



Initial Outcomes Review of the Gunaikurnai Settlement Package

**Prepared for Department of Justice and Community
Safety, Native Title Unit and Gunaikurnai Land and
Waters Aboriginal Corporation**

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We acknowledge and respect the Gunaikurnai as the Traditional Custodians of Gunaikurnai Country - land and waters, their unique ability to care for Country and deep spiritual connection to it.

We pay our respect to Elders past, present and emerging whose knowledge and wisdom has ensured the continuation of culture and traditional practices.



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Foreword

The Gunaikurnai Recognition and Settlement Agreement (RSA) between the Gunaikurnai Land and Waters Aboriginal Corporation (GLaWAC) and the State of Victoria came into effect in February 2011, when the Indigenous Land Use Agreement was registered by the National Native Title Tribunal. The RSA was the result of months of negotiations between the Victorian Government and Gunaikurnai, and settles Native Title claims dating back to 1990. The RSA is intended to meet the objectives of the *Traditional Owner Settlement Act 2010* (Vic) and to bind the State of Victoria and the Gunaikurnai into a meaningful partnership founded on mutual respect through the agreements that comprise the Settlement Package.

Clause 11.3 of the Gunaikurnai RSA requires an initial outcomes review within five years of the RSA registration date, or as otherwise agreed by the parties. In October 2019, with the agreement of GLaWAC, the Department of Justice and Community Safety (DJCS) engaged KPMG to conduct the independent review of the initial outcomes of the RSA ('the review').

The review team held interviews and a written submission process with key stakeholders of both parties from November 2019 through to May 2020. An online survey and toll free telephone number were also publically available to ensure all members of the Gunaikurnai community had the opportunity to contribute to the review. The review team would like to thank representatives and individuals who took the time to attend stakeholder meetings and to provide submissions.

This report, drafted by the review team, presents the outcomes of the document analysis, stakeholder consultations, survey results and submission process, and outlines the key findings against the core themes.

Based on the findings, the review team proposes a set of recommendations for the renegotiation of the RSA. The review team is pleased to submit this report to the Department of Justice and Community Safety, GLaWAC, the Attorney-General and the Chairperson of GLaWAC for consideration.

Glossary & Acronyms

Acronym/Term	Definition
ACCO	Aboriginal Community Controlled Organisation
CMA	Catchment Management Authorities under the Catchment and Land Protection Act 1994 (Vic)
COM	Committee of Management under the Crown Land (Reserves) Act 1978 (Vic)
DEET	Department of Employment, Education and Training
DELWP	Department of Environment, Land, Water and Planning
DJCS	Department of Justice and Community Safety
ESRC	Economic and Social Research Council
FNLRS	First National Legal and Research Services Ltd, the “native title service provider” for the purposes of the Native Title Act 1993 (Cth)
GEA	Gippsland Environment Agencies
GEGAC	Gippsland and East Gippsland Aboriginal Co-Operative
GKTOLMB	Gunaikurnai Traditional Owner Land Management Board under the Conservation, Forests and Lands Act 1987 (Vic)
GLaWAC	Gunaikurnai Land and Waters Aboriginal Corporation, the “traditional owner group entity” representing the Gunaikurnai People.
IPCG	Integrated Project Control Group
IPP	Indigenous Procurement Policy
JM	Joint Management under the Conservation, Forests and Lands Act 1987 (Vic)
JMP	Joint Management Plan
KEESO	Koori Education Engagement Support Officer
LGAs	Local Government Agencies
LGV	Local Government Victoria (part of the Department of Environment, Land, Water and Planning)
NRM	Natural Resource Management
PBC	Registered Native Title Prescribed Body Corporate under the Native Title Act 1993 (Cth)
PM&E	Performance, Management and Evaluation
PV	Parks Victoria
RAP	“Registered Aboriginal Party” under the Aboriginal Heritage Act 2006 (Vic)
RSA	Recognition and Settlement Agreement under the Traditional Owner Settlement Act 2010 (Vic)
TO	Traditional Owner
TOC	Traditional Owner Corporation
VTOT	Victorian Traditional Owner Trust
WOVG	Whole-of-Victorian Government
wurruk	Country

Key Legislation and Government Policy

Acronym/Term	Definition
CATSI Act	<i>Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth)</i>
ILUA	Indigenous Land Use Agreement which is part of the 2010 Settlement Package agreed by the State of Victoria and the Gunaikurnai People
LUAA	Land Use Activity Agreement under the <i>Traditional Owner Settlement Act 2010 (Vic)</i>
MCT	Parks Victoria 'Managing Country Together' Joint Management Statement
NRA	Natural Resource Agreement under the <i>Traditional Owner Settlement Act 2010 (Vic)</i>
NTA	<i>Native Title Act 1993 (Cth)</i>
RSA	Recognition and Settlement Agreement under the <i>Traditional Owner Settlement Act 2010 (Vic)</i>
TOSA	<i>Traditional Owner Settlement Act 2010 (Vic)</i>
VAAF	Victorian Aboriginal Affairs Framework
VALGAP	Victorian Aboriginal Local Government Action Plan
Water Act	<i>Water Act 1989 (Vic)</i>

1 Summary of Key Findings and Recommendations

This section of the report provides a summary of the key findings and recommendations against the core themes identified during the review.

1.1 Genuine Partnerships and Traditional Owner Status

The formation of genuine partnerships between GLaWAC and key state partners has been a strength of the RSA, providing a strong platform to build on in the next phase. A shared understanding across all required levels of government is an ongoing challenge that may benefit from dedicated cultural awareness training for RSA partners and a communications strategy to ensure GLaWAC's rights and responsibilities are understood, respected and entrenched.

GLaWAC is also driving positive and collaborative relationships with other Aboriginal organisations in the Gippsland area. To ensure these partnerships continue to grow, mapping of the roles and responsibilities aligned to respective policy objectives and funding will ensure any tension and uncertainty is addressed, thereby driving further collaboration in the future.

A Local Government Engagement Strategy (RSA clause 8.4 and Schedule 5D) should be developed to address the current mismatch between GLaWAC's aspirations and Councils' commitment to building a meaningful relationship with GLaWAC.

Recommendations to improve Genuine Partnerships and Traditional Owner status

Recommendations for the Attorney General

- 1 Develop a whole-of-government RSA communications strategy to ensure all relevant State Government stakeholders are aware of their roles and responsibilities in respect to the renegotiated RSA.
- 2 Map out all Aboriginal Community Controlled Organisations (ACCOs) functions and responsibilities in the Gippsland area to ensure clear consultation and engagement protocols for government and clarity in respect to allocation of government funding.
- 3 Develop change processes and practical tools for the full suite of existing RSAs and relevant legislative frameworks to consolidate and simplify responsibilities for RSA implementation for respective State partners.
- 4 Investigate incentives and policy/legislative opportunities to encourage local governments to procure services from GLaWAC over a set timeframe to enable security for GLaWAC to build capability, employ staff and acquire assets in order to be more competitive.
- 5 Investigate the possibility for the Commonwealth Government to apply its one per cent Indigenous Procurement Policy (IPP) on grant funding provided to LGAs for relevant responsibilities and programs to GLaWAC and the aspirations of the RSA.

Recommendations for GLaWAC and Attorney General

- 6 Establish a regular Cultural Awareness training program with GLaWAC for all on the ground RSA staff, key departmental staff and Local Government Agencies (LGAs) in the RSA area to build a shared understanding and respect for the role of GLaWAC and Gunaikurnai community generally.
- 7 Develop a Participatory Monitoring and Evaluation (PM&E) approach for annual review of the RSA outcomes. This will enable all RSA parties to develop a shared understanding of the aims of the RSA beyond compliance, agree on what success is and how to measure it, and build relationships for long-term success.
- 8 Create a Local Government Engagement Officer role for GLaWAC in support of implementation of LGA actions and enhanced cultural awareness within LGAs whilst increasing resource allocation of Emergency Management Planning Capability.
- 9 Align local government planning processes with the Gunaikurnai Country Plan, including a process that allows for GLaWAC's annual participation, to enable the six councils to work collaboratively with GLaWAC to implement shared goals and increase the involvement of Gunaikurnai People in matters that affect them and their Country.
- 10 Develop a GLaWAC negotiation and agreement process within Councils' strategic planning processes to raise the profile of the Gunaikurnai Country Plan and respect the Gunaikurnai People as equal partners.

1.2 Cultural Rights and Strengthening

Cultural rights and strengthening is core to Gunaikurnai aspirations as enshrined in the RSA's Recognition Statement and Gunaikurnai's Whole-of-Country Plan. While there have been achievements in cultural strengthening and repatriation of traditional knowledge since the implementation of the RSA, more work needs to be done in this area in the next phase of the RSA. Ongoing engagement with Gunaikurnai Elders who hold cultural knowledge for the community is essential to build Gunaikurnai's cultural assets and to develop the RSA's Interpretative Information Protocol. Cultural Hubs, Keeping Places and On Country programs that are vital for healing the legacy of trauma experienced from dispossession require further support from within the RSA.

The development of Gunaikurnai cultural awareness training and school education programs are important cultural assets that can provide viable future revenue streams for economic development and a means to further reconciliation with the wider community which should be considered within the RSA framework.

Recommendations to improve Cultural Rights and strengthening

Recommendations for the Attorney General

- 11 Provide funding to conduct cultural research to build Gunaikurnai's cultural assets and to embed into joint management practices specifically for fire, water, natural resource, and mining management.
- 12 Expand and provide further funding for Cultural Healing programs on Country for Gunaikurnai and the wider Gippsland Aboriginal community and ensure that Traditional Owner groups are within scope for funding by government departments, such as the Department of Health and Human Services, which fund these activities.
- 13 Provide RSA-specific funding for the four staged education program currently being developed by GLaWAC to be delivered to schools and the community across the Gippsland area.

Recommendations for GLaWAC

- 14 Develop a cultural knowledge program to be led by GLaWAC's Cultural Manager and Gunaikurnai Elders to finalise the RSA's Interpretative Information Protocol.

Recommendations for GLaWAC and Attorney General

- 15 Upgrade and enhance Gunaikurnai Cultural Hubs and Keeping Places to make it more appealing for the next generation of Aboriginal youth in the RSA area.
- 16 Implement a process to ensure that the Department of Education primarily consults with GLaWAC on all matters relating to Gunaikurnai language and culture to ensure provenance and consistency of Gunaikurnai culture and language in the wider community.

1.3 Economic Development and Self-determination

GLaWAC has made considerable progress in building sustainable economic development opportunities within the RSA framework. However, further funding and resources are needed if self-determination and Gunaikurnai aspirations are to continue to be realised.

There is a significant need for succession planning and investment into GLaWAC to ensure the next generation of Gunaikurnai leaders are able to lead the next phase of the RSA. GLaWAC also requires further funding to ensure that it is able to fulfil its core role to further the aspirations of the Gunaikurnai Traditional Owners through expanding its capacity to lead key initiatives and to take leadership on self-determination of the Gunaikurnai.

