




Aboriginal Lands Act Review

Executive Summary of Options Paper



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Aboriginal Lands Act 1970 Review
Executive Summary of Options Paper

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EXECUTIVE SUMMARY OF OPTIONS PAPER

The Options Paper outlines three main options, “no change” “minor change” and “major change” of the *Aboriginal Lands Act 1970* (Vic) (**ALA**).

Options for change

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 instead be made to policy, funding, or to the community and not to the ALA.

Key question:

We would like to hear from people who think no legal change is needed, and why?
Do you think that policy, funding, community or other changes should be made instead?

Minor change

The second option, “minor change”, is to keep the ALA but make some changes in the following areas:

- **Shares:** Is the share system working or can it be improved?
- **Governance:** How can governance of the Trusts be enhanced?
- **External regulation:** How should the Trusts be monitored by the Government?
- **Dispute resolution:** What would be the best way of resolving any disputes within the Trusts?
- **Trust residents:** How can greater engagement with Trust residents be facilitated?
- **Economic development** including sale of Trust land: How can the ALA be changed to provide for more economic development?

Major change

The third option is to introduce a totally new system for ownership of the land at Lake Tyers and Framlingham rather than keeping the share system. This could be ownership by a:

- statutory corporation (a corporation created by an Act of Parliament); or
- corporation established under the *Corporations Act 2001* (Cth); or
- corporation established under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth);
- cooperative established under the *Cooperatives National Law*.

One of these entities (or bodies) could hold the land on behalf of:

- existing shareholders;
- residents;
- people with a historical association with Aboriginal Trust (Lake Tyers) or Aboriginal Trust (Framlingham); and/or
- people with a traditional connection with Lake Tyers or Framlingham.

Creating an entirely new system allows for many different features and options to be considered. These are discussed further in Section 3 of the Options Paper and Summary.

SECTION 1

BACKGROUND TO REVIEW AND OVERVIEW OF ACT

Background to review and action to date

The *Aboriginal Lands Act 1970 (Vic)* (**ALA**) was passed in 1970. It is typical for Acts to be regularly reviewed, so that they can be improved and problems can be fixed. The ALA was reviewed in 2002 and 2012. Both reviews led to minor changes being made to the ALA.

In 2017, the Victorian Government published a "Discussion Paper" outlining the Government's intention to undertake a major review of the ALA to:

- improve governance;
- facilitate economic development; and
- enable greater 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" setting out some different options for improving the ALA.

Overview of 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 holds the freehold title of the former mission reserve on behalf of the shareholders (or members). In this way, the shareholders own the land together.

The ALA sets out rules for how the Trusts should operate, and how the land can be used:

- Each Trust can do all things that a corporation can do. However, there are some rules around when and how the Trust can do things. For example, land can only be sold if every shareholder who attends a special general meeting agrees.
- A Management Committee (also known as Committee of Management), chosen by members, manages the day-to-day affairs of the Trust.
- The Trust can also hold general meetings, where shareholders can have a say about what the Trust should do. People who live at the Trusts, but don't own shares, don't get a vote.
- The shares are "personal property" which means they can be sold or given to other people, in the circumstances set out in the ALA.
- The Minister for Aboriginal Affairs (Minister) supervises the Trusts. The Trusts need to report to the Minister on financial and other matters.
- If the Minister believes that the Trust is not complying with the ALA's rules, the Minister can appoint an Administrator to replace the Management Committee for a certain time.

Observations about the ALA

The reviewers have made several observations about the ALA which have informed the possible amendments they set out:

1. The ALA was intended to achieve land justice and enable the communities to become self-sufficient. It was an important and historic step in the long struggle for Aboriginal people to have land rights.
2. The share system is unique in giving shares to individuals which are personal property, and on which dividends can be paid. Any changes to the ALA that interfere with share ownership without giving compensation would be a breach of trust, and further dispossess Aboriginal people of their land.
3. When the ALA was passed, all the residents were shareholders. However, now there are many shareholders who don't live on

the land, and some residents who aren't shareholders. This means that there is less local participation in the decisions of the Trust, making it more difficult for the Trust to be effective.

