

FIRST PEOPLES' ASSEMBLY OF VICTORIA

Mr Alex Robson, Presiding Commissioner, Productivity Commission

Ms Julie Abramson, Commissioner

Mr Krystian Seibert, Associate Commissioner

Email: philanthropy@pc.gov.au

21/03/24

Self-Determination Fund - response to the *Future foundations for giving* draft report

Dear Commissioners,

In my capacity as the Chair of the Self-Determination Fund Council Committee at the First Peoples' Assembly of Victoria (the Assembly), I am writing to endorse the Self-Determination Fund's attached response to the Productivity Commission's draft report, *Future foundations for giving*, as part of the Commission's review of philanthropy.

The Assembly is the independent and democratically elected voice for Victorian Traditional Owners and First Peoples living in Victoria in the treaty process. The Assembly's 32 Members are all Traditional Owners of Country in Victoria, elected by community to represent them on the journey to Treaty.

As a part of the treaty process, the Assembly established the Self-Determination Fund - a First Peoples designed and controlled financial resource. The Fund's role is to support First Peoples' economic self-determination via two main purposes, which are:

- to negotiate Traditional Owners treaties, and
- build wealth and prosperity for current and future generations.

The Assembly established the Self-Determination Fund as a public charitable trust which is a wholly owned subsidiary of the Assembly. The Fund is managed by a Board of five First Peoples' Directors, with the expertise required to operate the Fund.

The Self-Determination Fund is the first of its kind in Australia, and an example of genuine self-determination in action and what can be achieved when First Peoples' are in control of the design and operation of entities established for our communities.

Regards

Troy McD

Chair, Self-Determination Fund Council Committee





**Self-Determination
Fund**
**FIRST PEOPLES'
ASSEMBLY
OF VICTORIA**

TRUSTEE OF THE SELF-DETERMINATION FUND

Mr Alex Robson **Presiding Commissioner, Productivity Commission**

Ms Julie Abramson **Commissioner**

Mr Krystian Seibert **Associate Commissioner**

22 March 2024

Submission - Productivity Commission Philanthropy Draft Report

Dear Commissioners,

Thank you for the opportunity to provide you a submission regarding the Productivity Commission's Draft Report – Future Foundations for Giving.

We welcome your considered interest in the work of the Self-Determination Fund and your time meeting with me and members of the Trustee Board to hear inputs from our perspective as a First Peoples designed and controlled entity.

Our submission responds to the draft Philanthropy report by further exploring the principles of self-determination and community led design in the context of the Victorian Self-Determination Fund.

We confirm that this submission is to be published on the Productivity Commission's website as a public submission.

Sincerely

Sandra Jacobs

Chief Executive Officer
Trustee of the Self-Determination Fund

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Wurundjeri Woi-wurrung Country



Submission to the Productivity Commission's Review of Philanthropy

Productivity Commission's Review of Philanthropy and Commission's draft report, Future Foundations for Giving (November 2023).

The Trustee of the Self-Determination Fund (Trustee) welcomes the opportunity to provide a submission to the Productivity Commission's (the Commission) Review of Philanthropy.

This submission responds to the Commission's draft report, *Future Foundations for Giving* (November 2023) and outlines the following:

1. Background to Victoria's Treaty process, including the establishment of the First Peoples' Assembly of Victoria and Self-Determination Fund.
2. General comments in response to the key point made in the Commission's draft report, and
3. Response to draft recommendation 10.1 to establish an independent Aboriginal and Torres Strait Islander philanthropic foundation.

In providing a response to the Commission's draft report and review, we note the Productivity Commission's recent review of the National Agreement on Closing the Gap (2024). We note the review found that in relation to efforts to close the gap under the National Agreement, a 'persistent' barrier to progressing reforms to close the gap, are the 'lack of power sharing for joint decision-making and the failure of governments to realise and act on the reality that First Peoples know what is best for their communities.'¹ We hope these findings inform the Productivity Commission's Review of Philanthropy in relation to findings that focus on Aboriginal and Torres Strait Islander peoples and communities.

In summary, this submission recommends that:

1. A set of principles with self-determination and empowerment as the central principles, are developed in consultation with First Peoples' organisations and bodies to guide the development of the proposed independent Aboriginal and Torres Strait Islander philanthropic foundation, and other initiatives to support and strengthen the connection between First Peoples and the philanthropic sector.
2. Consideration is given on how to build off the strengths and experiences of First Peoples' bodies at the state/territory, regional and local levels to avoid duplication or crowding out First Peoples' philanthropic efforts or potential sources of funding, including from the Commonwealth Government. For example, any relevant Commonwealth funding should be directed to Victoria's Self-Determination Fund.