The compensation and funding elements of the RSA are currently insufficient to meet the self-determination and economic development aspirations originally envisaged by the Gunaikurnai. This should be renegotiated in line with the State's policy commitment to the principle of self-determination for Aboriginal Victorians, and recent case law principles in this area.

Recommendations to improve economic development and self-determination

Recommendations for the Attorney General

- 17 Provide funding through the state's training and education initiatives for specific programs and internships with education providers to provide skilled employment pathways for the Gunaikurnai community and to support capability building and leadership training for the next generation of Gunaikurnai youth.
- 18 Explore opportunities to consolidate, simplify and eliminate multiple funding arrangements through evaluation of different base funding models for GLaWAC, with a view to moving away from short-term activity based funding to outcomes based funding.
- 19 Develop a proposal for preferential procurement strategies to ensure economic development opportunities and an equitable partnership for joint management is reached for GLaWAC.

Recommendations for GLaWAC and Attorney General

- 20 Renegotiate current base funding arrangements for GLaWAC to address the current funding shortfalls and to ensure adequate funding for the next phase of the RSA aspirations.
- 21 Renegotiate the compensation and funding elements of the RSA to ensure that GLaWAC's Settlement Package is in line with recent common law principles and the VAAF's commitment to self-determination for Aboriginal Victorians.

1.4 Land title and Joint Management

Repossession of culturally significant land is a core aspiration for Gunaikurnai. This is embodied in the transfer of Crown land to Aboriginal Title of 10 significant sites to GLaWAC for joint management and the option to purchase Crown land in fee simple (schedule 5, RSA). This should be a significant area of focus in the renegotiation phase of the RSA.

A phased approach to expanding land title and joint management for GLaWAC will enable capability and capacity to develop in step with Gunaikurnai's strong aspirations in this regard. A new model for joint management, such as the Committee of Management (COM) of The Knob Reserve, warrants further

investigation if the commitment to an equitable partnership is to be realised in JM. In this context, further funding is also needed for both parties to ensure there are adequate resources for implementation of the RSA. A community consultation process should also be developed to provide all Gunaikurnai clan groups decision making input in matters of joint management.

GLaWAC's strategic land assessment is critical to furthering one of the foundational aspirations of the RSA to have "access to and management of [Gunaikurnai] County which will provide a means to improve the Gunaikurnai community's livelihoods."¹ This assessment should be supported and findings considered in the negotiation phase of the RSA to enable further self-determination for Gunaikurnai. In the negotiation of a LUAA as a result of the outcomes of the Strategic Land Assessment process, GLaWAC is seeking to implement a standard procedure to ensure that GLaWAC is consulted on all crown land use in the RSA area which will ensure that state decision making is fully informed of potential impacts for Gunaikurnai.

In step with the Gunaikurnai Whole-of-Country goals, the roles and responsibilities of the GLaWAC Ranger program should be extended to build the capability in transmission of traditional knowledge when caring for Country in JM of parks.

GLaWAC's greater participation in emergency management planning for all Aboriginal people in Gippsland including planning support for ACCO's would benefit the Indigenous community's recovery from both COVID-19 and the bushfires.

The Traditional Owner Land Management Board (TOLMB) provides an effective model in development of the joint management plans for the RSA area. However, the current governance model is administratively burdensome, can lead to tension with TOCs and duplication in efforts and it should therefore be reviewed.

Recommendations to improve land title and joint management

Recommendations for the Attorney General

- 22 Provide further funding to support GLaWAC's strategic land assessment and then enter into the renegotiations based on the findings.
- 23 Provide further funding to enable effective implementation of the actions contained within the Joint Management Plan.
- 24 Consider legislative reform to enable Traditional Owner Corporations to become a delegated Crown land manager.
- 25 Provide funding to GLaWAC for the Gunaikurnai Elders and knowledge holders to conduct biodiversity studies and cultural mapping of totems and habitats to create an important additional role for the GLaWAC rangers in the transmission of cultural knowledge on Country.
- 26 Amend the *Water Act* (Vic) to support greater involvement of GLaWAC in the Victorian Water Management Framework to support water management as a potential pathway for economic development of the Gunaikurnai.
- 27 Review and amend current policy to provide greater clarity on the policy foundations for the joint management of marine protected areas and what the opportunities for commercial partnerships may be for Traditional Owner Entities.
- 28 Conduct a review of the TOLMB Governance model to address the underlying imbalance in power which can prevent equality in the partnership between GLaWAC and the State Minister for Energy, Environment and Climate Change.
- 29 Implement a standard procedure to ensure that GLaWAC is consulted on all crown land use, including reallocation, sales and leases, in the GLaWAC RSA area.

¹ Gunaikurnai Whole-of-Country Plan, 2015, p14

Recommendations for GLaWAC and Attorney General

- 30 Leverage the principles of the COM model in place. Develop a proposal to develop a staged approach for implementing an alternative joint management model for the six national parks in the RSA area that will enable a more equitable JM partnership.
- 31 Develop and implement a culturally appropriate and inclusive model for the Gunaikurnai community to provide input into joint management decision-making.

1.5 Further outstanding RSA negotiations

The negotiation of a Land Use Activity Agreement (LUAA) and Natural Resource Agreement (NRA) is recommended to formally entrench Traditional Owner rights into the management, access, activities and economic benefits that come from the land in the RSA area and to address ongoing challenges experienced under the Indigenous Land Use Agreement (ILUA) and Future Acts provision currently referred to for procedural rights. GLaWAC's Strategic Land Assessment and current initiatives with key State partners to commence negotiations for a formal NRA and LUAA are anticipated to benefit GLaWAC in this area and the outcomes of both should be taken into account in the renegotiation phase of the RSA.

Recommendations to further outstanding RSA negotiations

Recommendations for the Attorney General

- 32 Create and fund a role within GLaWAC focussed on ILUAA or LUAA and NRA implementation.

Recommendations for GLaWAC and Attorney General

- 33 GLaWAC and the State to enter into negotiations to finalise a LUAA and NRA aligned to the agreed outcomes from GLaWAC's Strategic Land Assessment and current initiatives to negotiate a LUAA and NRA with key State partners.
- 34 GLaWAC and the State to agree a solution to resolve the 70 plus encroachments of private dwellings onto Crown land as part of the renegotiation to fairly compensate GLaWAC for its loss of native title.

2 Introduction

2.1 Background and context

The Recognition and Settlement Agreement (RSA) between the State of Victoria ('the State') and the Gunaikurnai Land and Waters Aboriginal Corporation (GLaWAC) representing the Traditional Owners from the Brataualung, Brayakaulung, Brabralung, Krauatungalung and Tatungalung family clans, was entered into on 22 October 2010, and it was the first of its kind in Victoria. The RSA was entered into on the same day that the Federal Court of Australia recognised Gunaikurnai's Native Title claim over much of Gippsland. This RSA is covered under the – then new – State legislation, *Traditional Owner Settlement Act 2010 (TOSA)*.

As part of the RSA, GLaWAC entered a range of agreements that comprise the Settlement Package. These agreements build on Traditional Owners' rights under the TOSA and include:

- the recognition of Traditional Owner rights over all public land within the external boundary of the consent determination by the Federal Court;
- a grant of Aboriginal Title over 10 areas of land totalling approximately 460 km²;
- joint management (JM) arrangements over those 10 areas of land;
- \$12 million in funding, of which \$10 million is to be placed in trust and the interest used to help fund the operations of the GLaWAC;
- rights to access Crown land for traditional purposes, such as hunting, fishing, gathering and camping;
- employment with Parks Victoria (PV);
- assistance to set up a natural resource management (NRM) contracting business; and
- various cultural strengthening commitments surrounding recognition of the Gunaikurnai People as Native Title holders and Traditional Owners of the land within the consent determination.²

The additional agreements that comprise the Settlement Package included Funding, Indigenous Land Use, Traditional Owner Land Management, Participation and Natural resource agreements. Each of these sought to clarify the rights and recognition of the Gunaikurnai community as the Traditional Owners of the specified land and the activities that they are able to engage in on their Country.

One of the major elements of the Settlement package was the determination of Crown land that would be transferred to Aboriginal Title and jointly managed going forward. The 10 parcels of land that were part of this agreement with GLaWAC were:

- The Knob Reserve
- Mitchel River National Park
- Tarra-Bulga National Park
- The Lakes National Park
- Gippsland Lakes Coastal Park
- New Guinea Cave
- Lake Tyers Catchment Area
- Buchan Caves Reserve
- Gippsland Lakes Reserve
- Corringale Foreshore Reserve

² Gunaikurnai, Whole-of-Country Plan.

The Gunaikurnai entered into negotiations for the RSA with a list of aspirations that the agreements must be able to sustain in order to ensure the continued growth, support, training and healing for their community. The Gunaikurnai aspirations are detailed in Appendix B. These were then adapted and incorporated as part of the Gunaikurnai *Whole of Country Plan* to provide ongoing guidance for current and future aspirations.³

The seven strategic goals to support the Gunaikurnai vision are:

- A strong, healthy, happy mob;
- Healthy Country;
- Protecting and practice culture;
- Respect as Traditional Owners of our Country;
- The right to use, manage and control our resources;
- Economic independence; and
- A strong focus on learning.

GLaWAC utilises the above strategic goals within the confines of the RSA to create a sustainable and self-determined future for the Gunaikurnai community whilst restoring and protecting Country to the benefit of all residents within and around the RSA area.

During the 10 years since the signing of the RSA, GLaWAC, the Gunaikurnai community and other stakeholders have undergone significant changes in how they operate. A review at this crucial time will support decision making for renegotiation of the RSA, improve stakeholder relationships and joint management programs, ensuring that the RSA is upheld to its fullest extent and that the Gunaikurnai can achieve their *Whole of Country* vision.

2.1.1 Victorian Government Policy and legislative setting

The *Traditional Owner Settlement Act* (TOSA) was formulated in Victoria from 2006-2010 as a response to the apparent deficiencies and issues with the NTA. It provided an alternative mechanism for Traditional Owners to obtain native title rights and recognition outside of the Federal process.

Since the NTA was enacted in 1993, it became apparent that there were considerable barriers and inefficiencies for native title rights and recognition determination, mainly the high level of evidentiary support, technicality and costs associated with court action.

Prior to TOSA, the Victorian Government had only resolved 15 per cent of native title claims for Crown land under the NTA; this rate would mean that complete native title resolution would take more than 50 years.⁴ To provide an alternative method for formal recognition of native title and rights, the Victorian Government, in consultation with Indigenous community leaders, formulated the TOSA.