4. The Trusts are limited in scope – they were created to manage land and undertake business enterprises. Whatever changes are made, it is important to realise that they can't fix all social and economic challenges facing the communities.
5. Because the ALA gave the Government a role supervising the Trusts, Government has a responsibility to make sure that the ALA operates as intended.
6. There are many factors that impact on how well the Trusts are working that are beyond the legal framework. If there are community problems or a lack of capacity in community, there are likely to be problems, regardless of the legal or organisational framework.
7. There is no guaranteed funding for the Trusts. Income which is currently generated does not support the employment of many staff. Rules made for the Trusts need to be proportional to the Trust's capacity to comply.
8. The Lake Tyers and Framlingham communities are very different – in size, population, and in the make-up of shareholders and residents. The best solution for reform might be different for each community.

SECTION 2

ISSUES WITH THE ALA AND SUGGESTIONS FOR MINOR CHANGE TO THE ALA

The reviewers identified several issues with the way the ALA is currently working across six key areas. If the second option of “minor change” was chosen, the ALA would be retained, but changes could be made as suggested by the reviewers to address the issues they identified. The six areas are:

- The **share system**
- **Governance** of the Trusts
- **External regulation** of the Trusts
- **Dispute resolution**
- Facilitating engagement with **residents**
- **Sale of Trust land** and providing for **economic development**.

Shares

When each Trust was created, Parliament gave residents ownership of Trust land by giving them shares in the Trust. The ALA provides that each share is capable of having a dollar value, set by an auditor, that is based on the land value. The shares also have value in that it was anticipated that the profits made by the Trusts could be paid to shareholders as dividends (although it’s not clear if that has ever actually happened). However, because shareholders may not be able to find a buyer, the actual economic benefit of the share may be limited.

Many shareholders have a deep historical attachment to their shares, which symbolise their family history at Lake Tyers or Framlingham, and a recognition of their connection and ownership of the land.

Ownership of shares is recorded in a register, which is managed by the Management Committee. There are some issues with the rules in the ALA which set out how, and to who, shares can be transferred. The Options Paper suggests potential solutions to these issues.

TRANSFER OF SHARES

Issue	Possible Amendment
The ALA requires a “proper instrument of transfer” to transfer shares, but doesn’t set out what that form should look like, which can lead to disputes.	There should be a set form for transferring shares, and clear rules about what documents must be provided in support.
It is important for shareholders to know when shares have been transferred. This is because who holds shares, and the number of shares they hold, impacts on how many people are needed to make quorum at meetings, and, for a “poll” vote, on how many votes each person gets.	Shareholders should be: <ul style="list-style-type: none">• notified when shares have been transferred; and• able to request a copy of the share register at any time.
Shares can only be transferred to the Trust, another member, the Crown, or certain family members.	It should also be possible to transfer shares to Aboriginal people who live at the Trust.

SALE OF SHARES

Issue	Possible Amendment
It is not clear whether shares can be sold to people beyond the Trust, other shareholders, the Crown, or certain family members.	It should be clear who can buy shares.
The ALA requires that shares be sold at a price fixed by the auditor. This is designed to stop shares being sold for less or more than their worth.	Sellers and purchasers should give statutory declarations confirming that shares were sold at the price fixed by the auditor.
When shareholders sell shares to family members they may wish to sell for less than the price fixed by the auditor.	Shares can be sold at a lower price to a family member if the seller signs a declaration that they are aware, and agree, to sell their shares for a lower price.

TRANSFER OF SHARES TO NON-ABORIGINAL PEOPLE / THE CROWN

Issue	Possible Amendment
Shares can be held by non-Aboriginal people (for example if they inherit them).	<p>Shares can only be transferred to Aboriginal people. If approved by the Management Committee, shares could be transferred to non-Aboriginal people to hold for Aboriginal children until they turn 18.</p> <p>This would limit future transfers only: non-Aboriginal people who currently hold shares could keep them.</p>
Shares can be transferred to the Crown.	The communities should consider whether they want to keep the option of transferring shares to the Crown.

