

**Australians for Native Title and Reconciliation Victoria Inc**



**Response to**

**Victorian Environmental Assessment Council**

**River Red Gum Forests Investigation**

**Draft Proposals Paper for Public Comment July 2007**

**8 October 2007**

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## **Australians for Native Title and Reconciliation Victoria Inc**

Australians for Native Title and Reconciliation Victoria Inc (“ANTaR Vic”) is a community based organisation that aims to generate in Australia a moral and legal recognition of and respect for the distinctive status of Indigenous Australians as First Peoples. Recognition of Indigenous Australians’ rights is essential to creating a just and fair society for all Australians. These rights include rights to self-determination, recognition and protection of their relationships with land, and the maintenance and growth of their cultures. Only once these rights are recognised can land justice for Indigenous Australians be achieved.

### **ANTaR’s history and operation**

Australians for Native Title & Reconciliation began in 1997 in response to a swell of public anger towards Federal Government moves to wind back Indigenous native title rights. ANTaR is now an independent, national network of mainly non-Indigenous organisations and individuals working in support of justice and human rights for Aboriginal and Torres Strait Islander peoples in Australia. It is a people’s movement, committed to the rights and perspectives of Indigenous peoples to determine their own future with the support of the Australian people. ANTaR coordinates a national community education and awareness campaign on native title, reconciliation and other issues.

Australian support for a reconciled nation was demonstrated unequivocally in 2000, when an estimated 250,000 people walked across the Sydney Harbour Bridge and a further million were involved in similar marches across Australia. The Prime Minister John Howard himself described the mood of the Australian people as an ‘unstoppable force’ that was ‘overwhelmingly in favour of reconciliation’.

During Reconciliation week in 2004, Aboriginal leader Patrick Dodson acknowledged the millions of Australians who have recognised and embraced the opportunity for reconciliation:

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*Unlike many others, they have sought to learn and understand the reality of our shared history. They have gone into their schools, their workplaces, their centres of worship and their sporting clubs and said, ‘Here is an opportunity for healing and understanding, an opportunity for something profoundly better than what has gone before us in this country.’*

*They have placed the symbols of our Indigenous society along side their own in recognition that a shared country requires a society of equals with all the rights and responsibilities that this entails.<sup>1</sup>*

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ANTaR Vic was formed in 1997 under the banner of ‘Defenders of Native Title’ to preserve the integrity of the Mabo and Wik High Court judgements. It focuses on activities and issues specific to Victoria, while also supporting national campaigns. The organization has over 400 members and operates at a grassroots level with a network of local groups throughout metropolitan and rural Victoria, with each local group facilitating its own reconciliation initiatives.

<sup>1</sup> Dodson, P, *Beyond the Bridges and Sorry*, speech in the Great Hall of the Parliament in National Reconciliation Week, 25 May 2004, [http://law.anu.edu.au/anuiia/Beyond\\_the\\_Bridges%20and%20Sorry%20Final.doc](http://law.anu.edu.au/anuiia/Beyond_the_Bridges%20and%20Sorry%20Final.doc).

ANTaR Vic's view is that Indigenous people must lead the way in determining their futures and instituting change. That is the essence of self-determination. But non-Indigenous people have important roles to play, including:

- To help transform and open the minds and hearts of all Australians; and
- To help create a country that acknowledges its shared history, respects the unique culture and rights of Indigenous people and that can stand together as a proud nation, with integrity and harmony.

ANTaR Vic's response to the Victorian Environmental Assessment Council's ("VEAC") River Red Gum Forests Investigation draft proposals paper for public comment dated July 2007 ("the draft proposals paper") is guided by this history and these principles.

#### Aboriginal people in Victoria

At the time of European invasion, all the land now known as Victoria was occupied by sovereign Indigenous nations who owned, cared for and enjoyed it in accordance with their laws, customs and traditions. The invasion forced drastic changes on Indigenous peoples, including where and how they lived, their languages, religion, health, economic status, freedom of movement and association, and in some cases their very survival.

According to the United Nations, Australian Indigenous people are dying, on average, 20 years younger than other Australians. In addition, many are living in conditions worse than in the third world. Indigenous people continue to experience socio-economic disadvantage, intergenerational trauma, racism and alienation from the mainstream culture. These national problems reflect the situation in Victoria. ANTaR Vic remains committed to turning this around.