The TOSA's objectives are to provide a streamlined, expedited and cost effective approach to resolving native title claims through out-of-court negotiation. All the additional cost savings, from a State Government perspective, could be reallocated to the TOSA, supporting Traditional Owner groups and communities. The Act aims to support the resourcing of a Traditional Owner corporations, creating a new avenue for partnerships between Traditional Owner groups and the Victorian Government. This partnership aims to support self-determination for Traditional Owners' economic, social and cultural future.

The current Victorian Aboriginal Affairs Framework (VAAF) approach is another step forward to improving Traditional Owner recognition and self-determination but still requires ongoing effort to reduce the competitive nature of different departments all working to support Aboriginal Affairs and community. The

⁴ Premier Brumby media release, 28 July 2010

framework will provide guidance for working with Aboriginal Victorians, organisations and the wider community to drive action and improve outcomes whilst committing the Government to significant structural and systemic transformation.⁵

2.1.2 Gunaikurnai's journey for cultural recognition and native title

The Gunaikurnai People have inhabited their land continuously for tens of thousands of years, encompassing valleys, plains, mountains and sea. Their deep connection and understanding for their Country ensured the development of a harmonious and sustainable way of life for the Gunaikurnai People.

The Gunaikurnai's deep and enduring connection with their land and customs was threatened and broken when the first Europeans arrived on their Country during the 1830s. Settlers did not recognise the Gunaikurnai People as having rights over the land or any understanding of the deep and necessary connection with Country for ways of life and cultural identity. Since that time, the actions of governments, agencies and individuals led to substantial interference in the Gunaikurnai's practice of lore, language, culture, access to Country and use of its resources.⁶

The Gunaikurnai People suffered from epidemics and brutal massacres, ultimately decreasing their population by 90 per cent before 1900.⁷

The first stage of formal recognition of Gunaikurnai rights to land came in 1965, when the Lake Tyers Mission was formally declared a permanent reserve of 4,000 acres, which was subsequently handed over to the newly formed Lake Tyers Aboriginal Trust.⁸ Not only did this start to improve Gunaikurnai rights and recognition, it was the first successful Aboriginal Land Rights claim in Australia, providing a pathway for other Indigenous communities to begin a process of formal recognition.

The next major influence for the Gunaikurnai community's recognition was the High Court's native title determination in *Mabo v. Queensland (2)*. Until that time, Indigenous communities had struggled to obtain further recognition of connection and custodianship of land due to the doctrine of 'terra nullius' influencing land rights. The High Court's ruling led to the *Native Title Act* in 1993.

From the creation of the *NTA*, Gunaikurnai Elders began their difficult fight for native title recognition.⁹ The Federal Court ruled on 22 October 2010 that the Gunaikurnai People held native title over much of Gippsland. In addition, the first Recognition and Settlement Agreement with the State of Victoria was also agreed upon. It had taken the Gunaikurnai community over 13 years to have their native title formally recognised.¹⁰

The determination of native title for the Gunaikurnai community provided formal recognition that they are the right people for their traditional land, extending from West Gippsland near Warragul, east to the Snowy River and North to the Great Dividing Range. This recognition is the first major step in ensuring the ability to engage with government as equals, protecting Country and providing a means for self-determination of their community and continued cultural learning.

2.1.3 The first 10 years of the Gunaikurnai Recognition and Settlement Agreement

At the inception of the RSA, there was limited understanding by Gunaikurnai People, State agencies, local government and the wider community of the implications for all parties. This exacerbated some of the misconceptions and unfulfilled expectations by both parties (Gunaikurnai and the State) regarding the RSA.

As the first Agreement of its kind under the *TOSA*, the RSA got off to a challenging start as expectations for both parties were not clear and were not consistently met in the first six years. There was limited systemic support and leadership for implementation available to both GLaWAC and key State partner departments' and agencies' head offices and regional staff. The sheer novelty of the new arrangements led to confusion

⁵ Victorian Aboriginal Affairs Framework 2018-2023

⁶ Gunaikurnai Whole of Country Plan

⁷ Gunaikurnai Whole of Country Plan

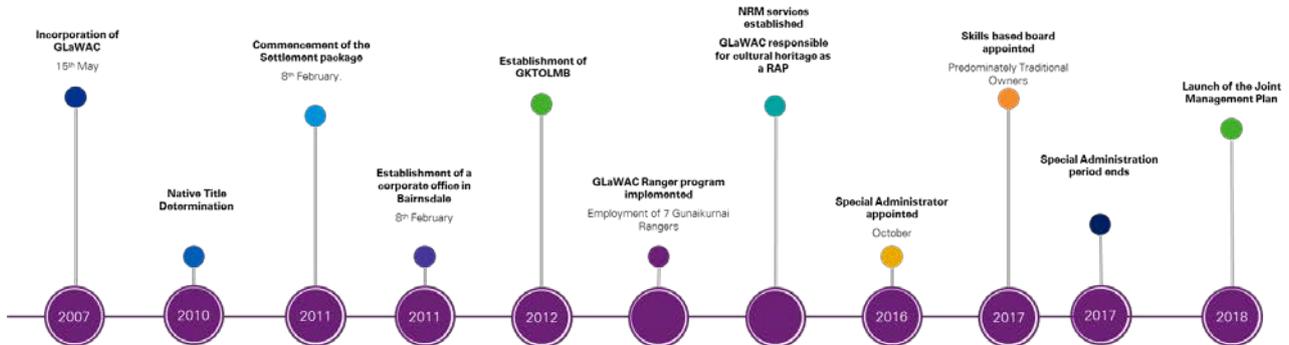
⁸ Gunaikurnai Whole of Country Plan

¹⁰ Gunaikurnai Recognition and Settlement Agreement

and miscommunications by both parties about responsibilities and rights under the RSA. This was despite significant efforts by key State partners and GLaWAC who worked hard to overcome systemic obstacles posed by the existing bureaucracy to these novel policy settings.

Despite these challenges, GLaWAC has made some significant achievements as detailed in **Figure 1** below.

Figure 1 Gunaikurnai RSA 10 year milestones



2.1.3.1 Special administration period for GLaWAC

The novelty of implementing the first ever RSA under the TOSA presented significant challenges for the new TOC. Furthermore, there was no clear and articulated strategic framework until 2015, with the release of the Gunaikurnai Whole of Country Plan.

All of these responsibilities were compounded with the creation of appropriate corporate governance from the beginning and a lack of funding to support the employment of members with prior experience in governance matters. Ultimately the above factors, combined with a lack of financial visibility of certain matters, led to board members reaching out to the Office of the Registrar of Indigenous Corporations (ORIC) to examine GLaWAC’s books on 5 August 2016.

Following the initial review by ORIC, it was deemed necessary for GLaWAC to enter a period of special administration alongside the resignation of the board until 5 May 2017.

During the period of special administration, the administrators improved GLaWAC’s financial management practices, resolved outstanding creditors’ claims, recruited a new CEO and secured long-term funding.¹¹

GLaWAC’s board and governance has strengthened substantially since their period of special administration. The board now consists of a majority of Gunaikurnai directors, all with deep experience within their community and in a broad range of areas such as cultural knowledge, business governance, health and education.¹²

All of these changes have resulted in GLaWAC having improved decision making models, corporate governance and business management of its relationships with key State partners. GLaWAC’s improved position ensures that community members retains a strong voice in the management of the RSA and supports continued Gunaikurnai community improvements through the Ranger program, land management and cultural activities.

¹¹ ORIC media release 5 May 2017

¹² GLaWAC annual report pp. 18-19

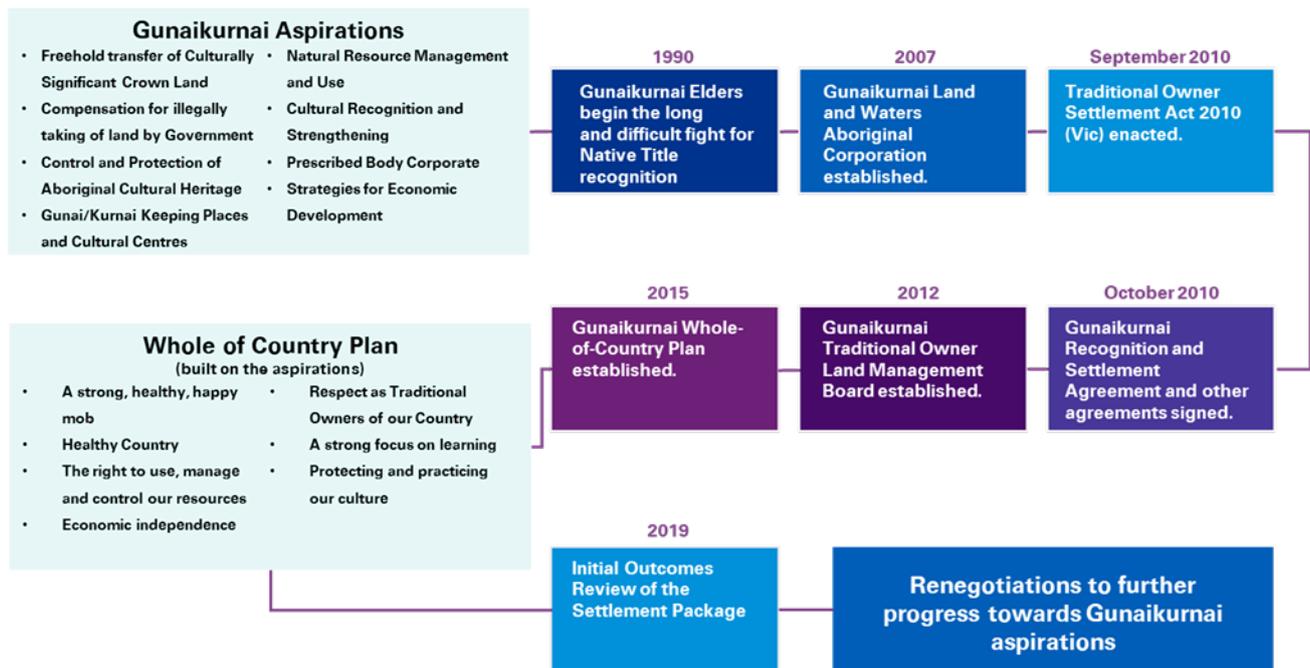
2.1.4 Next phase for the Gunaikurnai Settlement Agreement

The Gunaikurnai RSA was a key step for the State of Victoria in establishing the TOSA as the first RSA entered into under the legislative framework. This RSA is the first major step for Gunaikurnai to provide the ability to engage with government as equals, protecting Country and providing a means for self-determination for the Gunaikurnai community and continued cultural learning.

The review findings suggest that it is now time to enhance and build on the original RSA given significant progression of GLaWAC's growth, state partnerships and resources and the fact that the Gunaikurnai's aspirations have only just started to be realised.

The steps that encompass the long 'Journey Back' for Gunaikurnai and their future aspirations are summarised in **Figure 2** below.

