

Review of the *Aboriginal Lands Act 1991 (Vic)*

**Final Report:
Recommendations for reform
*December 2023***



**First Peoples –
State Relations**

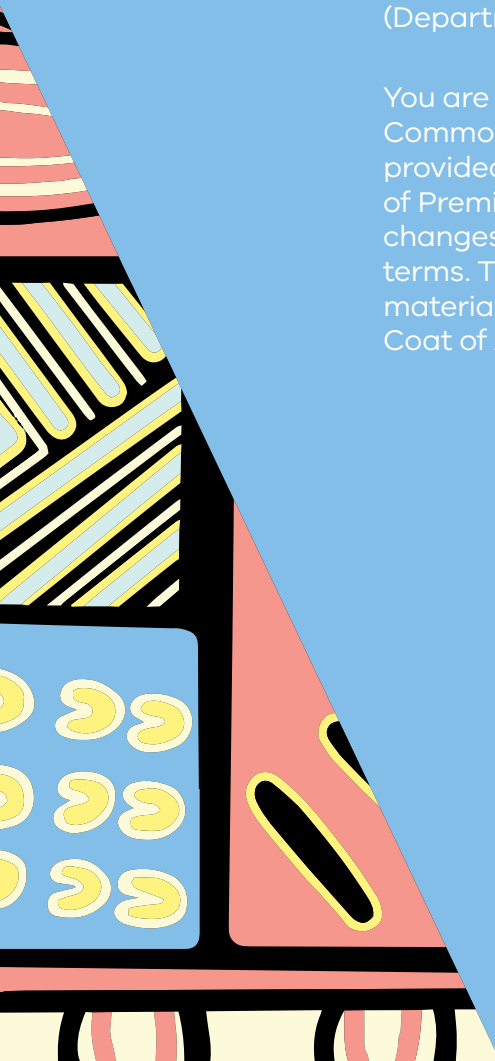
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Introduction

Glossary

Aboriginal Lands Act 1991 (Vic)	Victorian legislation that is the subject of this paper. This legislation transferred ownership of the cemeteries of the former missions at Coranderrk, Ebenezer and Ramahyuck to certain Aboriginal organisations.
Aboriginal Heritage Act 2006 (Vic)	Victorian legislation that provides for the management and protection of Aboriginal cultural heritage in Victoria.
Amendment	A change to a piece of legislation (or a text, legal document, contract, regulations, etc).
BGLC	Barengi Gadjin Land Council Aboriginal Corporation, which is the Traditional Owners Group Entity that represents the WJJWJ Peoples as the Traditional Owners of the land encompassing Ebenezer Mission.
Certificate of Title	The legal document which specifies the ownership and rights in relation to a piece of land under Victorian land and property laws.
Crown grant	The first transfer of land from the Victorian Government to a person in freehold.
Department of Premier and Cabinet (DPC)	The department responsible for leading the review of the <i>Aboriginal Lands Act 1991 (Vic)</i> .
Department of Treasury and Finance's (DTF) Land and Property Group (LP Group)	The group within DTF, which provides advice to government agencies on the future use or disposal of surplus government land.
Enact legislation	The passing of new legislation by parliament.
Encumbrance	A burden or charge (i.e., a mortgage) over a piece of land.
Fee simple	The fullest, most permanent interest a person can hold in land or property, with freedom to deal with the property at will (subject to usual planning and building laws). Each of the titleholders under the <i>Aboriginal Lands Act 1991 (Vic)</i> hold their land in fee simple. Also, another word for 'Freehold' see below.
Freehold	See 'Fee simple' above.
GEGAC	Gippsland and East Gippsland Aboriginal Co-operative, the titleholder for the Ramahyuck Mission Cemetery.