However, despite all this, Indigenous nations' sovereignty, as well as their peoples' right of ownership, occupation, use and enjoyment of lands, have not been ceded. ANTaR Vic acknowledges that all Indigenous peoples in Victoria today have rights to their lands, self determination and control over their culture and traditions. Recognition of these rights will yield land justice for Indigenous people.

#### ANTaR Vic's response to VEAC's draft proposals paper

##### Acknowledgment and recognition

**ANTaR (Vic) appreciates VEAC's acknowledgement of country, on page v of the draft proposals paper. It is important that VEAC:**

**acknowledges Traditional Owners of country within the investigation area, their culture and the spiritual connection to their country;**

**recognises and acknowledges the contribution and interests of Aboriginal people in the management of land and natural resources; and**

**acknowledges the fact that past injustices and continuing inequities continue to limit Aboriginal participation in land and natural resource management processes.**

Those past injustices and continuing inequities Aboriginal people in Victoria have been subject to were described in the Royal Commission into Aboriginal Deaths in Custody ("RCIADIC"):

Kooris in Victoria, as in the rest of Australia, have been dispossessed of land, relocated, separated from families and had their children forcibly removed. In addition, name changes and denial of language and culture, ongoing application of the assimilation policy in the administration of Aboriginal Affairs have combined to have a devastating result for Kooris today. Much of the community has been dispersed by force or through economic necessity. Still, Kooris and Koori culture have survived against the odds.<sup>2</sup>

VEAC's recognition in itself goes a little way to dealing with those injustices and inequities, but much more needs to be done. The recommendations in the draft proposals paper do contain some practical ideas which do deal, to an extent, with the injustices and inequities. This is noteworthy and to be encouraged.

In effect, VEAC's acknowledgement and recognition sets out the benchmark against which the draft proposals paper and its recommendations should be measured:

- To what extent do they address past injustices and continuing inequities?
- How do they assist Aboriginal people to overcome the barriers to their proper participation in land and natural resource management processes?

A guide to the adequacy of the draft proposals paper and its recommendations in addressing these barriers is set out in Recommendation 315 of the Royal Commission into Aboriginal Deaths in Custody:

315. That the recommendations submitted to the Conservation and Land Management meeting (held at Millstream on 6-8 August 1990) by representatives of Aboriginal communities and organisations be implemented in Western Australia upon terms to be negotiated between Aboriginal people and appropriate Aboriginal organisations and communities on the one hand and National Park authorities on the other so as to protect and preserve the rights and interests of Aboriginal people with cultural, historical and traditional association with National Parks. The recommendations proposed at the Millstream meeting were:

- a. The encouragement of joint management between identified and acknowledged representatives of Aboriginal people and the relevant State agency;
- b. The involvement of Aboriginal people in the development of management plans for National Parks;
- c. The excision of areas of land within National Parks for use by Aboriginal people as living areas;
- d. The granting of access by Aboriginal people to National Parks and Nature Reserves for subsistence hunting, fishing and the collection of material for cultural purposes (and the amendment of legislation to enable this, where necessary);
- e. Facilitating control of cultural heritage information by Aboriginal people;
- f. Affirmative action policies which give preference to Aboriginal people in employment as administrators, rangers, and in other positions within National Parks;
- g. The negotiation of lease-back arrangements which enable title to land on which National parks are situated to be transferred to Aboriginal owners,

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<sup>2</sup> RCIADIC National Report 1991, Vol. 2 [11.12.9], citing the Victorian Aboriginal Issues Unit of the RCIADIC.