¹ Productivity Commission. Review of the National Agreement on Closing the Gap (2024), p. 3

3. Further consultation with First Peoples' organisations and bodies occurs on the design and establishment of the foundation and other measures to ensure they are culturally appropriate and able to respond to the diversity of First Peoples' needs and aspirations informed by their communities and representative bodies.

1. Background to Victoria's Treaty process

In 2019, after years of activism and calls for Treaty in Victoria, the First Peoples' Assembly of Victoria (Assembly) was established following the commencement of the *Advancing the Treaty Process with Aboriginal Victorian Act 2018* (Vic) (Treaty Act).

The Assembly is the independent and democratically elected voice for Victorian Traditional Owners and First Peoples living in Victoria in the Treaty process. The Assembly's 32 Members are all Traditional Owners of Country in Victoria, elected by community to represent them on the journey to Treaty.

The Inaugural Assembly (2019-2023) successfully negotiated the elements required under the Treaty Act to support Treaty negotiations with the Victorian Government. Each element has a specific role or function in the Treaty process and combined make up the Treaty landscape in Victoria. Those elements include the:

- Treaty Authority – an independent umpire to oversee Treaty negotiations
- Treaty Negotiation Framework – ground rules or process for the negotiation of Traditional Owner treaties and statewide Treaty, and
- Self-Determination Fund – a First Peoples controlled financial resource to support First Peoples' economic self-determination in negotiating Traditional Owners treaties, and to build wealth and prosperity for current and future generations.

The second term of the Assembly commenced in July 2023, following statewide elections. The Assembly is preparing to negotiate a statewide Treaty with the Victorian Government which will cover big picture reforms of statewide issues. The process in Victoria also provides for Traditional Owner treaties which will reflect the aspirations and priorities of Traditional Owners over particular Country.

Treaty is about transferring decision making power from Government to First Peoples, as when it comes to First Peoples communities, cultures and lands, First Peoples are the experts. The Productivity Commission's recent report on the, *Review of the National Agreement on Closing the Gap* (2024), supports this view. Recommendation 1 of the report calls for power to be shared and that,

*'for meaningful progress to be made to Closing the Gap, governments must share power, recognising that the right of First Peoples to have control over decisions that affect their lives is central to self-determination.'*²

² Productivity Commission. Review of the National Agreement on Closing the Gap (2024), P.7

Establishing the Self-Determination Fund – a Victorian First Peoples’ financial resource

Negotiating the establishment of the Self-Determination Fund with the Victorian Government was a significant milestone for the Assembly and the Treaty process. The Assembly wanted to ensure it was a First Peoples controlled and managed financial resource. It is genuine self-determination in action.

As the elected First Peoples representative body under the Treaty Act, the Assembly is responsible for administering the Self-Determination Fund. Section 36(1) of the Treaty Act provides the Self-Determination Fund’s two purposes, which are:

1. support First Peoples to have equal standing with the State in Treaty negotiations, and
2. provide a financial resource, independent from the State, that empowers First Peoples to build capacity, wealth, and prosperity.

The Self-Determination Fund is a public charitable trust established by the Assembly and the State in accordance with the Treaty Act. The Self-Determination Fund is an example of strong governance, as the Assembly established a wholly-owned subsidiary company to manage the day to day operations of the Fund, the Trustee of the Self-Determination Fund.³ The Trustee is managed by a Board of five First Peoples Directors with financial, governance and business experience, who are appointed by the Assembly. While the Assembly sets broad parameters for the Trustee in operating the Fund, the Trustee are responsible for any distributions or investment of the funding, ensuring independence in its decision-making from the Assembly.

As a part of its directions to the Trustee, the Assembly requires the Trustee to be an active, strategic manager of the Self-Determination Fund to respond to the priorities and aspirations of First Peoples in Victoria in furthering the Fund’s charitable purposes.

Key features of the Self-Determination Fund include that it has:

- strong cultural governance processes, high standards of good governance and financial responsibility, and it will be transparent and accountable to Community in its operations, and
- will empower First Peoples to freely pursue their economic, social and cultural development in exercise of First Peoples’ inherent right to self-determination, a fundamental right that is affirmed in the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP).

The Self-Determination was officially established in October 2022, with the five inaugural Directors of the Trustee elected by the Assembly shortly after. Under the Trustee’s *Strategic Plan 2023-2026*, the vision of the Self-Determination Fund is:

Victorian First Peoples [to be] on equal footing as determined by the aspirations of First People individuals, families and Communities

The Trustee’s Strategic Plan on Page is on the last page of this submission.