Figure 2 Gunaikurnai Aspirations Journey



2.2 Purpose and scope

This report provides a review of the initial outcomes of the Settlement Package as required by the RSA and the terms of reference provided by DJCS. The purpose of this review, as stated in the RSA Clause 11.3, is to identify any issues raised by the parties or other bodies consulted during the review and make recommendations as to remedial action required or other action to be taken.

To undertake the review, the following items were considered as required by the RSA and terms of reference:

- implemented and not yet implemented RSA schedules;
- the Welcome to Country and cultural awareness protocol;
- local government engagement plans;
- interpretive information protocol;
- economic development, NRM, training and employment programs;
- establishment of NRM and cultural heritage enterprise;
- the purpose of TOSA;

- the agreements which comprise the RSA;
- the Gunaikurnai Whole-of-Country Plan (2015);
- the 2016 report of the joint GLaWAC and State scoping workshop;
- legislative/policy needs to achieve any insufficiently met objectives;
- arrangements needed/secured for the achievement of pending commitments, and monitor the achievement of intended outcomes of the RSA;
- the parties' commitment to negotiate a Natural Resource Agreement (NRA) (outlined in ILUA Clause 19.1) and a Land Use Activity Agreement (LUAA) (outlined in ILUA Clause 15);
- the Traditional Owner Land Management Agreement and associated processes;
- the adequacy of funding provided to GLaWAC;
- consideration of grants of freehold title and Aboriginal title of Crown land to GLaWAC;
- the efficacy of measures to develop the economic interests of GLaWAC;
- the impact of the RSA on GLaWAC's corporate capacity and governance and relationships with Aboriginal Co-operatives, key State agencies and local government;
- the extent to which State agencies and local governments have understood and promoted the objectives of the RSA; and
- the parties' commitment to building the corporation's capability, including GLaWAC's ability to engage with, and work alongside, key stakeholders.

The findings of this review will be used to make appropriate recommendations to:

- the Attorney-General, where change in legislation or government policy is needed;
- the GLaWAC Chairperson, where recommendations affect GLaWAC or Gunaikurnai People; and
- the Attorney-General and the GLaWAC Chairperson, where changes are required to the settlement package.

A more detailed overview of the terms of reference is provided in Appendix A.

2.3 Approach

To undertake this review, KPMG adopted a qualitative approach, focusing on feedback from a range of stakeholders to determine whether the objectives of the Settlement Package have been met. The approach included the following steps:

- **Desktop research:** KPMG undertook desktop research and analysed key documents provided by both parties. The key documents analysed included:
 - The objectives set out in TOSA
 - Schedules and agreements which compromise the Settlement Package
 - The Gunaikurnai Whole-of-Country Plan
 - Gunaikurnai Joint Management Plan
 - GLaWAC annual reports.

A full list of key documents analysed can be found in Appendix C.

- **Written submissions:** KPMG set up a written submission process for the State departments, agencies and local government to provide commentary on the Terms of Reference.

- **Online Survey:** KPMG designed an online anonymous survey to give all Gunaikurnai community members the opportunity to contribute to this review.
- **Consultations:** KPMG undertook face-to-face community consultations and semi-structured interviews with an agreed list of 40 stakeholders. A detailed list is available upon request and with permission from interviewees.
- **Report drafting:** KPMG analysed the findings from the research, written submissions and consultations to draft the recommendations and the final report.

2.4 Structure

The structure of the remainder of this report is as follows:

- **Chapter 3:** Discusses the themes, issues and the findings of the review, and outlines the review recommendations.
- **Appendix A:** Terms of reference provided by the Department of Justice.
- **Appendix B:** Gunaikurnai Whole-of-Country Vision.
- **Appendix C:** References.

This structure meets the minimum requirements outlined in the 2016 review scoping workshop report.

2.5 Outcomes based and Activity based funding

Research has shown that activity based funding arrangements can provide significant disadvantages and burdens for Aboriginal organisations.¹³ Funding focused on activities creates additional restrictions in how it can be used, potentially limiting the beneficial outcomes that the activity seeks to support. Ultimately, government funding is provided with the hope that desired outcomes, such as meeting legislative requirements or improving community factors, can be achieved.

Activities based funding can cause increased administrative burden for organisations and increased micromanaging by agencies and departments, as they seek to ensure that funds provided are utilised for the specified activities.¹⁴

The prescriptive focus on only a certain range of activities means that alternative solutions, that could achieve the same outcome, cannot be pursued. Ultimately, this means that government funding can become inappropriate or ineffective as better solutions to achieve outcomes cannot be utilised rapidly.

Furthermore, from an Indigenous perspective, an outcomes based funding approach supports the realisation of greater self-determination.¹⁵ Indigenous organisations benefit from general-purpose and expansive or flexible funding arrangements when there is a jurisdictional boundary or well-defined service delivery area.¹⁶

The Department of Health and Human Services has begun to implement an alternative, new model of funding for their health priority areas.¹⁷ Called 'flexible funding', it is a consolidation of existing funding streams that removes unnecessary red-tape, speeding up approval processes and ensuring that any action that can contribute to achieving the Department's outcomes can more efficiently obtain funding.

Ultimately, outcomes-based and flexible funding models seek to provide greater freedom to recipients for them to meet their obligations and achieve important outcomes for communities.

¹³ Closing the Gap, Issues paper no. 11 pp. 3

¹⁴ Outcome Based Budgeting PWC, 2017

¹⁵ Victorian Government Aboriginal Affairs Report 2019

¹⁶ Closing the Gap, Issues paper no. 11 pp. 3

¹⁷ DHHS policy and funding guidelines 2018

The table below categorises which funding recommendations of this review may be suitable for outcomes based / flexible funding or activities based funding models for consideration in the negotiation phase of the RSA.

Table 1 Potential funding arrangements for GLaWAC funding recommendations

GLaWAC Reference No.	GLaWAC Funding Recommendations	Activities based	Outcomes / Flexible based
11	Provide funding to conduct cultural research to build Gunaikurnai's cultural assets and to embed into joint management practices specifically for fire, water, natural resource, and mining management.		✓
12	Expand and provide further funding for Cultural Healing programs on Country for Gunaikurnai and the wider Gippsland Aboriginal community and ensure that Traditional Owner groups are within scope for funding by government departments, such as the Department of Health and Human Services, which fund these activities.		✓
13	Provide RSA-specific funding for the four staged education program currently being developed by GLaWAC to be delivered to schools and the community across the Gippsland area.		✓
17	Provide funding through the state's training and education initiatives for specific programs and internships with education providers to provide skilled employment pathways for the Gunaikurnai community and to support capability building and leadership training for the next generation of Gunaikurnai youth.		✓
22	Provide further funding to support GLaWAC's strategic land assessment and then enter into the renegotiations based on the findings.	✓	
23	Provide further funding to enable effective implementation of the actions contained within the Joint Management Plan.		✓
25	Provide funding to GLaWAC for the Gunaikurnai Elders and knowledge holders to conduct biodiversity studies and cultural mapping of totems and habitats to create an important additional role for the GLaWAC rangers in the transmission of cultural knowledge on Country		✓
32	Create and fund a role within GLaWAC focussed on ILUAA or LUAA and NRA implementation		✓

3 Theme, Issues and Recommendations

This section reports on the range of themes and issues raised during the stakeholder consultations, submission process and document analysis, and provides recommendations based on the findings. The issues raised in this section reflect the results of the documents analysis and views and perceptions of stakeholders who are parties, interact, or have an interest in the RSA as reported to the review.

The structure of this section and the relevance of each sub-section is outlined below.

Sub-section	Relevance
Theme	Issues have been grouped and discussed in one of five themes. The themes include: <ul style="list-style-type: none"> - Genuine Partnerships and Traditional Owner Status - Cultural Rights and Strengthening - Economic Development and Self-determination - Land title and Joint Management - Further outstanding RSA negotiations.
<i>Each theme has the following sub-sections:</i>	
Background	Contextual information relevant to the issues reported to the review are discussed in this sub-section.
Issues	Issues reported to the review during the stakeholder consultations, submission process or document analysis are discussed in this sub-section.
Findings	This sub-section synthesises and reports on the overarching findings for each theme based on the preceding sub-sections.
Recommendations	Recommendations being made by the review to the Attorney-General and/or GLaWAC Chairperson are outlined in this sub-section.

3.1 Genuine Partnerships and Traditional Owner status

3.1.1 Background

The Gunaikurnai RSA recognises that the Gunaikurnai People are the Traditional Owner Group for, and are the custodians of, the Country within the RSA Area. The State also recognises that the Gunaikurnai People have made a unique and irreplaceable contribution to the identity and wellbeing of the Gippsland region, and of the State.¹⁸ In this light, genuine partnerships between GLaWAC and respective State departments and

¹⁸ Gunaikurnai Recognition and Settlement Agreement, Volume 1, 2010

agencies are vital to deliver on the obligations and responsibilities contained in the RSA, as well as the Gunaikurnai aspirations that inform the RSA.

Both State and Gunaikurnai stakeholders acknowledged that forming equal partnerships has been challenging but continues to strengthen as the capability and capacity within GLaWAC grows. The individually negotiated partnership agreements formed between GLaWAC and State agencies in the RSA area have enabled a structured approach that is leading to better outcomes in joint land and natural resource management and are seen as setting a high standard for future agreements with other Traditional Owner groups.

While the increased cultural recognition and respect for Gunaikurnai as the Traditional Owners in the RSA area was seen as a great source of pride for many Gunaikurnai stakeholders, it was acknowledged that the general awareness of GLaWAC's role and authority as the TO entity needs to improve. Tactical ways suggested to improve this include regular RSA and cultural awareness training, development of a communications strategy for all respective State agencies and departments, and design of tools and processes that integrate all RSA responsibilities and provide clear guidance for RSA implementation.

The lack of development of the Local Government Engagement Strategy (RSA clause 8.4 and Schedule 5D) and resulting lack of engagement by the majority of LGAs in the RSA area with GLaWAC was seen as a distinct area for remediation and improvement in the next phase of the RSA.

3.1.2 Issues

3.1.2.1 Key partnerships with State Departments and Agencies

Since the implementation of the RSA, key state agencies, departments and GLaWAC have continued to work towards building a strong strategic and operational partnership. As the skills capability and capacity within GLaWAC continue to grow, partnerships are deepening and becoming more broad-based. However, it was generally acknowledged by both parties that GLaWAC must dictate the speed at which their role and responsibilities grow.

"We do get a seat at the table with a lot of these government initiatives now. It gives us a voice. We are better off today with Native Title and the RSA than what we are without it 10 years ago. We are building meaningful relationships with government and community."