- subject to the lease of the area to the relevant State or Commonwealth authority on payment of rent to the Aboriginal owners;
- h. The charging of admission fees for entrance to National Parks by tourists;
  - i. The reservation of areas of land within National Parks to which Aboriginal people have access for ceremonial purposes; and
  - j. The establishment of mechanisms which enable relevant Aboriginal custodians to be in control of protection of and access to sites of significance to them.<sup>3</sup>

These Millstream recommendations amount to a check-list for legislation and policies concerning the involvement of Indigenous people in land and natural resource management in national parks. Compliance with them would fulfil ongoing government obligations in respect of Recommendation 315, which the Victorian Government supported in 1995.<sup>4</sup>

VEAC's draft recommendations go some way to addressing some of the Millstream recommendations in the draft proposals paper, particularly:

- (a) Joint management;
- (b) Involving Aboriginal people in developing management plans;
- (d) Access for subsistence hunting fishing and collection of material;
- (f) Employment preference;
- (g) Hand-back/lease back arrangements;
- (i) Access to land for ceremonial purposes; and
- (j) Control of protection of and access to sites of significance.

To the extent that VEAC's draft recommendations address these matters, they should be praised. However, the draft recommendations do not fully meet the standard set by its own recognition and acknowledgement and by the Millstream recommendations. The draft proposals paper and its recommendations could go further towards achieving proper Aboriginal participation in land and natural resource management processes.

### **General Recommendations**

**ANTaR Vic strongly agrees with VEAC's statements<sup>5</sup> that:**

**In Victoria Indigenous involvement in public land management is minimal, particularly in comparison to other Australian states and territories.**

**In the past, there have been few mechanisms for assisting Traditional Owners to engage with public land planning and management and involvement in decision making is almost non-existent.**

**[I]ncreased involvement [in public land-use planning and management] benefits both land managers and Indigenous people and is a significant practical**

<sup>3</sup> RCIADIC Report 1991, 100-1.

<sup>4</sup> Victorian Implementation Review of the Recommendations from the Royal Commission into Aboriginal Deaths in Custody (Vol. 1: Review Report) 2005 ("Implementation Review"), 318.

<sup>5</sup> Draft proposals paper, 8.

**mechanism towards the reconciliation of traditional Indigenous cultural values and practices with the needs and interests of the wider Australian community.**

ANTaR Vic deals with some of the specific issues and draft recommendations below. However, as a general principle, its view is that consultation and negotiation take place with traditional owner groups/native title holders in the course of implementing any and all of the recommendations of the draft proposals paper.<sup>6</sup> **As a preliminary step, VEAC should make specific recommendations directed to setting up arrangements by which proper consultation and negotiation with Aboriginal people might take place.**

ANTaR Vic supports the specific submissions made by traditional owner groups/native title holders in response to the draft proposals paper.

**Environmental water**

ANTaR Vic supports the proposal for an environmentally sustainable flood regime. As the report states, any deterioration of the riverine forests in the study area would constitute an irreplaceable loss for the Aboriginal people of the area whose cultural and spiritual connections to their Country are profound.<sup>7</sup> The preservation of Australia's red gum forests is vital to the preservation of Indigenous cultural pride and practices in this region. ANTaR Vic agrees that increased reserve system protection must be underpinned by more water reaching wetlands and floodplain forests.<sup>8</sup>

**ANTaR Vic strongly agrees with draft recommendation R10:**

**That the environmental outcomes for the Investigation sought through the public land category system are dependent on a volume of water in the order of 4000 gegalitres for a floodplain inundation event at least every five years.**

**ANTaR Vic also agrees with draft recommendations R11-R17 in so far as they support more water reaching wetlands and floodplain forests so that Aboriginal cultural and spiritual connections can be sustained.**

ANTaR Vic is disappointed by the reported statement of the Premier on 26 September 2007 emphatically rejecting this draft recommendation. The statement appears to have been made without respecting the government's own independent process through VEAC, and without taking account of the cultural and spiritual concerns of Aboriginal people.

**Increasing Indigenous involvement in public land management**

As recommended at the Millstream meeting, preserving the rights and interests of Aboriginal people, with cultural, historical and traditional associations with national parks and other areas of environmental and cultural significance, can be achieved by increasing Aboriginal involvement in public land management. The VEAC report explicitly recognises this by recommending the direct involvement of Aboriginal people in the management of public land in the Investigation area.<sup>9</sup> This goes further

<sup>6</sup> ANTaR Vic refers to the people VEAC identifies as Traditional Owners as traditional owner groups/native title holders. Some of these groups may be recognised as native title holders.

<sup>7</sup> Draft proposals paper, 10.

<sup>8</sup> Draft proposals paper, 10.