TRANSFER OF SHARES AFTER PEOPLE DIE

Issue	Possible Amendment
<p>Currently, shares can probably be inherited by a broad group of people. (The ALA is not that clear).</p>	<p>Shares can only be inherited by other shareholders, certain relatives, or the Crown.</p>
<p>When there is a Will: the ALA is not clear about whether the Management Committee must approve transfers of shares in accordance with the Will of a person who has died.</p>	<p>Transfer of shares requested in a person's Will must be approved by the Management Committee. However, if the transfer is to a person in the group of people who the ALA generally allows to receive shares, the Management Committee could not refuse a transfer request.</p> <p>If the Management Committee refused the request to transfer shares, the shares could be transferred to the deceased person's children, or if they had no children, to another person who is not an executor of the Will or a member of the Management Committee.</p>
<p>When someone dies without a Will: families have to go through complicated legal procedures to transfer shares. Also, it is more likely the shares will go to a spouse of the person who has died, who may not be Aboriginal, rather than the person's children.</p>	<p>When someone dies without a Will, their shares should automatically be given to their children (or, if they don't have children, to their nieces and nephews or otherwise to the Trust).</p>

MAINTENANCE OF SHARE REGISTER

Issue	Possible Amendment
<p>There have been mistakes with maintaining the share register.</p>	<p>The share register could be maintained by an independent person, like a Registrar, who could record share transfers that have been authorised by the Management Committee and comply with the ALA.</p>



Governance

The ALA only has a few rules about how the Trust should conduct its affairs. These rules are not very clear. This increases the risk of disputes between shareholders and makes it more difficult for the Trust to be effective. Having clearer rules about how the Trust should operate will help the Trust govern itself, and provide more fairness, transparency and certainty for shareholders.

GENERAL MEETINGS

Issue	Possible Amendment
<p>Currently, there is no requirement to have general meetings. General meetings are important to:</p> <ul style="list-style-type: none"> • provide shareholders with the opportunity to ask questions to the Management Committee, increasing transparency and accountability; • improve the flow of information from the Management Committee to shareholders; • make shareholders feel involved in the business of the Trust. 	<p>Require each Trust to have at least one general meeting each year (as well as the Annual General Meeting (AGM)).</p> <p>(It should be possible for this requirement to be waived if it was too difficult to hold the meeting).</p>
<p>It can be difficult to meet quorum for general meetings. At least half of the shareholders who live at the former reserve are needed to meet quorum, and there is no way to force members to attend.</p>	<p>Make it easier to meet quorum by:</p> <ul style="list-style-type: none"> • reducing the required number of shareholders to attend a general meeting to one third of resident shareholders; and/or • including shareholders who live on Trust land (not just former reserve land); and/or • removing the requirement that shareholders attending must be residents but decrease the number of shareholders that need to attend for each Trust to a lower percentage; and/or • allow the meeting to be postponed if quorum can't be reached. At the postponed meeting, if quorum still can't be reached, allow the meeting to go ahead, or allow the meeting to go ahead if the Minister agrees (or Registrar, if one is appointed). <p>Full quorum could still be required for big decisions like sale of land.</p>
<p>Shareholders can be more prepared if they know beforehand what will be discussed at general meetings.</p>	<p>The Notice of General Meeting should be required to contain: time, date, location, and agenda.</p>
<p>There is no requirement to keep minutes of general meetings. Minutes are important for proper record-keeping and to provide transparency of decision making.</p>	<p>Require Minutes to be taken at general meetings and be given to members who request them.</p>

ELECTIONS TO MANAGEMENT COMMITTEE

Issue	Possible Amendment
Elections for the Management Committee are staggered, which helps to retain corporate knowledge. However, the ALA doesn't provide for the election schedule to be reconfigured where this requirement is not maintained.	Allow the election schedule to be adjusted as needed to ensure staggered elections for the Management Committee.
There are no rules about how Management Committee members should be elected.	Set out rules for how Committee members should be elected , including how they can be nominated, and requiring the Victorian Electoral Commission or a Registrar to conduct the election.

MEMBERSHIP OF MANAGEMENT COMMITTEE

Issue	Possible Amendment
Community members are not eligible to be on the Management Committee in limited circumstances, including being "of unsound mind", bankrupt, or removed by a resolution.	People should also be disqualified from being Management Committee members if: <ul style="list-style-type: none"> they have committed a criminal offence that involves dishonesty and can be punished by imprisonment of three months or more; they are disqualified from managing a corporation under Part 2D.6 of the <i>Corporations Act 2001</i> (Cth).
Other land rights legislation have been updated to be more in line with general corporations law.	
There is no time limit to fill casual vacancies on the Management Committee.	Casual vacancies should be filled at the next general meeting after the casual vacancy happens.