Glossary *(continued)*

GLaWAC	Gunaikurnai Land and Waters Aboriginal Corporation, which is the Traditional Owner Group Entity that represents the Gunaikurnai Peoples as the Traditional Owners of the land encompassing Ramahyuck Mission.
Goolum Goolum	Goolum Goolum Aboriginal Co-operative, the titleholder for the Ebenezer Mission Cemetery.
Governor in Council (GIC)	The Governor of Victoria, acting on the advice of the Executive Council or the Premier (if relevant). The role of the Executive Council is provided for in the <i>Constitution Act 1975 (Vic)</i> . The GIC is not a deliberative body but one that acts on the advice of the relevant ministers.
Land Act 1958 (Vic)	Victorian legislation that regulates the sale and occupation of Crown lands.
Legislation	Acts of parliament and subordinate (or delegated) legislation made under acts of parliament.
Parliament	Unless otherwise specified, the Victorian Parliament.
Registered Aboriginal Party	An Aboriginal corporation that has authority to make decisions on Aboriginal heritage issues over a particular area in Victoria under the <i>Aboriginal Heritage Act 2006 (Vic)</i> .
Registrar of Titles	The manager of Victoria's land title system.
Repeal	To use an act of parliament to remove legislation, or parts of legislation.
Titleholder	A titleholder is the person or corporate entity who is listed as the owner of land or property on a certificate of title (see 'Certificate of Title'). For the purposes of the Final Report, titleholder refers to the titleholders for the purposes of the Act, Wurundjeri, Goolum Goolum and GEGAC.
Transfer Restriction	A condition in the <i>Aboriginal Lands Act 1991 (Vic)</i> that the titleholders of each of the Coranderrk, Ebenezer and Ramahyuck Mission Cemeteries must not sell or transfer their ownership of the land (section 7).
Use Restriction	A condition in each of the Crown grants made under the <i>Aboriginal Lands Act 1991 (Vic)</i> that the land at Coranderrk, Ebenezer and Ramahyuck Mission Cemeteries must be used for Aboriginal cultural and burial purposes, as required under the Act (section 6(5)).
Valuer-General Victoria (VGV)	Oversees valuations for Victorian Government property transactions and the making and return of council rating valuations.
Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagulk Peoples (WJJWJ)	Aboriginal Peoples whose traditional land the Ebenezer Mission is situated on and whose ancestors are buried in the Ebenezer Mission Cemetery.
Wurundjeri	Wurundjeri Woi Wurrung Cultural Heritage Aboriginal Corporation (formerly known as Wurundjeri Tribe Land and Compensation Cultural Heritage Council). The titleholder and Traditional Owner Group Entity for the Coranderrk Mission Cemetery.

Executive Summary

Context

The Victorian Government publicly committed to delivering Aboriginal self-determination, through the *Victorian Aboriginal Affairs Framework 2018-2023* and *Self-Determination Reform Framework* by enabling greater transparency, government accountability and meaningful engagement when working with Victorian Aboriginal communities. Part of this commitment involves giving Aboriginal Victorians a lead voice in defining what their self-determination looks like in practice. A review of the *Aboriginal Lands Act 1991 (Vic)* (*the Act*) is a government priority to promote Aboriginal self-determination and empower Aboriginal organisations to freely exercise their land rights.

The Act was passed in 1991, facilitating the transfer of three Aboriginal cemeteries at the former missions of Coranderrk, Ebenezer and Ramahyuck to Wurundjeri, Goolum Goolum and GEGAC, respectively.

Wurundjeri are the Traditional Owners of the land encompassing Coranderrk Mission. The review also engaged BGLC as the entity representing Traditional Owners of the land encompassing Ebenezer Mission, and GLaWAC as the entity representing Traditional Owners of the land encompassing Ramahyuck Mission. The Traditional Owners and titleholders are considered the stakeholders for the purpose of the review.