<sup>9</sup> Draft proposals paper, 15.

towards achieving Aboriginal involvement in public land management than Victoria has previously gone. However, VEAC and the Government should go further in this direction than these draft recommendations contemplate.

Victoria has not already taken the steps that most other States and Territories have taken towards providing direct participation in land management. These steps include the creation of hand-back, lease-back and joint management regimes for Uluru and Kakadu National Parks by the Commonwealth as long ago as the 1970s, and, more recently, similar arrangements for parks in NSW, such as Mutawintji, Biamanga and Gulaga. Such steps are long overdue in Victoria.

It is good that VEAC recognises that the consultation it has already conducted is only part of a preliminary development stage of an ongoing relationship between public and land management agencies in the investigation area. Such consultation is a necessary part of Aboriginal involvement in public land management, and needs to continue, not only in the Investigation area, but throughout Victoria.

#### Increasing Indigenous community capacity

There is a need for improvements in the capacity of Indigenous traditional owner groups/native title holders to be able to engage properly in land management. These measures must include:

- Support for internal administrative structures within traditional owner groups/native title holders;
- Appropriate payment for time and expertise; and
- Sufficient funding to enable traditional owner groups/native title holders to undertake proper ‘informed consent’ group decision making processes.

‘Informed consent’ is vital for traditional owner groups/native title holders to be able to participate effectively in the management of public lands. It is just not appropriate for people to make decisions about what happens on their Country without full information about proposals and possibilities for land use and management and their involvement in it, and the capacity to use their own groups’ decision making practices and processes.

Among other things, this means that:

- The appropriate group has to be identified to make decisions and to participate in management. traditional owner groups/native title holders should be able make decisions about their Country. Thus, it is necessary for groups to have worked out boundaries between their Countries and for those boundaries to be recognised by government and land managers;
- All the members of the group must have been identified and have the capacity and knowledge to participate in decision making in the manner determined by the group;
- The group must be able to make decisions according to its own internal processes. This does not mean that government or land managers need to supervise the decision making process. They must only be aware that it has taken place, and that a decision has been made.

### Registration of traditional owner groups/native title holders

An Aboriginal decision making process is a matter for Aboriginal people, not for government or for land managers. This includes the identification of members of the group and the establishment of the processes by which decision are made. These are fundamental aspects of Indigenous self-determination that must be respected in the VEAC process and by government.

Registration of traditional owner groups/native title holders is not necessary. In fact it is offensive. Members of no other group in the community need their names on a list before they can participate in land management processes. The fact that traditional owner groups/native title holders traditionally own land or hold native title does not justify treating them any differently.

The rights of traditional owner groups/native title holders in respect of land do not depend on people's identification and registration. These rights are, to an extent, recognised in the VEAC draft recommendations that Indigenous people participate in the management of their traditional Country. The rights accrue from their status as First Nations' peoples, and from the general recognition of their pre-existing rights and interests based on their traditional laws and customs. They are group rights and should be exercised by each group, rather than by a collection of registered individuals.

Decisions and procedures under the *Native Title Act 1993* (Cth) do not require registration of individual members of groups before the group as a whole gains procedural and property rights. In fact, mere identification of the name of the group can suffice to identify a group of native title holders, as the Full Court of the Federal Court has recently indicated.<sup>10</sup> There is no justification for Victoria to require anything more.

Further, in practice, some of the traditional owner groups with Country in the Investigation area are participating in native title processes which involve members of the groups being identified and the groups setting up internal decision making processes, as part of the resolution of the native title applications. Native title applications within the Investigation area that are in the process of being resolved include those of the Dja Dja Wurrung, Barapa Barapa Wamba Wamba Wadi Wadi, Robinvale, Yapagulk, and Latji Latji groups.

There should be greater co-ordination with existing processes to identify groups and their Country, and to set up and recognise decision making processes. A multitude of such processes may lead to inconsistent outcomes and divisions within the Aboriginal community in Victoria.