RULES FOR THE TRUST

Issue	Possible Amendment
The Trust will be more accountable if it has to follow a set of rules when operating (which address procedural and governance issues like the issues mentioned in this Options Paper).	Set out the rules for the Trust. The rules could be included within the ALA, or in "Model Rules" which could be adjusted by the Trust. Model Rules are more flexible, but this could mean the Rules get weakened.
Members can vote on proposals even if they have a conflict of interest (for example, if they will receive a financial benefit if the vote goes through).	A person who has a material personal interest in a matter should be excluded from voting on, or discussing, that matter at a general meeting.
Sometimes it may be difficult for the Trust to comply with all the rules due to circumstances beyond its control. Requiring strict compliance can be a big, unintended burden, and lead to breaches of the ALA.	The Minister (or Registrar, if one is appointed) can exempt the Trust from complying with the ALA if appropriate.

External regulation

INDEPENDENT REGULATOR

Issue	Possible Amendment
<p>The Minister is responsible for ensuring compliance with the ALA.</p> <p>Disputes can only be resolved through the Supreme Court, which is expensive and inaccessible.</p>	<p>Appoint an independent Registrar to maintain the share register, assist the Trust to comply with the ALA, help settle disputes and investigate complaints. This is an advantage because:</p> <ul style="list-style-type: none"> dispute resolution will be more accessible; and unlike the Minister, the Registrar is independent of Government. <p>Alternatively, the Registrar under the <i>Associations Incorporation Reform Act 2012</i> (Vic) could do this.</p>

REPORTING REQUIREMENTS

Issue	Possible Amendment
<p>The Trust must provide a Report on economic and social wellbeing of residents. The Report is not very helpful because:</p> <ul style="list-style-type: none"> the Trust has no power to collect information from Trust residents; the information included in the report is mostly census information, which is already available to the Minister. 	<p>Instead of requiring an Annual Report on Economic and Social Wellbeing of Trust Residents, require an Annual Report or a strategic plan every three years.</p> <p>An Annual Report could cover the Trust's strategic direction, its operations, and the challenges it faces (including social challenges).</p> <p>A Strategic Plan could cover:</p> <ul style="list-style-type: none"> acquiring, managing, and/or developing land and other assets; community benefits schemes; business enterprise and investment; and Aboriginal culture and heritage.

APPOINTMENT OF ADMINISTRATOR

Issue	Possible Amendment
The ALA provides that the Minister can appoint an Administrator in certain circumstances, but it does not say whether the Minister can, or should, consult shareholders about this.	The Minister should be required to consult with shareholders before appointing an Administrator.
Unlike many other Acts, the Minister has a broad power to appoint an Administrator. This may be partly because there are not many specific rules the Trust has to follow.	Consider setting out more specific circumstances about when an Administrator could be appointed. If the rules the Trust must follow are specifically set out, appointment of an Administrator could follow as an option if those rules were breached.

INVESTIGATIONS

Issue	Possible Amendment
The Minister can issue a notice, or even appoint an Administrator, if the Trust is not complying with the ALA. However, the Minister has no power to investigate whether the Trust is complying with the ALA in the first place.	Give the Minister or other suitable person power to undertake an investigation of a Trust. This means the Minister could make informed decisions about whether to exercise their power to appoint an Administrator.

Dispute Resolution

Disputes often occur at the Trusts over misunderstandings, miscommunication or minor differences. The only option provided in the ALA for resolving disputes is applying to the Supreme Court. This is expensive, complicated, and often a disproportionate response to a minor dispute.

Other land rights schemes contain dispute resolution processes. The ALA could include other dispute resolution options such as:

- having an independent Registrar who mediates disputes; and/or
- members can ask the Trust or the Minister to appoint a mediator, or use an independent mediation centre; and/or
- require members to mediate before starting Court proceedings.

Facilitating Engagement with Trust Residents

Many Trust members today have moved away. About three-quarters of Lake Tyers shareholders live away from the Trust. Also, there are many residents at each Trust who don't own shares: at Lake Tyers, only one-third of residents are shareholders.

Residents who do not own shares don't have many rights in the operation of the Trusts. Non-shareholding residents can be elected to the Management Committee (and have been in the past at Framlingham and Lake Tyers). However, they can't vote at Trust meetings or elect the Management Committee.

Because non-shareholding residents form a large and important part of Trust communities, some people might think it's important that they have a role and a say in Trust affairs. This could be by:

- allowing shares to be transferred to Aboriginal residents, including shares currently held by the Crown.

