

First Principles Review recommendations by category

Recommendation number	Terms of Recommendation	Page ref.
Recommendations agreed to in full by the Victorian Government		
Recommendation 1	Settlement Act agreements should represent a fair and just settlement for Traditional Owners, as assessed against the listed criteria.	27
Recommendations agreed to in principle by the Victorian Government, subject to consulting with affected third parties, legislative processes, and considering financial implications		
Recommendation 3	<p>Money paid under a Settlement Act agreement should include:</p> <ul style="list-style-type: none"> (a) Compensation, being payment for loss of rights with no conditions governing its purpose; (b) On-going operational funding for dedicated purposes to support corporations to meet the cost of establishing and operating settlements, including, to participate in natural resource management and joint management; and (c) Commitment of on-going funding for departments to meet the cost of establishing and operating components of the settlements. 	29
Recommendation 7	Expert advice should be sought with respect to data issues, and the promotion of data sovereignty within the compensation process.	34
Recommendation 8	Where any issues arise around the availability or accuracy of data, it should be resolved with a presumption in favour of Traditional Owners.	35

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Recommendation 9	<p>The State should work with Traditional Owners to advocate for the Commonwealth to:</p> <ul style="list-style-type: none"> (a) meet any native title compensation liabilities it may have; and (b) contribute to the State’s native title liability, in accordance with previous commitments. 	35
Recommendation 11	<p>Executive Policy Owner Forum (EPOF) recommendation: The EPOF endorses the Expert Terms of Reference and further exploration of the Compensation Model; however, it considers that additional information is required, including in relation to:</p> <ul style="list-style-type: none"> • the comprehensiveness and reliability of data to be relied upon in the application of a retrospective LUAA; • the feasibility of including Land Use Activities such as major public works and public land authorisations in such a model (for which the data availability is currently unknown). <p>The EPOF suggests that further exploration of the Compensation Model should have regard to compensation being considered through Victoria’s treaty process, noting the work of the expert should be informed and align with progress in the treaty process.</p>	36
Recommendation 12	<p>The parties both jointly recommend that the Interim Community Benefits Formulae be adopted.</p> <p>EPOF additional recommendation, not supported by the First Principles Review Committee (FPRC):</p> <p>EPOF notes the significant financial and budgetary impacts of the Interim Community Benefits Formulae and considers that the recommendation needs to be</p>	38

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	<p>accompanied by an enabling revenue model to address the significant cost impacts on providers of essential services. As part of government's consideration of the First Principles Review recommendations, EPOF will be seeking: a 'no net loss of retained revenue' principle for land managers; that Community Benefits liabilities be factored into State Budget funding allocations; and that transitional arrangements be implemented for major public works with approved budgets impacted by the proposed Interim Community Benefits Formulae.</p>	
Recommendation 13	<p>That Traditional Owner Corporations (including Registered Aboriginal Parties) should be part of the First Right of Refusal process. At minimum, Corporations should be notified of proposed surplus public land and have the option to purchase this land under full or restricted title, before it goes to public auction. The ways in which this recommendation can be given effect are to be further explored in the Settlement Act forum, including looking at options:</p> <ul style="list-style-type: none"> • to ensure that the holding entity is the entity representing the Traditional Owner group, and if that status changes, there be provision for transfer to another entity, recognised as representing the relevant Traditional Owner group; and • for land and assets to be handed back to Traditional Owners, meaning they are transferred for only nominal or peppercorn consideration. 	40
Recommendation 14	<p>That the term 'comply with' be removed from item 4.1 of Schedule 1 of the Natural Resource Agreement template where this refers to the Sustainability Principles and replaced with the term 'give proper consideration to'.</p>	41
Recommendation 15	<p>That prohibitions on taking protected or threatened flora should not apply to Traditional Owners without their consent.</p>	42

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	That the Natural Resource Agreement template be amended so that any such prohibitions are removed from the template and are instead assessed and negotiated in accordance with the UNDRIP principle of free prior and informed consent, through the Partnership Forum.	
Recommendation 16	<p>Item 5.3 of Schedule 1 in the NRA template should be removed in order to facilitate greater Traditional Owner access to firewood, by allowing for the cutting down of trees or branches (outside firewood collection areas) for this purpose. The lifting of this restriction would create greater consistency between firewood and other vegetation in the Natural Resource Agreement template.</p> <p>It is EPOFs view that other natural resource legislation and regulations would also need to be reviewed to ensure it supported the proposed policy change.</p> <p>The parties agree that items 5.4 and 5.5 of Schedule 1 only regulate collection of firewood within a Firewood Collection Area, and outside such areas, Traditional Owners may collect firewood as an Agreed Activity, and in accordance with the relevant clauses in the NRA template, including the Public Land conditions in Schedule 1 of the NRA. The NRA should be amended so this position is more clearly stated.</p>	42
Recommendation 17	<p>The term ‘traditional purposes’ in Section 79 of the TOS Act should be replaced with ‘non-commercial purposes’ but retain the same definition.</p> <p>The FPRC and EPOF note that this is an interim measure until the Traditional Owner rights to use natural resources for commercial purposes is recognised.</p>	43