**ANTaR Vic strongly supports** those parts of draft recommendation 18 that deal with the facilitation, where appropriate action is not already taking place, of the **identification of traditional owner groups/native title holders, their engagement in land management, and the establishment of decision making processes, boundaries, and dispute resolution processes.**

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<sup>10</sup> *Moses v State of Western Australia* [2007] FCAFC 78, [362]-[375] (27 June 2007). The following was held to be a sufficient description of a group of native title holders: "Ngarluma People' are Aboriginal persons who recognise themselves as, and are recognised by other Ngarluma People as, members of the Ngarluma language group." Submissions in support of a more detailed description were rejected by the Full Court.

On the other hand, **ANTaR Vic strongly opposes** those parts of draft recommendation 18 that deal with the facilitation of the **registration of traditional owner groups/native title holders.**

**ANTaR Vic strongly supports** the following **parts of draft recommendation 18**, where relevant action is not already taking place:

**R18 That:**

**government provides assistance with strategic decision-making regarding public land management along the River Murray and across boundaries of Aboriginal Traditional Owner Groups by establishing a properly resourced program to provide the following services:**

**(b) administrative support for relevant Aboriginal Traditional Owner Groups,**

**(c) coordination of consultation requests from government agencies and preferential selection of appropriately qualified Traditional Owner Groups or organisations for contract services to work on land and natural resource management projects on Country,**

**(d) assistance for relevant Aboriginal Traditional Owner Groups with targeted training and capacity building exercises such as work placements, traineeships and use of existing programs to establish Aboriginal rangers and land management contractors to work on public land on traditional Country,**

**(e) assistance with coordination of relevant Aboriginal Traditional Owner Groups' responsibilities under cultural heritage and native title processes where these coincide with public land management,**

**(f) support for initiatives aimed at retaining traditional knowledge and expertise and assisting with the integration of this knowledge in land and natural resource management projects and partnerships on Country, and**

**(g) support for Aboriginal Traditional Owner Groups wanting to develop a permit regime as described in draft recommendations R26 and R27 for the traditional hunting, gathering and ceremonial use of Country.**

Enhancing Indigenous involvement in public land management

It is important that legislative provision is made for involvement of Aboriginal people in the management of public lands. For too long governments in Victoria have pleaded legislative incapacity in refusing Aboriginal demands for joint management of public lands. Therefore proposed action by amending the *National Parks Act 1975* is welcome.

However, legislative change should not be limited to the *National Parks Act 1975*. Other legislation also governs public land management in Victoria, including the *Crown Land (Reserves) Act 1978*, the *Land Act 1958*, and the *Forests Act 1958*. Involving Aboriginal people in the management of the public lands governed by these statutes is just as important as involving them in the management of land subject to the *National Parks Act 1975*. The other legislation governing the management of public land should be subject to the same proposed changes as the *National Parks Act 1975*.

Recognition and respect for the traditional and contemporary relationships of Aboriginal people with the land is vital for any reconciliation between Indigenous and non-Indigenous Australians. This requires proper consultation and negotiation by

public land managers with traditional owner groups/native title holders about their native title rights and interests, how they might be exercised, and about their traditional responsibilities to their Country. Reconciliation also requires cultural heritage awareness training for non-Indigenous people, including those involved in shared management arrangements, who deal with Indigenous Australians.

**ANTaR Vic agrees with draft recommendation R19**, particularly the aspects concerning:

- Planning and management based on an acknowledgment of the unique relationship of Aboriginal people with Country, and the recognition and respect for the traditional and contemporary relationship of Aboriginal people with the land;
- Consultation regarding native title rights and interests;
- Better mechanisms for resourcing Indigenous participation in land and water management. Aboriginal people should be involved in land management and planning from the start, rather than being involved in last minute consultation as happens too often at present. This places undue pressure on Aboriginal people from developers and casts them as stoppers of development rather than as participants in the planning process. Their involvement needs to be based on the provision of proper information and the resources to ensure that participation is real rather than perfunctory or a sham;
- The development of cross-cultural awareness programs for land, water and natural resources agency staff to improve their knowledge and understanding of, and communication with, Aboriginal communities;
- Increased employment and training for local Aboriginal people. Employment and training are crucial aspects of the empowerment of Aboriginal people and their involvement in the real economy, which should lead ultimately to proper self-determination and reconciliation.

However, mere consultation in respect of these matters is not likely to be sufficient to achieve lasting reconciliation, and a real and binding role of Aboriginal people in public land management. A better approach is to negotiate legally binding agreements with traditional owner/native title holding groups about the matters raised in draft recommendation 19.