Gunaikurnai community member

There is consensus across all parties that genuine partnerships and respect for one another's roles and responsibilities is imperative to the success of the RSA. This is evident in the efforts being made to achieve genuine partnerships, such as (but not limited to):

- the Department of Jobs, Precincts and Regions (DJPR) ensuring GLaWAC are engaged as part of the LaTrobe Valley Regional Rehabilitation Strategy;
- PV designing a Gunaikurnai Partnership Agreement to represent a shared commitment from GLaWAC and PV to work together; and
- GLaWAC and GKTOLMB are embedded in the Gippsland Environment Agencies (GEA) network and the GEA-GLaWAC Working Group. This has allowed GLaWAC, the GKTOLMB, DELWP and PV to share information about the settlement package, and GLaWAC to share Gunaikurnai aspirations more broadly with a large network of State agencies.

This new way of working with GLaWAC and TOCs across Victoria is effectively change management for government which has proved to be challenging due to the nature and complexity of embedding GLaWACs into existing bureaucratic processes. This has led to some challenges along the way where GLaWACs were not consulted in matters they should have been or where procurement has been sourced from other suppliers on Gunaikurnai Country instead of GLaWAC's NRM enterprise.

In this context, State stakeholders acknowledge that change needs to start from within, with a strong focus on building organisational capability and cultural competency to work in effective partnerships with Traditional Owners. There is general recognition that key State partners have an important role to play in

supporting Traditional Owner partners to achieve their aspirations, and to help ensure that the intended benefits of RSAs are realised.

A number of Government agencies stated a commitment to ensuring that its policies, programs and work practices are fully consistent and that they celebrate the Government’s commitment to Aboriginal self-determination, as identified in the 2018-2023 VAAF. In this context, the State must ensure that its partnering relationship has GLaWAC as an equal partner in land management and results in genuine empowerment and participation in operational decision-making.

To move towards an equal partnership, as stated in the Gunaikurnai Whole-of-Country Plan, Corporate and Joint Management Plans, State partners are making a focused effort to provide the opportunity for GLaWAC influence over regional business planning processes, resource allocation, and co-designing and implementing effective governance arrangements. Furthermore, executives and managers from both parties are increasingly working together to build programs and policies that give effect to the rights and interests of the Gunaikurnai community. Examples provided by State stakeholders of the steps taken to further embed GLaWAC into their planning, operations and strategic initiatives are provided in the table below.

Table 2 GLaWAC integration across different State Departments and Agencies

GLaWAC integration across different departments and agencies	
Category	Description
Land Management	GLaWAC has established itself as a trusted partner in land management and natural resource management (NRM) related activities across Gunaikurnai Country.
Implementation	GLaWAC is embedded in activities from high-level forums, such as the Gippsland Environment Network (GEN), through to on-ground works implementation.
Project governance	GLaWAC staff are embedded in project control, reference and working groups to ensure Gunaikurnai are represented in NRM delivery on Country.
Special projects	GLaWAC participation in activities such as bushfire response continues to increase and it is now looking at expanding its participation into roles beyond Cultural Values Advisors and General Fire Fighter roles. Further involvement by GLaWAC in other country initiatives to strengthen and build economic prosperity for the region through the Gippsland Aboriginal Economic Strategy.
Authority and decision making	Traditional Owner Partnership Group membership proposed by DPJR will comprise key DJPR executives and commence with the Registered Aboriginal parties to create an authorising environment for effective decision-making and better-informed departmental policies and practices. Involvement from the Aboriginal community in the Aboriginal Economic and Employment Council established by the DJPR.
Integrated natural resource management	GLaWAC and GKTOLMB are embedded in the Gippsland Environment Agencies (GEA) network and the GEA-GLaWAC Working Group. This has allowed GLaWAC, the GKTOLMB, DELWP and PV to share information about the settlement package, and GLaWAC to share Gunaikurnai aspirations more broadly with a large network of State agencies.

Source: KPMG

For Gunaikurnai stakeholders, equal partnership cannot be realised until there is an equal number of GLaWAC rangers working on the joint management of parks with PV. GLaWAC decision making power must also be strengthened in respect to what happens in natural resource management and land management in the RSA area.

GLaWAC acknowledges that the progress made in partnerships with the State in the first 10 years of implementation of the RSA is a significant key first step. Continuing to build and strengthen these partnerships is vital for Gunaikurnai to realise their aspirations.

3.1.2.2 Partnership Agreements

Individually negotiated partnerships between GLaWAC and State agencies have provided an effective structure that has led to better outcomes for the corporation. For example, the Gippsland Environmental Agency Agreement with the local environmental agencies has presented regular commercial opportunities for GLaWAC's NRM Enterprise. Partnership agreements are also a key platform for strengthening shared capacity with Traditional Owners in park management, which will lead to better conservation outcomes across the Parks Estate. There is a wide body of research supporting the premise that collaborative partnerships involving Traditional Owners and government yield significant benefits for conservation of landscapes and ecosystems for future generations.¹⁹

Individually negotiated partnership agreements are one of the key mechanisms for delivering on PV's commitments under the MCT framework. The Gunaikurnai Partnership Agreement detailed in the table below was the first of its kind and has set a high standard for future agreements with other Traditional Owner groups.

Table 3 Gunaikurnai and PV Partnership Agreement

Gunaikurnai and PV Partnership Agreement
<p>The Partnership Agreement is designed to:</p>
<ul style="list-style-type: none"> • Represent a shared commitment from GLaWAC and PV to work together to protect the cultural and natural values of the Parks Estate across the whole of Gunaikurnai Country • Set out the nature of the relationship between the organisations, and describe the expectations and commitments for an enduring partnership • Provide a pathway to practically implement PV's MCT Framework (2017) and Shaping Our Future (2016) commitments; to make progress on the goals and priorities articulated in the Gunaikurnai Country Plan (2015) and GLaWAC Corporate Plan (2017); and to direct our efforts to implement the JMP (2018) • Establish coordinated and respectful communication and collaboration arrangements to reduce the consultation burden on Traditional Owners • Enable fair approaches to fees and charges for Traditional Owner services to be negotiated • Ensure Traditional Owner values and priorities are embedded into Park planning • Identify opportunities to collaborate on shared cultural heritage, conservation and organisational outcomes on the Parks Estate.

¹⁹ Parks Victoria, 2020

Implementation will be guided by:
<ul style="list-style-type: none">• Annual Partnership Priorities that describe what we will work together on throughout that year• Working on Country Deed for Park Management Services, which outlines our obligations and arrangements for jointly managing appointed Aboriginal Title lands• Joint Management Annual Works Program, which specifies the type, quantum and locations of work to be delivered on joint managed lands and other agreed parks.

Source: Parks Victoria partnership agreement

3.1.2.3 Status and Authority of GLAWAC as the Traditional Owner Entity

There is a general consensus from both parties that improvements are needed in the mandate and decision-making authority of TOCs across relevant Government sectors, for example, Local Government, Education and Cultural Heritage.

At the inception of the RSA, there was limited understanding by Gunaikurnai People, State agencies, local government and the general community of the implications for all parties. This led to misconceptions and unfulfilled expectations by parties regarding the RSA. Both State and Gunaikurnai stakeholders shared that State agencies were either engaging with individual Gunaikurnai Elders instead of GLAWAC or no engagement was taking place at all. This is starting to change, particularly in the years post special administration, where there is an emerging respectful acknowledgment by key State stakeholders and the wider Aboriginal community that they need to consult with GLAWAC as Traditional Owners generally for any on Country and cultural heritage matters. The importance of primary engagement with GLAWAC for any plans concerning Country needs to be embedded into respective RSA agencies' and departments' processes to ensure TOCs status and authority continues to improve.

3.1.2.3.1 Shared understanding and awareness

While there is a strong awareness and understanding of the RSA and GLAWAC at the departmental head and executive level, further work still needs to be undertaken to ensure rights and responsibilities are understood across the organisational structures and by on the ground staff.

A major inhibitor for building shared understanding and awareness has been the lack of dedicated resources for State agencies to lead the delivery of responsibilities under the RSA. In 2017-18, the State funded DELWP and PV to deploy two regional staff each – an RSA Coordinator and a Traditional Owner Project officer to support the RSA implementation, however the review heard this is insufficient and further resources and funding are needed. State agencies are building the internal staff knowledge of the RSA, what JM means, and developing cultural staff competency in different ways. With respect to local governments, there is little understanding or promotion.

To build shared understanding and awareness of RSA commitments across government, an RSA communications strategy should be developed in the renegotiation phase of the RSA. This will ensure that all relevant State and regional players are aware of their respective roles and responsibilities regarding GLAWAC's renegotiated RSA. To ensure an ongoing commitment and review of performance, it is suggested that RSA partners could consider a participatory monitoring and evaluation (PM&E) approach for annual review of the RSA outcomes. A PM&E approach would enable all parties to develop a shared understanding of the aims of the RSA beyond compliance, agree on what success is and how to measure it, and build relationships for long-term success. PM&E has been proven to build understanding, trust and ownership of success that has been used by other TO Groups in Australia and internationally. In this context, the review heard that DELWP and GLAWAC are currently developing a Gunaikurnai TO Self-Determination Plan (TO SD Plan). The plan seeks to enhance existing relationships and build stronger partnerships to holistically account for the goals and aspirations expressed through the Gunaikurnai Country Plan. Central to the development of TO SD Plans will be enhanced monitoring and evaluation mechanisms for TOs to hold government to account on progress toward enabling self-determination.

Having multiple legislative frameworks and a suite of agreements that govern the RSA responsibilities with Traditional Owner entities makes it complex for State agencies to have full oversight of implementation responsibilities. It would be beneficial for State agencies and departments to have standard change processes to simplify and support RSA implementation. Collaboration and partnerships with ACCOs

GLaWAC continues to drive collaboration and build strong partnerships with Aboriginal organisations in Gippsland. There is an acceptance and respect from ACCOs of GLaWAC as the land and natural resource manager in the RSA area. While GLaWAC fully supports the funding and support that flows to Aboriginal communities through other arms of Government and through ACCOs, there have been tensions created in setting up TOCs due to the fact that strategic interventions to support collaborations have not been mapped out but have instead been left to the respective organisations and their Government partners to work out for themselves.

The funding mix between trauma and welfare support and that of Settlement Agreements is disparate and heavily weighted to the welfare sector. GLaWAC suggests that strong, healthy TOCs, which are based on culture, significantly improve wellbeing and improve on welfare dependencies and therefore reduce pressure on health and wellbeing entities. In this context, GLaWAC submits that the strength-based sector, (GLaWAC's core business) continues to grow its core funding base as much as possible and that continuous improvement in Government coordination across departments is encouraged.

The current VAAF approach is another step forward but still requires ongoing effort to reduce the competitive nature of different departments all working to support Aboriginal Affairs and community.