Table 1: Stakeholders

Site	Titleholder	Traditional Owner Group Entity
Ebenezer Mission Cemetery	Goolum Goolum	BGLC
Ramahyuck Mission Cemetery	GEGAC	GLaWAC
Coranderrk Mission Cemetery	Wurundjeri	Wurundjeri

The Act places two significant limitations on the rights of titleholders. First, they are prohibited from selling or transferring their respective interests in the land (**Transfer Restriction**). Secondly, the lands must be used for Aboriginal cultural and burial purposes (**Use Restriction**). These limitations run counter to the principles of Aboriginal self-determination in that they limit the opportunities of titleholders to freely use and deal with their land as they see fit.

DPC canvassed options for reform with the five stakeholders between 22 September 2020 and 20 November 2020. A Discussion Paper and Supplementary Discussion Paper were circulated to the stakeholders, inviting submissions in response to eight options for reform. The feedback received from all five stakeholders forms the basis of this report’s recommendations to reform the Act to meet the aspirations of the stakeholders.

The Use Restriction is set out in the Certificate of Title itself, as well as required by the Act (section 6(5)). By contrast, the other restriction relating to transfer of land (section 7) is only contained in the Act. It is not mentioned on the title.

Summary of Recommendations

The key recommendations are:

No.	Site	Recommendation
1	Coranderrk Mission Cemetery	Do not amend the Act with respect to the Coranderrk Mission Cemetery.
2	Ebenezer Mission Cemetery	Amend the Act to remove the Transfer Restriction ¹ and Use Restrictions. ²
3	Ramahyuck Mission Cemetery	Amend the Act to remove the Transfer Restriction ³ and the Use Restrictions. ⁴

1. Note: The recommended amendment does not limit the ability of the titleholder to transfer the title to another party at their choosing.

2. Note: The recommended amendment permits the titleholder to use the land for purposes other than Aboriginal cultural and burial purposes.

3. Note: The recommended amendment does not limit the ability of the titleholder to transfer the title to another party at their choosing.

4. Note: The recommended amendment permits the titleholder to use the land for purposes other than Aboriginal cultural and burial purposes.

The Review

Background

The Act was passed in 1991 to facilitate the transfer of three Aboriginal burial sites or cemeteries at the former missions at Coranderrk, Ebenezer and Ramahyuck to local Aboriginal organisations. The Act authorised the GIC to grant an estate in fee simple (or freehold title) to the following titleholders:

- Coranderrk Mission Cemetery – to Wurundjeri;
- Ebenezer Mission Cemetery – to Goolum Goolum; and
- Ramahyuck Mission Cemetery – to GEGAC.

These three titleholders received freehold land, which was subject to two restrictions under the Act:

1. The 'Use Restriction': a condition in each of the Crown grants that the land must be used for Aboriginal cultural and burial purposes (section 6(5)); and
2. The 'Transfer Restriction': a condition that the titleholders must not sell or transfer their ownership of the land (section 7).

On 22 September 2020, DPC circulated a Discussion Paper to the stakeholders. The Discussion Paper was designed to allow stakeholders who are affected by the Act to have their say on its future operation and potential options for reform. On 20 November 2020, DPC issued a Supplement to the Discussion Paper which provided advice around native title considerations arising out of Option 6 and provided an additional Option 8.

The Discussion Paper and Supplement canvassed the below options:

1. Amending the Act to remove one or both restrictions for all three cemeteries
2. Amending the Act to remove one or both restrictions for only specific cemeteries, as requested by titleholders;
3. Enacting new legislation which removes the Use Restriction on the title, and repeals the current Act to remove the Transfer Restriction;
4. Removing only the Transfer Restriction by repealing the current Act, but leaving the Use Restriction (which will remain on the title);
5. Amending the Act to allow the GIC to remove one or both restrictions;
6. Amending the Act to allow the titleholders to surrender their titles back to the Crown, for them to be re-issued without either of the restrictions;
7. Doing nothing; or
8. Amending the Act to empower the Registrar of Titles to remove the Use Restriction upon the making of an application by the titleholder.

Consultation Process

The scope of the consultation process extended to the titleholders and Traditional Owner groups of the land on which the three cemeteries are located.