#### Joint management, co-management and Aboriginal advisory committees

The existing relatively low level of capacity of traditional owner groups/native title holders is used by VEAC as a justification for recommending a ‘flexible framework’ for the direct involvement of Aboriginal people in public land management. That flexible framework includes some proposed regimes with minimal Aboriginal involvement in land and resource management, such as Aboriginal advisory committees. In the long term, such minimal involvement of Aboriginal people in managing the use of their traditional Country is unacceptable.

The preferred outcome of change that involves Aboriginal people in public land management must be joint management. Mechanisms should be put in place directed to achieving that goal.

Another justification for such minimal involvement in land management is an alleged ‘broad range’ of Indigenous community aspirations of Indigenous communities.<sup>11</sup> There is no evidence in the report of a low level of such aspirations. The findings from the VEAC Indigenous Community Consultations include:<sup>12</sup>

- A low level of knowledge about options for Indigenous involvement in public land management; and
- A high level of interest in putting in place joint management arrangements for public land areas with a ‘hand-back lease-back’ arrangement.

These two findings do not support a statement that there is a broad range of aspirations. They cannot be used to justify a low level of Aboriginal involvement in public land management in the long term. In ANTaR Vic’s experience, Aboriginal people do have a high level of aspiration to ‘get the land back’, including by way of ‘hand-back lease-back’ arrangements. This is supported by VEAC’s own consultation, which states that ‘a majority of consultation workshop participants expressed the view that ‘hand-back lease-back’ options for some of the public land within the River Red Gum Forests study area would be welcome.’<sup>13</sup>

**‘Hand-back lease-back’ arrangements should be the first, and default, choice for the direct involvement of Aboriginal people in the management of all public lands.**

It should be remembered that from an Aboriginal point of view, Victoria ‘always was, always will be’, Aboriginal land. Their ongoing links to Country mean that Aboriginal people should have a primary role in the management of, and decision making about, that land. Not only does it amount to recognition of traditional owner groups/native title holders and their relationship with country, but is likely to go some way towards meeting their land justice aspirations.

ANTaR Vic supports VEAC’s proposal for meaningful Indigenous involvement in public land management and its suggestion that legislative changes are necessary to achieve this aim. **Changes should be made to the *National Parks Act 1975* to entrench requirements for the involvement of Indigenous people in shared management. In addition, changes should be made to other legislation to entrench this requirement for public lands other than those covered by the *National Parks Act 1975*.**

As indicated in the VEAC draft proposals paper, the changes required to achieve shared management are the same whether or not the land itself is transferred to Aboriginal ownership or not. Therefore, there is no impediment, arising out of the way in which land is managed, to land being transferred to traditional owner groups/native title holders. There does not appear to be any valid reason why land should not be transferred to appropriate Aboriginal people on a hand-back/lease-back basis independent of the management regime proposed for the land. This should occur as a matter of course.

There is no basis for the distinction drawn in the draft proposals paper between ‘co-management’ and ‘joint management’. Joint management is the preferred option since it goes further towards ‘getting the land back’ and achieving land justice.

<sup>11</sup> Draft proposals paper, 15.

<sup>12</sup> Draft proposals paper, 94.

<sup>13</sup> Draft proposals paper, 105.

**ANTaR Vic strongly supports draft recommendation R20**, concerning joint management of national parks.

**ANTaR Vic supports draft recommendations R21-R23, in so far as they provide for greater management involvement** by Aboriginal people in particular parks and other areas of public land.

However, joint management should also apply to parks and reserves. Therefore, **ANTaR Vic does not support draft recommendation R21, in so far as it does not provide for joint management.**

If there is to be co-management, the obligations of the board should give greater priority to the continued enjoyment of the area by the relevant Aboriginal groups for cultural, spiritual and traditional uses.

**ANTaR Vic does not support draft recommendation R22, in so far as it does not provide for joint management, or for a mechanism for Aboriginal groups to achieve joint management of particular areas.** Amendment of the *National Parks Act 1975* and other legislation such as the *Crown Land (Reserves) Act 1978*, to provide for a process for additional areas to be added to areas to which joint management applies would be useful.

