

What does the Options Paper say?

Background to this Review

The *Aboriginal Lands Act 1970* (Vic) (ALA) was passed in 1970. In 2017, the Victorian Government published a "Discussion Paper" saying that it wants to review the ALA to improve and increase:

- governance;
- economic development; and
- self-determination

for the communities at Framlingham and Lake Tyers.



Jason Behrendt and Tim Goodwin were appointed as independent reviewers. They consulted with the communities in 2018, and wrote an "Options Paper" in 2019 setting out some different ideas for improving the ALA.

This is a "snapshot" of the key ideas in the Options Paper.

Background to the ALA

The ALA created two trusts: the Framlingham Aboriginal Trust and the Lake Tyers Aboriginal Trust. People living in each community on 1 January 1968 were given shares in that community's Trust. Each Trust owns the former mission reserve land on behalf of the shareholders (or members). In this way, the shareholders own the land together.



Options for Changing the ALA

The Options Paper outlines three main options for the ALA:

1. No Change

Communities may feel there is no need for legal change. They might feel that the current system is working, or that changes should be made to policy, funding, or to the community, instead of legal changes.

2. Minor Change

Keep the share system but consider make some changes in the following areas:

<i>Shares</i>	<p>The rules around how a share transfer can be carried out, and who can receive shares, are not that clear. This leads to disputes.</p> <p>Make the rules clearer, so share transactions are more transparent.</p>
<i>Governance</i>	<p>The ALA only has a few rules about how the Trust should conduct its affairs. Some of these rules are not very clear.</p> <p>Have clearer rules for how the Trust should operate, including about:</p> <ul style="list-style-type: none">• how often general meetings should be held;• meeting quorum;• elections to the Management Committee (also called the Committee of Management). <p>This would reduce disputes and make it easier for the Trust to operate effectively.</p>
<i>External Regulation</i>	<p>Currently, the Minister is responsible for overseeing compliance with the ALA, and has the power to appoint an administrator but no power to investigate breaches of the ALA before doing so.</p> <p>Consider having an independent Registrar to look after the share register, help the Trust comply with the ALA, investigate complaints, and help settle disputes. This would mean appointing an administrator is more of a last resort.</p>
<i>Dispute resolution</i>	<p>The only way to resolve disputes is through the Supreme Court, which is expensive and complicated.</p> <p>Have accessible dispute resolution processes, which could be:</p> <ul style="list-style-type: none">• an independent Registrar to mediate disputes;• an independent mediator; or• require mediation before Court proceedings are started.
<i>Engagement with Trust Residents</i>	<p>Non-shareholding residents form a large and important part of Trust communities but they can't vote at Trust meetings or elect the Management Committee.</p> <p>Consider giving residents more of a role and a say in Trust affairs.</p>
<i>Sale of Trust Land</i>	<p>Land can be sold if there is a unanimous resolution of the Trust (which can happen even if only a few people attend a Trust meeting).</p> <p>Consider whether the Trust should be allowed to sell or mortgage Trust land, and if so, who needs to agree.</p>
<i>Economic Activity</i>	<p>It was intended that the Trusts would pursue business opportunities and earn money for shareholders, but this hasn't really happened.</p> <p>Help the Trusts to pursue business opportunities by allowing the Trusts to:</p> <ul style="list-style-type: none">• carry out business anywhere (not just on Trust land);• acquire companies to carry out businesses.

3. Major Change

Introduce a totally new system for ownership of the land at Lake Tyers and Framlingham instead of the share system.

Key questions are:

- **Who would hold the land?**

Statutory Corporation (a corporation created by an Act of Parliament)

- oversight by (and close relationship with) government
- members have equal voting and membership rights
- corporation could be designed to meet each community's specific needs
- rules could also be designed with the communities' needs in mind
- the rules are more fixed, as changes can only be made by Parliament

Corporation established under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth) (CATSI Act)

- regulated by ORIC Registrar, who can provide support, dispute resolution services and education
- specifically designed to suit the needs of Aboriginal people
- rules can be changed more easily, which could significantly change how the cooperation operates

Corporation established under the Corporations Act 2001 (Cth)

- regulated by ASIC
- no Indigenous-specific support
- rules can be changed more easily, which could significantly change how the corporation operates

Cooperative established under the Cooperatives National Law

- regulated by Cooperatives Registrar
- each member has one share
- no profits can be distributed to members
- as members must be active, non-residents may be unable to be members

- **Who would the land be held for?**

The land could be held for one or a combination of the following groups:

Existing shareholders and their descendants

As with the current system, this means many members (especially in relation to Lake Tyers) would not live on Trust land.

Residents

Many residents are not shareholders, but non-shareholding residents could be members under a new system.

If so, it would need to be decided how long someone must live in the community to be considered a resident and what happens if people move away from the Trust.

People with a historical association with Lake Tyers or Framlingham

This could be people who lived on the Trust in the past or who have family members buried at the Trust.

People with a traditional connection with Lake Tyers or Framlingham

This could be traditional owners of the land and waters or could be defined in another way.

If the shareholding system is replaced, it also would need to be decided:

- whether non-Aboriginal people could be members in future;
- how existing shareholders could be compensated.

Feedback

The reviewers would like to hear what shareholders think should happen with the ALA.

Give feedback by:



Visiting a community drop-in lunch.



Calling the Reviewers:
Jason on 02 9231 4544,
or Tim on 03 9225 8444



Online at <https://engage.vic.gov.au/ala-review-1970>



Calling Aboriginal Victoria
on 03 9651 2913 to arrange
a one-on-one conversation.

Glossary

ASIC	Australian Securities and Investments Commission.
Corporation	An entity with “legal personality”, which means it can act as a person by entering into contracts, buying and selling land.
Governance	When referring to companies and organisations, governance relates to the set of systems, practices, rules and processes the organisation operates under.
Management Committee (or Committee of Management):	The governing body of the Trust, responsible for managing the Trust and the Trust Land, and elected by Members.
Members	The people who own a share in the Trust (also known as shareholders) . The original Members were people who were living on the Trust Land on a certain day specified in the ALA. Members may have passed on their shares, for example to relatives, who then become Members.
Minister	The Minister responsible for administering the ALA, being currently, the Victorian Minister for Aboriginal Affairs.
ORIC	Office of the Registrar of Indigenous Corporations.
Quorum	The minimum number of members needed at a meeting for the proceedings and decisions made to be valid.
Stakeholders	Another term for Members.
Statutory corporation	A company or corporation created through an Act of Parliament. It is governed by the Law that creates it and answerable to the Parliament
Trust	The body corporate established by the ALA which owns the Trust Land. It comprises the Members of the Trust but is a separate legal entity from the Members of the Trust.
Trust Land	The land owned by each of the Framlingham Aboriginal Trust and the Lake Tyers Aboriginal Trust under the ALA.