The breadth of consultation was deemed appropriate, given the Act only governs the use and transfer of cultural burial sites for some Aboriginal Victorians. The principles of self-determination underpinned DPC's decision to engage only with the Aboriginal organisations whose interests are affected by the Act: granting these communities the right to determine how the Act may best serve their interests of Aboriginal self-determination.

The below timeline summarises the key steps in the consultation process:

- **June 2018** – The then Minister for Aboriginal Affairs, the Hon. Natalie Hutchins MP, sent letters to the titleholders under the Act to advise the Act would be reviewed.
- **Mid 2019** – DPC staff met individually with the titleholders to discuss the review and obtain initial feedback on the goals and aspirations of each titleholder in relation to the cemetery titles.
- **December and January 2020** – At BGLC's request, DPC and BGLC met to discuss the matter of Ebenezer Mission Cemetery.
- **September 2020** – the Acting Deputy Secretary, Social Policy Group, Brigid Monagle, emailed the Discussion Paper to all five stakeholders to support submissions to the review.
- **November 2020** – DPC emailed the Supplement to the Discussion Paper to all five stakeholders, to provide native title considerations and canvas an additional option.
- **November 2020 to January 2021** – DPC received written submissions from all five stakeholders between 13 November 2020 and 20 January 2021.
- **July and August 2023** – DPC met with titleholders and Traditional Owners to confirm policy positions and finalise the legislative recommendations.

Summary of Feedback

The below summarises stakeholder submissions and preferred options for the Act's amendment.

Site	Stakeholder	Preferred Option
Coranderrk Mission Cemetery	Wurundjeri	Option 7 – Do nothing; or Option 2 – Amend the Act to remove either the Transfer Restriction or the Use Restriction or both for only specific cemeteries as requested by titleholders (not Coranderrk Mission Cemetery).
Ebenezer Mission Cemetery	BGLC Goolum Goolum	Option 2 – Amend the Act to remove both the Transfer Restriction and Use Restrictions for the Ebenezer Mission Cemetery.
Ramahyuck Mission Cemetery	GEGAC GLaWAC	Option 2 – Amend the Act to remove both the Transfer Restriction and the Use Restriction for the Ramayhuck Mission Cemetery.



Recommendations

Site	Recommendations
Recommendation 1 Coranderrk Mission Cemetery	1.1 It is recommended that all references in the Act to the Coranderrk Mission Cemetery remain unchanged.
Recommendation 2 Ebenezer Mission Cemetery	2.1 It is recommended that the Act be amended to remove the Transfer Restriction and Use Restriction with respect to this title, enabling the titleholder to self-determine the future transfer and use of the Ebenezer Mission Cemetery. 2.2 It is recommended that the Act be amended to allow the Registrar of Titles to amend the titles to remove the Use Restrictions, because the requirement relating to the use of the land for Aboriginal cultural and burial purposes is restricted on the title as well as under the Act.
Recommendation 3 Ramahyuck Mission Cemetery	3.1 It is recommended that the Act be amended to remove the Transfer Restriction and Use Restriction with respect to this title, enabling the titleholder to self-determine the future transfer and use of the Ramahyuck Mission Cemetery. 3.2 It is recommended that the Act be amended to allow the Registrar of Titles to amend the titles to remove the Use Restrictions, because the requirement relating to the use of the land for Aboriginal cultural and burial purposes is restricted on the title as well as under the Act.



Next steps

Implementing the recommendations outlined in the review will enable titleholders and Traditional Owners to realise their aspirations for each cemetery by embedding self-determination, and empowering First Peoples to freely exercise their cultural, land and property rights.

The Minister for Treaty and First Peoples is committed to amending the Act and is exploring opportunities to pass amending legislation through the Parliament of Victoria.

Please note that this is subject to the development of the draft reforms and passage via the Victorian Parliament. There is a risk, that exists with all legislative processes, that Parliament may not choose to pass amending legislation, not pass it in a timely manner, or could choose to pass it in an altered form.





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