**ANTaR Vic does not support draft recommendation R23, in so far as it does not provide for joint management or for a mechanism for Aboriginal groups to achieve joint management of particular areas.** Advisory committees, even if adequately resourced, cannot provide Aboriginal people with any degree of control over traditional lands. The proposal for review of the role of an advisory committee may be beneficial if it leads ultimately to joint management. However, the proposal is too loose to provide any guarantee that joint management will ever be realised.

Since joint management is the preferred outcome for management of all public lands including national parks, other parks and reserves, it should be expressed as the preferred, and even the default, management arrangement for all public lands. All lesser outcomes should be expressly subject to a statement to this effect, and should include specific and binding mechanisms by which joint management can be achieved.

ANTaR Vic welcomes specific proposals for involvement of particular Aboriginal groups in the management of particular parks. However, the proposals contained in R24, which are limited to the proposed Barmah National Park and Nyah-Vinifera Park, do not go far enough. In ANTaR's view, the value of the proposal is limited by its restriction to co-management, rather than joint management. Further, parks and reserves within the traditional Country of more traditional owner/native title holding groups should be included in the proposal.

There should be consultation with all traditional owner/native title holding groups with traditional Country in the Investigation area as to the nature of their future involvement in the management of particular parks.

**ANTaR Vic supports draft recommendation R24, in so far as it provides for greater management involvement by Aboriginal people in particular parks.**

**ANTaR Vic does not support draft recommendation R24, in so far as it does not provide for joint management of these particular parks, and does not include other parks, or a mechanism for consultation about the inclusion of other specific parks.**

### Aboriginal traditional cultural practices

The draft recommendation that Aboriginal traditional cultural practices be maintained by removing legislative restrictions on these practices across public land in the Investigation area is welcome.

However, there is ambiguity in the terms of the draft recommendations R26 and R27 as to how this might be done. The preferable means to achieve this is through a general exemption on public land for Aboriginal people to carry out Aboriginal cultural practices, no matter what the other requirements of the management regime on that land.

If there is to be a permit regime, it should be Aboriginal controlled. Permits to carry out Aboriginal cultural practices should be granted by Aboriginal people in accordance with the decisions of traditional owner groups/native title holders. Attention should be directed to the manner in which this might be done.

**ANTaR Vic agrees with draft recommendation R26, but argues that it does not go far enough:**

**R26 That:**

**policies and legislative restrictions inhibiting traditional cultural practice on specified areas of public lands and waters be amended to provide for Aboriginal Traditional Owners to undertake the following activities for personal, domestic and non-commercial communal use:**

- (a) hunt (including using firearms), gather, collect and fish,**
- (b) collect earth materials, and**
- (c) conduct a cultural or spiritual ceremony, including (if required) having exclusive use of specified areas for a specified time.**

This definition appears to be based on the terms of many native title determinations. It partially reflects the reality of the requirements of s.211 of the *Native Title Act 1993* (Cth), which removes prohibitions on native title holders carrying on hunting, fishing, gathering, cultural or spiritual activities in exercise or enjoyment of their native title rights and for the purpose of satisfying their personal, domestic, or non-commercial communal needs.

While recognition that traditional cultural practices may include hunting with firearms is welcome, the extent of the traditional cultural practices should better reflect the terms of the most recent native title determination in Victoria: the Gunditjmarra determination on 30 March 2007.

That determination,<sup>14</sup> agreed to by the State of Victoria, recognised native title that consisted of the non-exclusive:

- (a) right to have access to or enter and remain on the land and waters;
- (b) right to camp on the land and waters landward of the high water mark of the sea;
- (c) right to use and enjoy the land and waters;

<sup>14</sup> *Lovett on behalf of The Gunditjmarra People v State of Victoria* [2007] FCA 474 (30 March 2007), at [5] of the determination.

- (d) right to take the resources of the land and waters; and
- (e) right to protect places and areas of importance on the land and waters.

The resources that could be taken explicitly included taking water for domestic or ordinary use.<sup>15</sup>

VEAC's draft recommendations regarding cultural practices should be extended to allow practices including:

- Explicit inclusion of taking water;
- Camping; and
- The protection of places and areas of importance on the land and waters.