3.1.2.3.2 Minority community dissent

This review notes that there is historical and ongoing dissent from a minority of Kurnai clan members towards the RSA and the Gunaikurnai native title determination within the RSA area. Multiple applications by Kurnai clan members for a determination of native title have been refused by the Federal Court. It was noted in one of the judgment proceedings that the claimant had continued to be embraced as a member of the Gippsland Aboriginal community by GLaWAC and the Gunaikurnai community generally. GLaWAC continues to seek legal advice on how to deal with this community matter respectfully.

3.1.2.4 Lack of engagement by LGA

The RSA contains a Local Government Engagement Strategy (RSA clause 8.4 and Schedule 5D) that has not yet been developed. Although the commitment was included as an action in the Victorian Aboriginal Local Government Action Plan (VALGAP) launched by the former Minister for Local Government in December 2016, little or no progress has been made. VALGAP is implemented by Local Government Victoria, in the DELWP portfolio. However, despite the lack of State assistance, GLaWAC has formed new relationships with some local government agencies, particularly the East Gippsland Shire, Wellington Shire and the Latrobe City Council. Both parties agree that Local Government engagement has not provided the benefits intended under the RSA. With respect to local governments, there still seems to generally be a mismatch between TO aspirations and councils that requires a focused effort to build understanding and meaningful relationships.

The recommendations below were put forward to the review to improve engagement between GLaWAC and LGAs which warrant further consideration in the renegotiations of the RSA.

- Create a Local Government Engagement Officer role for GLaWAC and other TO Groups in Victoria in support of implementation of LGA actions. There is a need for coordinated engagement across councils with TO Groups in a way that maximises efficiency without placing unnecessary burden on TO Groups. Local Government Victoria (LGV) can continue to play an overall coordinating role to facilitate local government awareness of and engagement with TO RSAs. In addition, GLaWAC, and other TO Groups in Victoria, could employ a Local Government Engagement Officer in support of Schedule 5D actions. The resulting group of local government engagement officers across the State could network in a similar manner to DPC's Local Aboriginal Network (LAN). This network could support councils to deliver a share of the intended RSA benefits. Such a position could be jointly funded by the councils as an RSA officer (analogous to DELWP and PV RSA coordination officers) to be the point of contact for employment initiatives/targets, cultural awareness programs, naming in languages etc.

- Investigate opportunities to align local government planning processes with the Gunaikurnai Country Plan, including a process that allows for GLaWAC's annual participation. The Gunaikurnai Country Plan reaffirms aspirations and should guide local governments' strategic planning. It is a framework for the six councils that overlap with Gunaikurnai's RSA area, to work collaboratively with GLaWAC to implement shared goals and increase the involvement of Gunaikurnai People in matters that affect them and their Country.
- Developing a GLaWAC negotiation and agreement process within councils' strategic planning processes could raise the profile of its Country Plan and respect the Gunaikurnai People as equal partners. An agreed process with councils is required to help achieve the Country Plan and to improve the economic, cultural and social standing of TOs. Local government, as the arm of government closest to the community, has an important role to play in recognising Country Plans and aligning their strategic planning processes with that of TOs.
- Councils must plan effectively and report their results to ensure their activities are transparent and accountable to the community and other levels of government. The State's Local Government Performance Reporting Framework has been mandatory since 1 July 2014 and requires councils to deliver four core documents: Council Plan, Strategic Resource Plan (four years), Budget (annually) and Annual Report (annually). Many councils also include a Community Plan. The activities outlined in Schedule 5D fall within this council planning and reporting framework.
- Investigate incentives and policy/legislative opportunities to encourage local governments to procure from GLaWAC. Entering into a procurement arrangement with councils over a set timeframe would provide more security for GLaWAC (Gunaikurnai Rangers, Gunaikurnai NRM teams etc.) to build capability, employ staff and acquire assets to be more competitive. Overall, this will help to achieve the economic benefits intended from the RSA.
- The Commonwealth Government provides grants to councils for various responsibilities, for example, through programs such as Roads to Recovery and Better Regions. Investigating the possibility for the Commonwealth Government applying its one per cent Indigenous Procurement Policy (IPP) on funds to councils through eligible programs may assist to increase opportunities for GLaWAC (although the IPP applies to Indigenous organisations and is not specific to Gunaikurnai Corporation).

3.1.3 Findings

The formation of genuine partnerships between GLaWAC and key state partners has been a strength of the RSA, providing a strong platform to build on in the next phase. A shared understanding across all required levels of government is an ongoing challenge that may benefit from dedicated cultural awareness training and a communications strategy to ensure GLaWAC's rights and responsibilities are understood, respected and entrenched.

GLaWAC is also driving positive and collaborative relationships with other Aboriginal organisations in the Gippsland area. To ensure these partnerships continue to grow, mapping of the roles and responsibilities aligned to respective policy objectives and funding will ensure any tension and uncertainty is addressed, thereby driving further collaboration in the future.

A Local Government Engagement Strategy (RSA clause 8.4 and Schedule 5D) should be developed to address the current mismatch between GLaWAC's aspirations and Councils' commitment to building a meaningful relationship with GLaWAC.

Recommendations to improve Genuine Partnerships and Traditional Owner status

Recommendations for the Attorney General

- 1 Develop a whole-of-government RSA communications strategy to ensure all relevant State Government stakeholders are aware of their roles and responsibilities in respect to the renegotiated RSA.

- 2 Map out all Aboriginal Community Controlled Organisations (ACCOs) functions and responsibilities in the Gippsland area to ensure clear consultation and engagement protocols for government and clarity in respect to allocation of government funding.
- 3 Develop change processes and practical tools for the full suite of existing RSAs and relevant legislative frameworks to consolidate and simplify responsibilities for RSA implementation for respective State partners.
- 4 Investigate incentives and policy/legislative opportunities to encourage local governments to procure services from GLaWAC over a set timeframe to enable security for GLaWAC to build capability, employ staff and acquire assets in order to be more competitive.
- 5 Investigate the possibility for the Commonwealth Government to apply its one per cent Indigenous Procurement Policy (IPP) on grant funding provided to LGAs for relevant responsibilities and programs to GLaWAC and the aspirations of the RSA.

Recommendations for GLaWAC and Attorney General

- 6 Establish a regular Cultural Awareness training program with GLaWAC for all on the ground RSA staff, key departmental staff and Local Government Agencies (LGAs) in the RSA area to build a shared understanding and respect for the role of GLaWAC and Gunaikurnai community generally.
- 7 Develop a Participatory Monitoring and Evaluation (PM&E) approach for annual review of the RSA outcomes. This will enable all RSA parties to develop a shared understanding of the aims of the RSA beyond compliance, agree on what success is and how to measure it, and build relationships for long-term success.
- 8 Create a Local Government Engagement Officer role for GLaWAC in support of implementation of LGA actions and enhanced cultural awareness within LGAs whilst increasing resource allocation of Emergency Management Planning Capability.
- 9 Align local government planning processes with the Gunaikurnai Country Plan, including a process that allows for GLaWAC's annual participation, to enable the six councils to work collaboratively with GLaWAC to implement shared goals and increase the involvement of Gunaikurnai People in matters that affect them and their Country.
- 10 Develop a GLaWAC negotiation and agreement process within Councils' strategic planning processes to raise the profile of the Gunaikurnai Country Plan and respect the Gunaikurnai People as equal partners.

3.2 Cultural rights and strengthening

3.2.1 Background

The recognition of Gunaikurnai's cultural rights as Traditional Owners enshrined in Clause 3 of the RSA is key to achieving Gunaikurnai's Whole-of-Country vision and Gunaikurnai aspirations. The dispossession of culture as a result of colonisation means there is a great need in the community to strengthen connection to culture and to repatriate what has been lost.

Healing through on Country activities and community cultural events led by GLaWAC is having a positive impact on Gunaikurnai People and the wider Aboriginal community. Gunaikurnai culture is also being strengthened by Cultural Hubs and Keeping Places which now require upgrading to engage the next generation of Gunaikurnai youth.

The Gunaikurnai Education program provides a significant opportunity to build cultural awareness and shared understanding of history and further reconciliation in the Gippsland area. This currently sits outside the RSA and should be considered in the renegotiation phase.

3.2.1.1 Interpretive protocol and building of cultural knowledge

In the RSA, the parties agreed to develop a protocol in relation to responding to requests for, preparation of, access to and use of interpretive information in relation to the Gunaikurnai People or the RSA area.²⁰ The Interpretative Information Protocol relates to the cultural rights and recognition of Gunaikurnai as it can provide copyright protection and put in place culturally appropriate processes for preparing and accessing interpretative information.

With a history of dispossession of culture, such protection is needed to achieve the Gunaikurnai's vision of having the right to use, manage and control traditional knowledge.²¹ There is a lack of clarity as to the progress of the original Interpretative Protocol and Engagement Protocol Agreements. While GLaWAC has undertaken ad hoc projects that publish information about Gunaikurnai traditional ownership and *wurruk*, such as the installation of interpretive signage in collaboration with State agencies at the RSA sites, more resources are required if cultural interpretation and Gunaikurnai cultural knowledge is to be embedded in the joint management of parks. This requires ongoing engagement with Gunaikurnai Elders who hold this cultural knowledge for the community in a culturally appropriate way.

3.2.1.2 Cultural Strengthening and application of traditional knowledge

Many Gunaikurnai people told the review that the RSA had led to a significant increase in a feeling of pride and improvement in respect for Gunaikurnai as the Traditional Custodians from the Aboriginal and Gippsland community more generally. GLaWAC's ranger program in the jointly managed parks, cultural awareness programs, welcome to Country protocols and meaningful partnerships with the State were all seen as vital to building up of personal and collective pride. The GLaWAC managed community cultural events on Country, ongoing community engagement efforts and respect and involvement of Elders' views in cultural matters were seen as examples of GLaWAC's commitment to cultural integrity in the implementation of the RSA as well as initiatives that provide the Gunaikurnai community to live and express their culture. The impacts of colonisation and, more recently, disputes during the native title court proceedings requires ongoing healing. The conflict between identities for the Gunaikurnai people needs to be resolved to ensure collaboration and the ongoing strength of the Gunaikurnai community.

"There is increasing participation of the mob in activities on Country and healing Country as they feel welcome now."

Gunaikurnai community member

While the significant additional work currently being conducted with respect to cultural strengthening for the Gunaikurnai community is not written directly into the RSA, it has been undertaken by the community and GLaWAC as a result of empowerment through the RSA. Ongoing support to enable the Gunaikurnai and wider Aboriginal community to strengthen their connection to culture is vital to continue the healing now needed and acknowledged by both parties in the RSA's Recognition Statement. This includes funding for ongoing cultural research to repatriate what has been lost by the community due to colonisation and historical government policies that may have disconnected Gunaikurnai People from their culture.

"We need to up skill our people in culture. It's not show and tell for others. This is important for our people."