- establishing a resident’s advisory committee to help the Management Committee.
- give non-shareholding residents “associate membership” of the Trust. Shareholders could decide what rights “associate members” would have. However, this would mean another membership register would need to be created and managed, and could lead to complexity and disputes.

For these options, a “resident” could be defined as someone who has been ordinarily living on the former reserve land for three months or more.

Sale of Trust Land

Some Aboriginal land rights schemes don’t allow land to be sold, or have built-in safeguards, like requiring another body to approve a sale. These schemes are trying to balance the need to protect land which is significant to Aboriginal people, against the need to enable Aboriginal communities to pursue economic activity and self-determination.

The ALA allows land to be sold if there is a unanimous resolution of the Trust. This protection is limited, as a unanimous resolution can be passed even if only a small number of people show up to a meeting (provided quorum is reached).

Lake Tyers has not sold any land. Framlingham has transferred some land to former shareholders in exchange for their shares. Allowing Framlingham to sell land may be appropriate, but the Lake Tyers community may want to have protection against sale of its land. The ALA could be changed to say:

1. Lake Tyers land cannot be sold; or
2. A sale or long-term lease of Lake Tyers must be approved by the Minister (although this might be seen as a backwards step and paternalistic); or
3. Any decision to sell or transfer land must be a unanimous decision at a general meeting of the Trust attended by at least 25% of members.

The ALA is unclear about when Trust land can be mortgaged or used as security. It should be made clear that a unanimous resolution of the Trust is required for this too.

Facilitating Economic Activity

When the Government introduced the ALA, it intended that the Trusts would pursue business opportunities and earn money for shareholders. Changes to the ALA which could help achieve this include:

1. Allowing the Trusts to establish or acquire a company or Aboriginal corporation which could conduct a business; and
2. Making it clear that the Trusts can engage in business anywhere, not just on Trust Land.

Funding

Aboriginal Victoria (AV) pays for specific infrastructure projects at both Trusts and provides some administrative funding to Lake Tyers. In the past both Trusts appear to have received some Commonwealth funding, which helped Framlingham buy several properties. Other than Framlingham’s income from these properties, neither Trust has an independent funding stream, limiting their ability to pursue economic development (especially in the context of managing communities with socially, politically and culturally complex histories).

An additional separate stream of funding would help the Trust pursue economic development. One option is a one-off settlement sum that could be invested, so the Trusts could live off the interest or investment in perpetuity. The New South Wales Government established a fund like this, which has helped fund ventures of 116 Aboriginal land councils. Another similar fund exists as part of native title settlements under the *Traditional Owner Settlement Act 2010* (Vic).

SECTION 3

OPTIONS FOR MAJOR CHANGE TO THE ALA

There may be some people who prefer “no change” to the ALA at all because they think it’s working, or that the changes needed are policy, funding or community changes and not legal changes.

Section 2 identified issues with the ALA and suggested amendments to the ALA to resolve these issues, which have been described as “minor change”.

The third option is “major change”, which could be introducing a totally different system of land ownership. During the first round of consultations, there was strong support from some people to maintain shares, but there was also discussion from some people about the Government buying back shares and a different system being put in place. The 2002 review noted that if there was a repeal of the ALA and a different system put in place, existing shareholders would need to be compensated.

Issues with the Share System

Reasons to support changing the share system include:

1. It was anticipated that shareholders would receive dividends on their shares, but it is not clear this has ever happened. This limits the economic benefit of owning shares, and also means many people don’t realise the value of their shares.
2. The share scheme is complicated and difficult to maintain. For example, at Lake Tyers there are many shares held in the name of deceased people which have never been transferred to anyone.
3. Many shareholders don’t live on the reserve land anymore, particularly at Lake Tyers.
4. The share system has led to disputes in the community and in relation to electing the Management Committee, as owning more shares can increase the value of a person’s vote.

Alternative Options to the Share system

There are different options to consider if the Trusts want to move away from a share-based system. Which option is preferred will depend partly on the reasons for change. For example, is the main reason for change because shareholders:

- want to move away from a share-based system? or
- want the land to be managed under a different corporate structure? or
- want the land to be held by a broader group of people beyond existing shareholders (provided existing shareholders are compensated)?

