2.3)
- Development of land, waters and resources protection (Clause 2.4)
- Certain major developments concerning land, water and resource uses (Clause 2.5)
 - o Including mining, electricity transmission lines, logging
- Management of grazing in Barmah (Clause 2.6)

In addition, the Yorta Yorta Joint Body is required to provide advice and recommendations to the relevant Minister or Secretary in relation to “any matters referred to it” (Clause 3.1), to assist in the implementation and monitor the effectiveness of “departmental policies, programmes and services” (Clause 3.2 and 3.3) and to encourage communication between relevant bodies (Clause 3.4).

In making decisions regarding the designated areas in the Agreement, the Minister or Secretary will take into account the relevant advice and recommendations he or she has received from the Yorta Yorta Joint Body (Clause 16.1) However, the Minister or Secretary is not obliged to act on the advice and recommendations of the Yorta Yorta Joint Body. If the Minister or Secretary decides to act otherwise than in accordance with the advice or recommendations, he or she may provide the Yorta Yorta Joint Body with reasons for the decision (Clause 18.)

Employment and Training

Employment and training are only outlined in the objectives of the Agreement (Clause 13.) An aim of the Agreement is to facilitate the “identification and promotion of employment, training and economic development opportunities for Yorta Yorta People” (Clause 13.3.)

Other Provisions

The role and structure of the Yorta Yorta Joint Body is subject to an ongoing internal review (Clause 20.) Clause 21 provides that the Minister may “review the structure

and role of the Yorta Yorta Joint Body at the end of the first two year period from the date of its establishment.”

The Co-operative Management Agreement has been criticised for not providing for adequate input by the Yorta Yorta People in managing the designated areas. Further information relating to the Agreement and an analysis of its limitations, can be found in the following article:

- Seidel P and Hetyey J, 'Summary of Yorta Yorta Nation Aboriginal Corporation/State of Victoria Co-operative Management Agreement – Part I' (45) *Indigenous Law Bulletin* 2004
 - o <http://www.austlii.edu.au/au/journals/ILB/2004/45.html>