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Recommendation 18	That the Settlement Act and the NRA template be amended so as to accommodate the commercial use of animals (other than fish) to create parity with the provisions providing for commercial use of vegetation and stone.	44
Recommendation 19	That the Settlement Act and TOLNRA template be amended so that 'agreed activities' can be exercised on freehold land within the outer boundaries of a Recognition and Settlement Agreement, subject to a landowner's permission.	46
Recommendation 20	The EPOF and FPRC agree the State should acknowledge that Settlement Agreements do not provide sufficient recognition of Traditional Owner rights and interests in water. The EPOF and FPRC recommend that substantive reform be pursued as a priority in the proposed Settlement Act forum.	47
Recommendation 21	DEECA commits to developing a policy to offer Miner's Right permits to members of Traditional Owner Corporations under the <i>Mineral Resources Sustainable Development Act 1990</i> . This would be a temporary solution designed to address the exclusion of gold, silver, metal and minerals in the definition of 'natural resources' in the Settlement Act. EPOF recommends that options for legislative change be explored through the proposed Settlement Act forum.	48
Recommendation 22	Community Purpose Permits and Licences be re-categorised as Negotiation Class A, with a condition that no Community Benefits are payable, this change occurring for permits and licences: <ul style="list-style-type: none"> • with a term above 21 years, in accordance with Timeframe 1;¹ and 	50

¹ **Timeframe One** means within 3-6 months following endorsement by Cabinet.

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	<ul style="list-style-type: none"> all other Community purpose permits and licences, in accordance with Timeframe 2.² 	
Recommendation 23	<p>Community Purpose Leases to be re-categorised as Negotiation Class A, this change occurring for leases:</p> <ul style="list-style-type: none"> with a term above 21 years, in accordance with Timeframe 1; and all other Community Purpose Permits and Licences, in accordance with Timeframe 2. 	50
Recommendation 24	<p>Commercial Permits and Licences to be re-categorised as Negotiation Class A, this change occurring for permits and licences:</p> <ul style="list-style-type: none"> with a term above 10 years (not including water licences) in accordance with Timeframe 1; and all other Commercial Purpose Permits and Licences, including works (Water Act) licences as defined in s 27 of the TOS Act. 	51
Recommendation 25	<p>Commercial Purposes Leases to be re-categorised as Agreement activities, the change occurring for leases:</p> <ul style="list-style-type: none"> with a term above 10 years, in accordance with Timeframe 1; and all other Commercial Purposes Leases, in accordance with Timeframe 2. 	51
Recommendation 26	<p>Major Public Works:</p> <p>That the proposed re-categorisation of Major Public Works from Negotiation B to Negotiation A take effect after provisions have been included in the TOS Act to</p>	52

² **Timeframe Two** means a phased approach estimated to take 3-5 years.

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	provide clear guidance on the factors VCAT may take into account in its decision making, and the grounds upon which VCAT may decide that a Major Public Work does not proceed. The proposed recategorisation will therefore take place in accordance with Timeframe 2.	
Recommendation 27	That: <ul style="list-style-type: none"> • each activity described in subsections 99(a), (b) and (c) of the Constitution Act 1975 (Vic) be categorised as Agreement activities under the LUAA; and • the issue of offshore fracking be referred to the proposed Settlement Act forum. 	53
Recommendation 28	That the Land Use Activity Regime should not treat differently land that is within the boundaries of an alpine resort, which will require the repeal of section 32(3A) of the Settlement Act.	54
Recommendation 29	That with respect to the capture of existing Public Land Authorisations upon renewal, Option A should be implemented as an interim measure, while the issue be referred to the proposed Settlement Act forum, in accordance with Option C, for final resolution. The detail of each relevant option is as follows: <ul style="list-style-type: none"> • Option A: Commence ongoing payment: Upon entry into a Settlement Act agreement, the State will start paying Community Benefits for PLAs that are in effect as at the time of settlement, from monies otherwise being paid to consolidated revenue, plus where any right of renewal for these PLA's is exercised, it will be categorised as an Advisory activity under the LUAA. • Option C: Refer this issue to the proposed Settlement Act Forum: While Option B requires a specific proposal be referred to the proposed Settlement Act forum, Option C proposes that this issue be referred in its entirety to allow for: 	54