Features of Different Options

In considering different options, the key questions are:

1. What kind of body should hold the land?
2. What is the purpose of the new structure?
3. Who would be a member of the new scheme?
4. How would the land be held?
5. Should the land be able to be sold?
6. Is there a need for governing legislation?
7. What happens to shares if the shareholding system no longer exists?

1. WHAT KIND OF BODY SHOULD HOLD THE LAND?

1.1 Option 1: A statutory corporation under the ALA

The ALA could be changed to establish a new corporation to hold the land instead of the Trust. A corporation established under an Act or “statute” is known as a “statutory corporation”. This statutory corporation would hold the land on trust for members, who would each have equal voting and membership rights. The land would still be managed under the ALA, but the share system would be removed. This is a model used by Aboriginal Land Councils in NSW.

There are a wide variety of options for what a statutory corporation could look like. What it requires in relation to governance could be detailed or general.

Features of this model:

Flexible in design: The scheme can be designed to meet the needs of each Trust community. Over time the Act can be reviewed and changed to meet the communities’ changing needs. However, the fact that changes to the scheme would require changing the law might also be seen as *limiting autonomy*, and changes might be driven by matters other than the interests of the Trust communities.

Structured rules: The rules for the corporation would follow a certain structure, although this also creates *inflexibility*, which may be limiting.

Governance: The amended Act could include clear rules for how the organisation was to be governed, rather than relying on the general law.

Close relationship with the Victorian Government: This is beneficial if the relationship remains positive, but might not encourage the independence of community.

Tailored: The Act can include exactly the provisions wanted, such as restrictions on dealing with land, or regulating third parties.

Coordinated: The Act can be coordinated with other Victorian regulators and anti-corruption bodies, although this might be seen as a disadvantage.

1.2 Option 2: A corporation established under the CATSI Act

The land could be held by a corporation established under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth), also known as the “CATSI Act” or “ORIC Act”.

Benefits:

- **Tailored for Aboriginal people:** The CATSI Act was designed specifically to help Aboriginal people incorporate. At least 50% of the members of a CATSI corporation must be Aboriginal.
- **Tailored regulator:** The ALA is regulated by the Registrar of Indigenous Corporations (**Registrar**) who has experience in dealing with Aboriginal people and helping them meet their needs.
- **Familiar:** Many current shareholders are already members of CATSI corporations and might be familiar with how they work. Shareholders might prefer to deal with only one regime.
- **Support:** The Registrar can offer other support like dispute resolution services, and education on how the ALA operates.

Disadvantages:

- The Registrar’s **limited resources** may limit its ability to assist the organisation comply with its rules and obligations.
- The **rules can be changed**, which can significantly change the CATSI corporation and how it operates.

1.3 Option 3: A corporation established under the Corporations Act 2001 (Cth)

- If shareholders wanted to move away from Indigenous-specific legislation, the land could be held by a corporation established under *the Corporations Act 2001* (Cth), which would be regulated by ASIC. ASIC would not be able to provide the same level of targeted, culturally specific support as a Registrar could provide to a CATSI corporation. Also, shareholders are unlikely to be familiar with the *Corporations Act 2001*.

1.4 Option 4: Cooperative established under the Cooperatives National Law

The land could be held by a non-distributing cooperative under the Cooperatives National Law, which is administered in Victoria by Consumer Affairs Victoria.

Benefits:

- There are established dispute resolution procedures under the Cooperatives National Law.
- The Cooperatives Registrar would regulate the cooperative. The Cooperatives Registrar could bring proceedings for breaches of the Cooperatives National Law in the Magistrates' Court.
- The Cooperatives Registrar's decisions can be reviewed by VCAT.
- Each member of a cooperative has one share.
- Some shareholders would be familiar with cooperatives.

Disadvantages:

- If the intention is to move away from the share system, then the cooperative would have to be a non-distributing cooperative, and would not be able to distribute its profits to its members.
- The purpose of a cooperative is to provide services, and members have to be active members. This would make it difficult for non-residents to retain an interest if this was intended.

2. WHAT IS THE PURPOSE OF THE NEW SCHEME?

Choosing a new structure will also depend on the purpose of the new scheme:

- Is the new entity mainly created to hold the land, or also to be involved in providing services to the communities?
- Could the new entity distribute benefits to its members, or would it be a not-for-profit organisation?
- Should the entity also be able to regulate the use of the land (for example, rules about fishing within the waterways)?