³ The key documents that establish the Fund are include: [Directions to Trustee](#), [Trust Deed](#), [Company Constitution](#).

In December 2023, funding applications for Victorian Traditional Owner groups to apply for funding to support their treaty aspirations opened.

2. General Comments

The following general comments are made in relation to the recommendations in the Commission's draft report (2023) on how to grow the philanthropic sector for the benefit of all Australians, with a specific focus on reforms that would strengthen First Peoples involvement in, and access to, philanthropy.

1. Self Determination and empowerment of First Peoples should guide all philanthropy, particularly First Peoples focused philanthropy.
2. The Trustee welcome philanthropic giving, while also supporting a new era of giving that is based on the agency and empowerment of First Peoples' community being supported, as determined by First Peoples representative bodies and entities at the local, regional and State level.
3. The Trustee supports a simpler, fairer and more consistent deductible gift recipient (DGR) system as suggested in the Draft Report.
4. That philanthropy is not viewed as a substitute or replacement for governments' obligations to fund and deliver services and programs to the community, including to First Peoples.

3. Specific Concerns about Draft Recommendation 10.1

Draft Recommendation 10.1

The Australian Government support the establishment of an independent philanthropic foundation designed and controlled by Aboriginal and Torres Strait Islander people.

The foundation would focus on strengthening the capacity of Aboriginal and Torres Strait Islander communities to build partnerships with philanthropic and volunteering networks and supporting new and existing Aboriginal and Torres Strait Islander giving vehicles. It would administer grants programs to fulfill these functions.

Appropriate governance arrangements will be necessary to ensure that the foundation's functions do not duplicate the roles and responsibilities of other bodies, including government agencies, and to set out reporting arrangements on the outcomes of its activities. This should include an evaluation of the foundation's impact after five years of operation.

We welcome and support the Commission's intent to address barriers to Aboriginal and Torres Strait Islander organisations and communities accessing philanthropy. The Commission's findings on some of the barriers to accessing philanthropy for First Peoples are those that are experienced by Victorian First Peoples.

However, we are unable to support the Draft Recommendation 10.1 in its current form on the basis that it does not:

- consider the broader context of First Peoples' self-determination, and the diversity of First Peoples communities, aspirations, and infrastructure across the country, including already established funding bodies and structures at the State and Commonwealth levels (eg., Victorian Self-Determination Fund, NSW Aboriginal Land Council Statutory Investment Fund and Northern Territory Aboriginal Investment Corporation),
- recognise the various processes in Victoria, South Australia and Queensland, that are progressing First Peoples' self-determination through treaty and the representative bodies and structures, including funding bodies, established as part of these processes (such as the Self-Determination Fund in Victoria), and
- clearly consider how the proposed foundation would interact with these processes, and already established First Peoples' representative bodies and funding and investment entities across the jurisdictions.

We recommend that the design of a Commonwealth independent Aboriginal and Torres Strait Islander philanthropic body:

- embed the principles of self-determination and empowerment of First Peoples to determine their own diverse needs and aspirations, including determining how a philanthropic foundation at the Commonwealth level will be able to respond to this diversity effectively and efficiently across the country,
- be informed by cultural safety and founded in Aboriginal and Torres Strait Islander lore and law, cultural authority and cultural values and practices, and
- consider, in the Victorian context, some philanthropic funds, by virtue of their mandate, can only distribute funds within the State of Victoria. Those funds would not be able to provide any philanthropic funds to a Commonwealth foundation, if established.

Our specific concerns and recommendations in response about Draft Recommendation 10.1 are outlined below:

3.1 Informed by the principles of self-determination and empowerment – First Peoples decide First Peoples' issues

Any recommendations or new bodies established need to:

- embed the principles of self-determination and empowerment, and
- be able to respond to the aspirations identified by local First Peoples' communities, for their communities, including via First Peoples' representative bodies, ideally elected, and other First Peoples' controlled organisations.

The diversity of First Peoples in Australia is vast, as are the different systems and processes for facilitating the voices and self-determination of First Peoples via representative bodies and entities. For example:

- Victoria has the Assembly, while also recognising the expertise of the Aboriginal Community Controlled sector and Traditional Owner corporations,
- South Australia has a First Nations Voice to Parliament legislated last year with elections to be held in March 2024 to elect representatives to the Voice,



- the New South Wales Aboriginal Land Council has elected Councillors whose responsibilities include oversight of the Council's Statutory Investment Fund, and
- Northern Territory has a number of major land councils and the recently established Northern Territory Aboriginal Investment Corporation.

As a result, there needs to be different approaches to identify Community priorities and aspirations in each State and Territory. Without a truly representative cross-section of consultation with First Peoples on the proposed federal body, its design and operation will not reflect the diverse aspirations or needs of the communities it would seek to support.