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	<ul style="list-style-type: none"> ○ a broader review of exclusions from the LUAA; ○ an examination of whether other exempt PLAs should generate Community Benefits payments and be categorised to allow procedural rights; and ○ an exploration of revenue sharing for PLAs in existence at the time of settlement. For example, the proposed Settlement Act forum could consider whether PLA revenue sharing should be extended to include public land with existing community and/or commercial infrastructure at the time of settlement. 	
Recommendation 30	(a) That the Settlement Act and <i>Conservation, Forests and Lands Act (1987)</i> be amended in order to allow for the grant of Aboriginal title and joint management arrangements over land within the boundaries of a State Game Reserve.	56
Recommendation 31	That the Settlement Act and other relevant legislation be reviewed and amended to allow for transfers of Crown land with existing commercial leases to Traditional Owner corporations, along with a commitment to develop a supplementary policy to support the change. This proposed legislative change and policy development should be progressed by the Settlement Act forum.	56
Recommendation 32	<p>(a) That the Settlement Act be amended to include the following definition of the term 'emergency': 'emergency' has the same meaning as in Section 3 of the Emergency Management Act 2013 (Vic)'. That clause 7(c) of the template LUAA be amended to strengthen engagement with Traditional Owners following the carrying out of an emergency activity by the State, by incorporating the following:</p>	57

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	"In an emergency situation where the State carries out a Land Use Activity as permitted by s 39 of the Act, the State will inform and, upon request, meet with the Corporation as soon as is practicable.	
Recommendation 33	That a Traditional Owner Settlement Act Forum, comprised of both Traditional Owners and State representatives, be established to build on the work of the First Principles Review. It is intended that the new Settlement Act forum will finalise those issues not resolved in the current Review, as well as work towards solutions for emerging issues under the Settlement Act. The First Peoples – State Relations group will need to work closely with the new Settlement Act forum to ensure its work aligns with treaty progress, including through engagement with the First Peoples' Assembly of Victoria.	58
Recommendation 34	With respect to Crown Water Frontages: (b) That DEECA work together with the effected Traditional Owner groups, the Department of Premier and Cabinet and the Victorian Fisheries Authority to discuss a way forward with an approach that includes an assessment of Crown water frontage sites for Aboriginal cultural heritage values.	58
Recommendations not agreed to by the Victorian Government		
Recommendation 2	Calculation of compensation should not be limited to activities occurring post-1975.	28
Recommendation 4	Settlement Act agreements should not be full and final in respect of native title compensation, and instead a method should be adopted to allow for compensation to be increased if developments in the common law would otherwise so entitle Traditional Owners.	30

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Recommendation 5	<p>Compensation for historical impairment (along with extinguishment) of native title rights should form part of the Settlement Sum. Compensation for historical impairment should be calculated:</p> <p>(a) on the basis of newly negotiated Community Benefits formulas, applied retrospectively, where the activity would be compensated in accordance with a Land Use Activity Agreement (LUAA) following settlement; and</p> <p>(b) on the basis of individual negotiation, where the activity would not be compensated under the LUAA, but has otherwise had, or continues to have, a significant impact on the ability of Traditional Owners to exercise Traditional Owner Rights over, or in relation, to the relevant land.</p>	32
Recommendation 6	Compensation should include interest on all compensable acts, calculated as compound interest.	33
Recommendation 10	That a moratorium on all Crown land sales be initiated in all areas where the Traditional Owner groups do not have rights to either provide or withhold consent to the sale.	36
Recommendation 35	<p>FPRC recommends that as an outcome of this review:</p> <p>(a) the State appoints an independent lawyer to provide advice to the State and local governments on LUAA matters, and will initiate a penalty regime for failure to comply with the LUAA; and</p> <p>(b) the State agrees to establish an independent office or body to oversee the implementation of Settlement Act agreements (and other agreements between Traditional Owners and the State) to oversee not just disputes and compliance, but also ongoing review and implementation. This role would be something akin</p>	62

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	to an ombudsman, with exact nature of its role and enforcement powers to be determined through the proposed Settlement Act forum.	
Recommendation 36	<p>The FPRC recommends that where any issue raised in this report is referred to the Minister for Treaty and First Peoples (Minister), the Assembly, or otherwise sought to be progressed through the Treaty process, that:</p> <p>(a) Those matters should be raised with the Assembly and the Minister in writing, and they should both be provided a copy of this report in full; and</p> <p>Unless the Assembly confirms that they intend to actively negotiate and pursue each issue within 12 months of receiving notice in writing, the issue will be automatically referred to the proposed Settlement Act forum to be further progressed.</p>	73