Gunaikurnai Elder

GLaWAC plays an important role in cultural strengthening for Gunaikurnai and the wider Aboriginal community in Gippsland. As the TOC for Gunaikurnai people, GLaWAC plays a key role and should act as the primary reference for the Department of Education, and any other education providers, to ensure the provenance of Gunaikurnai culture and language as it is shared with the wider community. In this context, there is a need for greater visibility across all relevant government departments of GLaWAC's role in cultural rights and

²⁰ Gunaikurnai Recognition and Settlement Package, Clause 8.5.

²¹ Gunaikurnai Whole-of-Country Plan.

strengthening activities and improvements should be made in funding allocations to ensure GLaWAC can fulfil its role as custodians of language and culture for the Gunaikurnai community.

3.2.1.3 GLaWAC Cultural Hub and Keeping Places

The Gunaikurnai Cultural Hub and Keeping Places are playing an important role in cultural retention for the Gunaikurnai community as well as providing the opportunity for a greater understanding and recognition by the general community. The review heard that connecting the next generation to culture is critically important to build confidence and self-worth for Gunaikurnai youth who might lack role-modelling and experience significant social disadvantage in their everyday lives. Enhancing the experience to make it more appealing to youth in a similar way to the Koorie Heritage Trust's Keeping Place would see more engagement from younger generations.

"The cultural strengthening and application of knowledge is the soul of the RSA."

Gunaikurnai Elder

The transition of the responsibility and ownership of certain cultural centres and special places between Cooperatives and GLaWAC has not been fully realised. A partnership approach between the State and GLaWAC for Keeping Places and spiritually important places is vital. The review understands that funding in this area is currently provided by the Department of Health and Human Services (Vic) and disparate opportunistic grants rather than through the RSA.

3.2.1.4 GLaWAC Educational programs

Gunaikurnai cultural awareness training and school education programs that are currently being developed by GLaWAC are important initiatives to work towards meeting Gunaikurnai aspirations and elevating their cultural status as Traditional Custodians. Both initiatives also present a viable revenue stream for economic development as GLaWAC continues to develop. GLaWAC is currently working on a four-staged approach framework to provide entry level access to Gunaikurnai history and cultural awareness through to more in-depth training. The Education program is currently run completely outside of the management of the RSA and would benefit from support and further funding from within the RSA.

3.2.2 Findings

Cultural rights and strengthening is core to Gunaikurnai aspirations as enshrined in the RSA's Recognition Statement and Gunaikurnai's Whole-of-Country Plan. While there have been achievements in cultural strengthening and repatriation of traditional knowledge since the implementation of the RSA, more work needs to be done in this area in the next phase of the RSA. Ongoing engagement with Gunaikurnai Elders who hold cultural knowledge for the community is essential to build Gunaikurnai's cultural assets and to develop the RSA's Interpretative Information Protocol. Cultural Hubs, Keeping Places and On Country programs that are vital for healing the legacy of trauma experienced from dispossession require further support from within the RSA.

The development of Gunaikurnai cultural awareness training and school education programs are important cultural assets that can provide viable future revenue streams for economic development and a means to further reconciliation with the wider community which should be considered within the RSA framework.

Recommendations to improve Cultural Rights and strengthening

Recommendations for the Attorney General

- 11 Provide funding to conduct cultural research to build Gunaikurnai's cultural assets and to embed into joint management practices specifically for fire, water, natural resource, and mining management.
- 12 Expand and provide further funding for Cultural Healing programs on Country for Gunaikurnai and the wider Gippsland Aboriginal community and ensure that Traditional Owner groups are within scope for funding by government departments, such as the Department of Health and Human Services, which fund these activities.

- 13 Provide RSA-specific funding for the four staged education program currently being developed by GLaWAC to be delivered to schools and the community across the Gippsland area.

Recommendations for GLaWAC

- 14 Develop a cultural knowledge program to be led by GLaWAC's Cultural Manager and Gunaikurnai Elders to finalise the RSA's Interpretative Information Protocol.
- 15 Upgrade and enhance Gunaikurnai Cultural Hubs and Keeping Places to make it more appealing for the next generation of Aboriginal youth in the RSA area.

Recommendations for GLaWAC and Attorney General

- 16 Implement a process to ensure that the Department of Education primarily consults with GLaWAC on all matters relating to Gunaikurnai language and culture to ensure provenance and consistency of Gunaikurnai culture and language in the wider community.

3.3 Economic development and self-determination

3.3.1 Background

The opportunities for economic development that come from the RSA has transformational potential for the Gunaikurnai community. The establishment of sustainable commercial enterprises have at times been challenging for GLaWAC, particularly due to resourcing issues and the burden of undertaking a competitive tendering process for NRM on Gunaikurnai Country. These issues have somewhat been overcome or are currently being addressed, however further work needs to be undertaken and preferred procurement measures would lead to greater employment opportunities in NRM for Gunaikurnai on Country.

As GLaWAC moves into its next phase of the RSA, there is a significant need to invest in the leadership and capability of the next generation of GLaWAC and Gunaikurnai leaders. Specific programs and pathways in partnership with key RSA and education partners would provide more opportunities for Gunaikurnai to lead the TOC into the next era.

GLaWAC's base funding provided through the RSA is currently insufficient to enable the TOC to fulfil its role beyond its baseline responsibilities under the RSA. To fulfil its core role to further the aspirations of the Gunaikurnai Traditional Owners, it requires more RSA funding to lead key initiatives and improve the capacity, integrity and self-determination of the Gunaikurnai.

The compensation and funding elements of the RSA are currently insufficient to provide self-determination for Gunaikurnai. This element of the RSA needs to be renegotiated in step with the State's commitment to self-determination for Aboriginal Victorians, and in light of the significant recent case law in this area.

"Economic development is imperative to enrich the lives of our future generations."

Gunaikurnai community member

3.3.1.1 Natural Resource Management and Cultural Heritage

The importance of economic and employment opportunities in achieving long-term sustainability for GLaWAC and the Gunaikurnai community is recognised by the RSA. Through the RSA, the State committed to collaborating with GLaWAC to establish an NRM enterprise, with a goal of it being fully owned by GLaWAC within four years. GLaWAC's Natural Resource Management crew and Cultural Heritage team provides training and employment to Gunaikurnai People across Gippsland, and has on-the-ground crews and cultural heritage experts who work independently and with partners on a wide range of natural and cultural resource management projects. As such, GLaWAC works collaboratively with JM partners to build capacity and capability in their employees, teach caring for Country techniques and pass down cultural knowledge and customs.

Historically, the NRM enterprise has experienced challenges in recruitment and retention making it difficult to establish its service offerings and presence in the market. The State has provided funding for NRM recruitment of the course of the RSA. Post administration, GLaWAC's challenges in recruitment and retention appear to be overcome, enabling the NRM enterprise to develop its services and emerge as a

viable revenue stream for economic development and employment opportunities for Gunaikurnai on Country.

The success of the NRM Enterprise is heavily dependent on the development of strong partnerships for contract delivery. The review heard that strong partnerships are developing as a result of extra measures that have been taken by the State in relation to the RSA's Schedule 4 (Economic Development, Natural Resource Management, Training and Employment Programs) in recent years and that the NRM crew are now regularly delivering contracts in partnership with PV, CMA's, Greening Australia and Trust For Nature.

3.3.1.2 Preferred procurement measures in RSA area

The review heard that there have been issues for the NRM crew in relation to tendering in the RSA area and that the introduction of preferred procurement measures would be a benefit for building capacity and capability in the next phase of the RSA.

For example, PV's current competitive procurement policy appears to be a barrier to NRM participation on Country for GLaWAC. This has resulted in PV putting out tenders for work in Aboriginal title parks and reserves that could have been undertaken by Gunaikurnai NRM crews. PV recognises this and is currently developing a new procurement policy which will clarify its position on preferential procurement from Traditional Owners.

Introducing preferential procurement policies can provide the commercial and employment opportunities that will enable the growth in capacity and capability for GLaWAC employees. Preferential procurement policies support economic development by providing further employment opportunities and the acquisition of assets, improving the corporation's ability to be competitive in the market. These benefits and outcomes are currently not being achieved as intended, and preferential procurement policies for GLaWAC will provide a practical and cost-effective policy measure to improve these outcomes.

3.3.1.3 Future aspirations through economic development

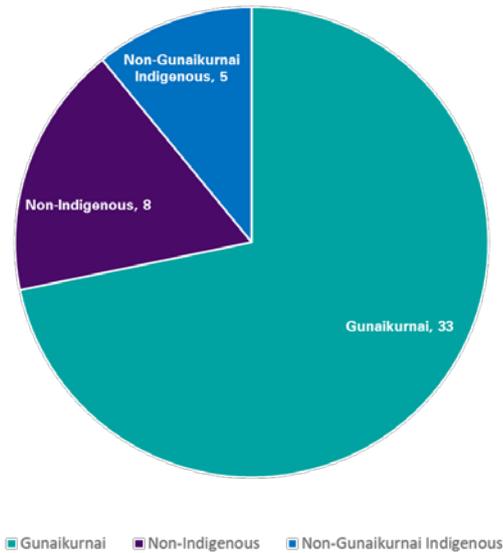
GLaWAC's Economic Development Strategy is focused on providing opportunities that show a way out of the welfare cycle, through secure employment and involvement in caring for Country and commercialising Cultural education and tourism, where appropriate. The positive outcomes from the Strategic Land Assessment currently underway and redress of compensation and funding elements in the renegotiation phase of the RSA will go a long way to providing the means needed to achieve Gunaikurnai's future economic development aspirations. Bushfire management, mining and carbon farming are all examples of where the renegotiation of the RSA can provide future resourcing for the community in new areas that will create major economic development opportunities.

The DJPR has recently funded GLaWAC to develop a whole of Gippsland Aboriginal Economic Strategy and appoint a Business Development Manager for 12 months. This will serve to support GLaWAC's development of strategy and forge stronger connections with local industries, employers and other key stakeholders, thereby assisting in achieving GLaWAC's aspirations for further economic development.

3.3.1.4 Continued development of GLaWAC

GLaWAC has significantly strengthened as an organisation, improved its decision-making model post-administration and has demonstrated an improved capacity and capability for corporate governance and business management of its affairs and relationships with key State partners. GLaWAC also continues to build stronger trust and engagement with the Gunaikurnai community post administration. A priority focus for GLaWAC is to provide employment for Gunaikurnai in GLaWAC as well as the wider local Aboriginal community. Over the past 10 years, the commitment to employing and investing in Gunaikurnai capability and skills development in the TOC's core business is evident as the majority of positions within GLaWAC are currently held by Gunaikurnai People as detailed in Figure 3 below.