We support a model that is truly representative of First Peoples' aspirations and needs, self-determined by First Peoples through a process that is representative of, and controlled by, First Peoples. This takes time and investment in ensuring that the establishment of any fund is First Peoples determined, designed and controlled. We encourage the Commission to consider the process undertaken by the First Peoples' Assembly of Victoria to design and establish the Self-Determination Fund, as a practical example of how this type of self-determined policy design may come to life.

3.2 Avoiding duplication and 'crowding out' to promote better relationships

The draft report refers to 'crowding out' (on page 8) in relation to First Peoples' philanthropy. The Assembly and Trustee agrees that if a federal body was to be established, careful consideration is needed to ensure it does not duplicate or 'crowd out' what is already established in the states and territories to fund and support First Peoples' self-determination.

Additionally, First Peoples are overly consulted as a community and the Commission should consider utilising existing structures, like the Self-Determination Fund in Victoria, to avoid duplication and over consultation where possible.

From the perspective of the Trustee on philanthropy, the critical opportunity identified by the Commission's draft report is to build better partnerships, connections and capacity for First Peoples organisations and communities seeking philanthropic funding. Traditional philanthropy approaches can reflect the imposed structures, decision-making and systems on First Peoples that has resulted in their disempowerment over generations. This traditional approach to First Peoples philanthropy must change so that First Peoples' control and direct their own futures across Australia.

3.3 Further consultation with First Peoples' organisations and representative bodies is needed

The Trustee would welcome further discussions with the Productivity Commission on how lessons learned from the design and establishment of the Self-Determination Fund could inform the Productivity Commissions proposed reforms.



STRATEGIC PLAN ON A PAGE – 2023 TO 2026

Vision	Victorian First Peoples on equal footing as determined by the aspirations of First People individuals, families and communities				
Strategic Purpose	Establish a prosperous and enduring self-determination fund, that supports the First Peoples' Assembly of Victoria to achieve unincumbered participation of First Peoples in Treaty negotiations and facilitate their wealth and prosperity through empowerment and self-determination				
What does success look like	<ul style="list-style-type: none"> Support First Peoples to have equal standing with the State in Treaty negotiations Provide the financial independence for First Peoples so that they are empowered and have capacity, wealth and prosperity Be Transparent and accountable to First Peoples' Communities and the broader Victorian public Support the Cultural diversity of this generation and future First Peoples of Victoria. Demonstrate the impact of the Self-Determination Fund (SDF) to this and future generations 				
Strategic Pillars (Clause 8.3 Trust Deed)	A. Develop longer-term plans to facilitate advancement of the SDF's purposes	B. Be responsive to aspirations and priorities of Victorian First Peoples communities as communicated by the Assembly	C. Propose mechanisms for reporting and transparency of the SDF to the Victorian First Peoples	D. Establish any SDF-related strategic direction on matters significantly affecting land, culture and inherent rights	
Key Focus	Carry out business relating to its sole charitable purpose	Operating ethical and responsible governance, including investments, reporting and oversight		Ensure the sustainability of the SDF so that First Peoples are supported in Equal Footing efforts and Wealth and Prosperity aspirations for this and future generations	
Our Priorities (2023-26)	1. Establish Trustee and SDF	2. Receive and distribute* Government Donations	3. Invest and Manage Funds as Trustee	4. Future Growth and Impact	5. Relationships
	1.1 Organisational set-up complete (Trustee, and SDF) 1.2 Complete Establishment Period obligations 1.3 Receive Initial State contribution 1.4 Transition to ongoing Board & corporate operations 1.5 Establish strong risk and compliance and associated audits of those mechanisms	2.1 Safely and promptly receive additional State donations and contributions 2.2. Fair and equality First Peoples funding process 2.3 Streamlined and easily understood monitoring and evaluation of funding 2.4 Fundraising and donations guidelines	3.1 Ethical and Responsible investments that are responsible to First Peoples' aspirations 3.2 Develop and implement Investment Strategy safely 3.3 Sustainable management fee structure 3.4 Expert investment manager appointed	4.1 Attract and grow donations 4.2 Establish First People donations 4.3 Establish alternative NGO donations 4.4. Sustainable and balanced and innovative (where appropriate and agreed) SDF funds and grants	5.1 Inclusive partner for Victorian First Peoples 5.2 Trusted partner to Assembly and all Traditional Owner groups 5.3 Trusted facilitator between State Government, Non-Governmental Organisations and First Peoples stakeholders 5.4 Respected for safely delivering on the Trustee and SDF's obligations

*Interim Directors unable to distribute funds.