Many of draft recommendations A-M in Part 2 of the draft proposals paper, dealing with specific public land use recommendations, specifically allow traditional cultural practices by exempting them from a general prohibition.<sup>16</sup> For clarity's sake, the full terms of the exemption in draft recommendation 26 should be referred to.

While the truncated form of the exemption appears in draft recommendation A, dealing with national parks, it does appear in other draft recommendations at all. For instance, there is no such exemption in draft recommendations B, concerning regional and other parks.

The exemption does not appear in draft recommendations:

- B (regional and other parks);
- C (State forests);
- D (nature conservation reserves);
- E (historic and cultural features reserves);
- F1 (reference areas);
- F2 (heritage rivers);
- G (natural features reserves);
- H1 (water production areas);
- H2 (water drainage and distribution areas);
- I (community use areas); and
- M (uncategorised public land).

This appears to be mere oversight. There appears to be no reason why an exemption from the land use requirements should not apply for traditional cultural practices.

In each of these cases, the proposed land use is categorised by describing the use to which the land is put and identifying some specific prohibitions on activities that may take place on that land. The exemption should appear in respect of each of these cases, subject to:

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<sup>15</sup> *Ibid.*, at [6] of the determination.

<sup>16</sup> See draft recommendation A(c) note 3.

- The land uses by their nature necessarily requiring that traditional cultural practices not take place on the land. However, none of the descriptions of land use expressly state that traditional cultural practices are inconsistent with the proposed use; or
- There being no relevant prohibitions that traditional cultural practices need to be exempted from. However, the nature of the traditional cultural practices, even in the limited form described in draft recommendation 26, may require specific mention in the description of the activities that may take place on land subject to specific uses.

ANTaR Vic welcomes VEAC's draft recommendation that some control over traditional cultural practices should be conferred on traditional owner groups/native title holders by providing for them to have a role in the issue of permits to undertake cultural practices on their Country. This would amount to Aboriginal people controlling the practice of Aboriginal traditional culture, which is something that has not occurred enough in the years since white settlement.

**ANTaR Vic agrees with the principle behind draft recommendation R27:**

**R27 That:**

**traditional cultural practice be governed by a permit regime and protocols established by the land manager in partnership with the identified Aboriginal Traditional Owners for the specific area(s).**

However, again, the proposal may not go far enough. It should ensure that the greatest degree of control possible over Aboriginal culture is given to Aboriginal people.

**Summary of ANTaR Vic' position**

In summary, ANTaR Vic:

1. Praises VEAC's acknowledgement of traditional owner groups/native title holders in the draft proposals paper;
2. States that Recommendation 315 of the Royal Commission into Deaths in Custody should guide government in its approaches to the joint management of national parks;
3. Has the view that, as a general principle, consultation and negotiation should take place with traditional owner groups/native title holders in the course of implementing any and all of the recommendations of the draft proposals paper;
4. Supports the proposal for an environmentally sustainable flood regime, which depends on a volume of water in the order of 4000 gegalitres for a floodplain inundation event at least every five years;
5. Supports proposals designed to facilitate increased Indigenous community capacity;
6. Does not support any requirement that Aboriginal people be registered before they participate in the management of public lands;
7. Supports increased Aboriginal involvement in management of public lands;

8. States that 'Hand-back lease-back' arrangements should be the first, and default, choice for the direct involvement of Aboriginal people in the management of all public lands;
9. Is concerned that any lesser involvement of Aboriginal people in public land management (such as involvement in management without owning the land) should explicitly be part of a specific and binding program towards achieving joint management;
10. Supports changes to the *National Parks Act 1975* to entrench requirements for the involvement of Indigenous people in shared land management. In addition, changes should be made to other legislation to entrench this requirement for public lands other than those covered by the *National Parks Act 1975*;
11. Supports people being able to carry on traditional cultural practices by removing legislative restrictions on these practices across public land in the Investigation area, as well as in national parks. Those permitted cultural practices should include taking water, camping, and the protection of places and areas of importance;
12. If there is to be a permit regime for traditional cultural practices, supports an Aboriginal controlled scheme that ensures that the greatest degree of control possible over Aboriginal culture is accorded to Aboriginal people.