

Recent native title achievements in Victoria

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Gunaikurnai people win respect and recognition – first settlement to use new legislation

On 25 October 2010, over one hundred people gathered in Gippsland for the court hearing at Knobs Reserve, near Sale. For over 13 years the Gunaikurnai people have been in and out of court, struggling for native title. The settlement agreement recognises the Gunaikurnai people's traditional ownership across much of Gippsland, and their unique rights to some 22,000 square kilometres of lands included in the settlement area. Of this land, 13,870 square kilometres is Victorian Crown land, or almost 20 per cent of Crown land in the State. The Federal Court consent determination covers the same area.



New legislation for Victoria: Victorian Traditional Owner Land Justice Group and Victorian Government on the steps of Parliament.

Photo courtesy of Victorian Government

The settlement agreement will allow for funding for the Gunaikurnai people to manage their affairs and obligations under the settlement, and will help realise economic development and employment opportunities for the Gunaikurnai people. The settlement agreement also allows for significant cultural strengthening, including new protocols for welcomes to country, cultural performances, practices and awareness, and cross cultural training.

Significantly, it will see the return of land to the Gunaikurnai people through grant of Aboriginal Title over ten national parks in Gippsland, which have cultural significance. Aboriginal Title is a new form of Victorian land tenure which has been created under the *Traditional Owner Settlement Act 2010* (Vic) (the Act), and creates a partnership approach in the joint management of public lands in Gippsland in this settlement agreement.

New Victorian legislation

A few weeks before the Gunaikurnai settlement, the Act became Victorian law. This new legislation recognises the special relationship Aboriginal people in Victoria have with their land and in doing so recognises the rights they hold in concrete and meaningful ways.

This legislation is specifically designed to provide statutory authority for 'Framework agreements' of the kind outlined in the December 2008 'Report of the Steering Committee for the Development of a Victorian Native Title Settlement Framework' (Framework Report).¹

The Victorian Government has committed to the full implementation of the Framework Report, subject only to adequate Commonwealth funding.² There are many aspects of the Framework Report that are not reflected in the Act where legislation is not required for them, or where further legislation is expected in the future.

¹ See

http://www.ntsiv.com.au/document/report_sc_vic_native_title_settlement_framework_13May09.pdf

² The Hon Rob Hulls MP, Attorney-General, speech at 2009 AIATSIS Native Title conference, 3 June 2009.

Components of the *Traditional Owner Settlement Act 2010 (Vic)*

Essentially, the Act authorises the responsible Minister (the Victorian Attorney-General) to enter into a 'Recognition and Settlement Agreement' (RSA) with a traditional owner corporation. The traditional owner corporation is a corporation appointed by a traditional owner group.

A 'Recognition and Settlement Agreement' is composed of a number of sub-agreements including:

- a land transfer agreement;
- a traditional owner land management agreement;
- a land use activity agreement;
- a natural resource agreement;
- a funding agreement; and
- an Indigenous land use agreement (ILUA).

The land transfer component of the Act is particularly significant for Victorian traditional owners who have been seeking more appropriate measures to resolve land justice for many years.³

Under the Act, a traditional owner corporation can receive a grant of freehold, with or without conditions.

The Act also authorises the grant of freehold land in the form of 'Aboriginal title' with the condition of joint management.

Aboriginal title is a new form of freehold tenure for Victoria. It will be granted only for areas that are jointly managed and will be subject to restrictions that ensure it will be used for joint management,

and not dealt with by a traditional owner corporation or the State in a way inconsistent with joint management. The grant of Aboriginal title will be the source of the State's right to use and manage land that is jointly managed. Examples of the land that could be transferred under this provision are national parks and state forests that are identified and agreed by the State and a traditional owner group.

Other components:

An alternative future act regime is created through the land use activity agreement provisions. These provisions create the machinery for the classification of activities in the way envisaged by the Framework Report – routine, advisory, negotiation (category A or B) and agreement. In this way, the current thirteen categories in the future act provisions of the *Native Title Act 1993 (Cth)* (NTA) are reduced to just four.⁴



Gunaikurnai Elders with Commonwealth and State Ministers, and NTSV.

Photo courtesy of NTSV & Victorian Government

Natural resource agreements will provide for the exercise of non-commercial, non-exclusive statutory rights for members of a traditional owner group with a RSA. The Act will

permit the Governor in Council to make a number of natural resource

'authorisations' (whether for taking flora and fauna, water, camping etc). The authorisations will give effect to the natural resources agreements. The Act will not create a right to use natural resources independently of an authorisation.

This two stage process is more complex than that recommended by the Framework Report, which stated that every traditional owner group with an

³ See <http://www.landjustice.com.au/>

⁴ For further information on this component of the Act, see NTSV's information paper available at <http://www.ntsiv.com.au/document/TOSB-information-paper-3Sept10-final.pdf>

individual Framework agreement should have access to non-commercial, communal rights to use Crown land resources. This is similar to the rights held by native title holders with a non-exclusive determination of native title. Further policy development on this issue will occur in 2011, and we expect that the State will simplify the provisions.



Deputy Premier and Victorian Attorney General Rob Hulls and Aunty Gwen Atkinson sign the Gunaikurnai settlement agreement.

Photo courtesy of Todd Condie

The Gunaikurnai consent determination means that Gunaikurnai people do not need to rely on an authorisation under the Act to use natural resources. Rather, they can rely on their non-exclusive native title rights.

Sustainable funding and certainty for the future

Sustainable funding is a feature of the Framework Report which is integral to ensuring certainty and finality for both government and future generations of traditional owners. An ILUA will be a component of, or accompany, each RSA and will be the vehicle for addressing the native title certainty requirements of the State and also giving security to traditional owners.

The Framework Report recommends that funding in perpetuity be available to a traditional owner corporation. While the Act provides that the responsible Minister will be authorised to enter a funding agreement as part of a RSA, the size of the funding package will be a matter for ongoing negotiations between the government and each traditional owner group.

Essentially, the Act is an enabling mechanism that could produce a variety of results. For the Gunaikurnai people, their negotiations resulted in the transfer for joint management of ten national parks and a \$12 million settlement package. This is certainly the best result achieved in Victoria so far. Each settlement agreement in Victoria has improved on those that have gone before. Quality outcomes are by no means guaranteed, but in Victoria the future looks more promising than ever before.



Alfie Hudson takes part in smoking ceremony to commence Gunaikurnai settlement proceedings.

Photo courtesy of Todd Condie