3. WHO WOULD BE A MEMBER?

A key question for the review is whether the class of people who get an interest in the land will be expanded. The land could be held for one or a combination of the following:

Existing Shareholders and their descendants:

- This may be seen as a problem because many shareholders, particularly in relation to Lake Tyers, don't live on Trust land.

Residents from time to time:

- Members could be people who live on reserve land from time to time. If so, it would need to be decided how long they should live there to be considered a resident, and what would happen if they move away (and whether it makes a difference if they move to a nearby town).

Historical association with Lake Tyers or Framlingham

- Members could be people who have a historical association with the Trust, perhaps by living on the Trust in the past, or who have family members buried on Trust land.

People with a traditional connection to Lake Tyers or Framlingham

- This could be the traditional owners of the land and waters, or could be defined in a different way.

Non-Aboriginal people

- There are currently several non-Aboriginal shareholders. It would need to be considered whether in future the land could only be held by Aboriginal people.

4. HOW WOULD THE LAND BE HELD?

The land could be held by a corporation on trust for members or held by the corporation to do as it pleases in accordance with its constitution. If it was held on trust, that may provide more security for the members, and would allow payments to be made to members. It could be that only the former reserve land is held in trust (and not other land the Trust has since acquired).

5. SHOULD THE LAND BE ABLE TO BE SOLD OR LEASED?

Some Aboriginal land rights schemes allow land to be sold. Other schemes don't. Some schemes state the land can be leased, but only if there is consent from the Traditional Owners and/or the Minister and/or the Land Council.

In considering this question, former reserve land might be treated differently to other land held by the corporation.

6. WOULD THERE BE A NEED FOR GOVERNING LEGISLATION?

This depends partly on which options are chosen. A statutory scheme will have its own governing Act (which might be an amended ALA or a new Act). If a CATSI or ASIC corporation was used to hold land on trust, this could be done with a trust deed rather than legislation. However, it could be an advantage to have an Act, which could help make restrictions legally binding (like restrictions on the sale of land).

7. WHAT HAPPENS TO SHARES IF THE SHAREHOLDING SYSTEM IS REPEALED?

If the share system is replaced, there would need to be negotiation with the Government about how the shares would be valued, and how existing shareholders would be compensated.

It would need to be considered whether compensating shareholders who will also get a benefit under a new system means those shareholders would receive a "double" benefit.

Finally, the position of non-resident shareholders would need to be considered if they would lose their interest in the land under a new system: although they could be paid out, they may prefer to keep an interest in land.

FEEDBACK

The Review would like to hear from shareholders about whether there should be a fundamental change to the system of land ownership and what form that should take.

Feedback can be provided by:

Visiting a community drop-in lunch;

Going online to <https://engage.vic.gov.au/ala-review-1970> and filling out the survey;

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

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

GLOSSARY

ASIC:	Australian Securities and Investments Commission.
Auditor:	A person appointed and authorised to inspect the accounts and records of an organisation and check the organisation is complying with the rules that govern it.
Committee of Management or Management Committee:	The governing body of the Trust, responsible for managing the Trust and the Trust Land, and elected by Members.
Company constitution:	A document that sets out the rules governing the relationship between, and activities of, the company and its shareholders.
Corporation:	an entity with “legal personality” which means it can act as a person by entering into contracts, buying and selling land etc.
Dividends:	A payment made by a company or organisation to its shareholders to distribute profits.
Executor:	The executor of a Will is responsible for carrying out the wishes of a person after they die.
Freehold title:	To hold a freehold title over land is to have full and free control and ownership of it into the future.
Governance:	When referring to companies and organisations, governance relates to the set of systems, practices, rules and processes the organisation operates under.
Holding land “on trust”:	To hold land on trust for another person means to be named as the owner of the land, but to hold it for the benefit of another party.
Members:	The people who own a share in the Trust. 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.
ORIC or CATSI Corporation:	A corporation established under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth) and regulated by ORIC. This structure is similar to a company limited by guarantee and strives to take into account Aboriginal customs and traditions. This structure is only available for organisations that meet an Indigeneity requirement.
Quorum:	The minimum number of members needed at a meeting for the proceedings and decisions made to be valid.
Shareholders:	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.
Wills:	A document written by a person before they die, which sets out what they want to happen to their property after they die.