Figure 3 GLaWAC's Current Employee Mix



Source: GLaWAC, 2020

One of the benefits of the RSA for GLaWAC has been its ability to implement a preferred organisational structure to deliver its priorities, rather than a reactive structure changing with levels of available funding. GLaWAC's relationships with key State agencies has improved as a result of this stable structure and the associated support that the RSA provides. The State has been able to support this structure through funding and other resources in addition to the RSA funding, including providing secondments into GLaWAC. While this support from the State has been beneficial for GLaWAC, current funding is not adequate for the next phase of development for the TOC.

Gunaikurnai stakeholders acknowledge that, in light of the work that needs to be done to progress Gunaikurnai's aspirations, there is a need for further capacity building within GLaWAC and an investment in capability building for Gunaikurnai People as part of its succession planning. The review heard that the next generation of Gunaikurnai is highly educated and there is concern that there are currently limited opportunities for them in the current RSA. There is a need for further investment in leadership skills which will enable Gunaikurnai People to be more involved with GLaWAC's core business and be on an equal footing with its State partners. Specific pathway programs particularly focused on linking Gunaikurnai youth at secondary schools and university could build confidence and the next generation of Gunaikurnai leaders needed to continue the work of the TOC.

"Currently our young people don't have the ability to develop their footprint in their own country for them to grow. The RSA provides for very limited opportunities in this direction and it was not the intent of the Elders when it was put together."

- Gunaikurnai community member

The review heard that improved funding and formal partnerships with DEET, KESOs, universities and vocational training institutions that support coordinated programs including internships would be a huge benefit to the community and support capability building.

3.3.1.5 Sustainable funding for GLaWAC

To ensure that GLaWAC can continue to grow and meet its obligations under the RSA, as a registered RAP, as the PBC, as well as working towards meeting the aspirations of Gunaikurnai Traditional Owner native title holders, increasing base funding is required.

GLaWAC's core role is to further the aspirations of the Gunaikurnai Traditional Owners and native title holders. For GLaWAC, this is achieved through the implementation of the RSA, the provision of high quality

policy advice, emerging strategic leadership on key initiatives and the continuous improvement of the capacity, integrity and independence of the Gunaikurnai.

In this context, GLaWAC's core functions are:

- Land Management- Caring for Country;
- Protection and Education regarding Aboriginal Cultural Heritage and Culture; and
- Economic development that secures long-term employment and business opportunity for the Traditional Owners and other members of the Gippsland Aboriginal community.

Currently, the base funding provided by the State marginally covers the roles needed for GLaWAC's core operations. GLaWAC also currently draws money from its Trust Fund investment to support labour and continue its operations and relies on direct short term grant funding of positions from various government sources. If GLaWAC are to continue working towards Gunaikurnai aspirations, this is not a suitable nor sustainable long-term strategy. Further, GLaWAC would like to incorporate a range of roles that are currently held in State departments into GLaWAC. The current quantum of base funding is also insufficient to allow for the growth in land management roles if the aspirations for further Aboriginal title and strategic directions of the Joint Management Plan are to be realised.²²

3.3.1.5.1 Current funding shortfall

There are currently roles that are required in the future for GLaWAC that are unable to be funded, and roles currently being fulfilled that are not being funded sustainably. State stakeholders acknowledge that although GLaWAC's deposit in Victorian Traditional Owner Trust (VTOT) has grown in the first eight years of the Settlement Package, the current minimum annual funding amount of \$175,000 is unlikely to sustain GLaWAC's core corporate operations, particularly if a LUAA and an NRA are added to the Settlement Package. The \$2 million transferred to GLaWAC in 2011 under the Funding Agreement (some of which has been spent) is also likely to be insufficient to promote significant economic opportunities and long-term wealth creation for the Gunaikurnai.

To meet its current and medium term future objectives and the aspirations of its Board and members and the State's self-determination objective under the VAAF, the State should consider further funding of GLaWAC to meet the current base funding shortfall illustrated in Figure 4 below.

²² GLaWAC, Funding of a Large Traditional Owner Corporation, 7 May 2020.

Figure 4 Government funding provided to GLaWAC for direct human resources costs



Source: GLaWAC, *Funding of a Large Traditional Owner Corporation*.

State stakeholders also support the view that the current funding arrangements are not optimal for GLaWAC to deliver the commitments under the RSA and TOSA. Mechanisms for improvement suggested by the State include moving GLaWAC's diverse funding streams from short-term activity based funding to outcomes based funding. Outcomes-based funding of Traditional Owner Corporations is more aligned to the VAAF objective to promote self-determination.

3.3.1.6 Redress of compensation and funding elements of the RSA

The funding elements and compensation contained in the RSA is not sufficient to allow for the economic development and self-determination originally envisaged by the Gunaikurnai negotiation team and entrenched in Gunaikurnai's aspirations. The RSA Funding Agreement (RSA, Section 7) provides the following:

- \$12 million quantum of which:
 - \$10 million is to be deposited into the Traditional Owner Settlement Trust, to be invested on behalf of Gunaikurnai and provide annual income to GLaWAC for at least 20 years
 - \$2 million for GLaWAC to invest in economic, cultural and other aspirations.

As the first TOC to enter into a RSA under the TOSA, the funding elements are now inequitable in comparison to other Settlements under the Act. This has been recognised by the State which is currently leading the First Principals Review with DJCS's Native Title Unit and TOCs, including GLaWAC. While GLaWAC is fully supportive of the First Principles Review currently underway, it seeks assurance from the Attorney General that it will suffer no disadvantage or delays to GLaWAC's renegotiation of the compensation and funding elements of the RSA due to the First Principles Review. This review supports GLaWAC's position on this matter.

The purpose of the First Principals Review is to consider the 'first principles' of the TOSA in light of the significant case law detailed below that has been developing since its enactment in 2010 to re-establish a meaningful co-ownership of the framework and better promoting the principle of self-determination specifically in respect to the compensation and funding elements of the TOSA framework.

Entering into the Gunaikurnai RSA and agreeing to not further seeking of compensation through GLaWAC's Native Title Determination was done on the basis that the funding provided through the TOSA was in excess of what can be claimed through the Native Title legal proceedings. In light of the recent case law and the significantly larger settlement amounts being provided to other TOCs in Victoria, this may now have changed. The High Court Timber Creek ruling provides relevant guidance for negotiations and is applicable to land sales and 'various grants of tenure and the construction of public works which were later held to have impaired or extinguished native title'. In Timber Creek, the High Court found that the objective economic value of non-exclusive native title rights and interests should be expressed as a percentage of freehold value and the appropriate percentage should be determined by the nature of the claim group's native title rights and interests. In determining the appropriate percentage, the claim group's native title rights and interests must be compared with the rights and interests of full exclusive native title. Under common law, the precedent set in the Timber Creek ruling for government liability for compensation in respect to native title holders is:

- economic loss – calculated at 50 per cent of freehold value, in recognition of the non-exclusive nature of the native title rights affected;
- simple interest on the economic loss component;
- non-economic loss – calculated on an in globo basis by assessing the effects on the cultural and spiritual values of the native title holders on the relevant area as a whole; and
- damages – for trespass for the invalid grant of freehold over three lots.²³

In this context, GLaWAC is seeking an increase to the original quantum of compensation provided to an amount that will enable the VAAF's commitment to supporting self-determination for Gunaikurnai to be part of the renegotiations of the RSA.

3.3.2 Findings

GLaWAC has made considerable progress in building sustainable economic development opportunities within the RSA framework. However, further funding and resources are needed if self-determination and Gunaikurnai aspirations are to continue to be realised.

There is a significant need for succession planning and investment into GLaWAC to ensure the next generation of Gunaikurnai leaders are able to lead the next phase of the RSA. GLaWAC also requires further funding to ensure that it is able to fulfil its core role to further the aspirations of the Gunaikurnai Traditional Owners through expanding its capacity to lead key initiatives and to take leadership on self-determination of the Gunaikurnai.

The compensation and funding elements of the RSA are currently insufficient to meet the self-determination and economic development aspirations originally envisaged by the Gunaikurnai. This should be renegotiated in line with the State's policy commitment to the principle of self-determination for Aboriginal Victorians, and recent case law principles in this area.

²³ High Court Judgement in *Northern Territory v. Mr A Griffiths (deceased) and Lorraine Jones on behalf of the Ngaliwurru and Nungali Peoples* [2019] HCA 7.

Recommendations to improve economic development and self-determination

Recommendations for the Attorney General

- 17 Provide funding through the state's training and education initiatives for specific programs and internships with education providers to provide skilled employment pathways for the Gunaikurnai community and to support capability building and leadership training for the next generation of Gunaikurnai youth.
- 18 Explore opportunities to consolidate, simplify and eliminate multiple funding arrangements through evaluation of different base funding models for GLaWAC, with a view to moving away from short-term activity based funding to outcomes based funding.
- 19 Develop a proposal for preferential procurement strategies to ensure economic development opportunities and an equitable partnership for joint management is reached for GLaWAC.

Recommendations for GLaWAC and Attorney General

- 20 Renegotiate current base funding arrangements for GLaWAC to address the current funding shortfalls and to ensure adequate funding for the next phase of the RSA aspirations.
- 21 Renegotiate the compensation and funding elements of the RSA to ensure that GLaWAC's Settlement Package is in line with recent common law principles and the VAAF's commitment to self-determination for Aboriginal Victorians.

3.4 Land Title and Joint Management

3.4.1 Introduction

Repossession of culturally significant land is a core aspiration for Gunaikurnai. The RSA accounts for this in the transfer of Crown land to Aboriginal Title of 10 significant sites to GLaWAC for joint management and the option to purchase Crown land in fee simple (schedule 5, RSA).

Presently, nine of the 10 parks have been transferred to Aboriginal Title and the option to purchase Crown land (schedule 5, RSA) was not taken up for various reasons. Gunaikurnai has a strong desire for further opportunities for land ownership and title to be put back on the table in the renegotiations of the RSA. GLaWAC are currently undertaking a strategic land assessment to identify what Gunaikurnai would like to see in the next phase of land justice for the community.

The Joint Management partnership for natural resource management and land management in the RSA area has ambitions to be an equitable and mutually beneficial partnership as capacity and capability builds in GLaWAC. While the GLaWAC Ranger team is a great source of pride for many Gunaikurnai people, further investment into development and an expansion of GLaWAC Ranger responsibilities and authority is required if an equitable partnership is to be reached. There is a significant opportunity to further embed cultural knowledge and practices into the GLaWAC Ranger's role of caring for Country and sharing that knowledge with other Gunaikurnai people and the wider community.

The TOLMB have been effective and provide a robust and flexible model for joint management. However, the current governance model is administratively burdensome, can lead to duplication in efforts and tension with TOCs, therefore a review in this regard is needed.

3.4.2 Issues

3.4.2.1 Additional parks for Aboriginal title

The RSA recognised Aboriginal Title on 10 sites, however only nine have been transferred to Aboriginal Title. Gippsland Lakes Coastal Park have not been transferred due to surveying and encroachments related to the Esso Pipeline, and a small area of Lake Tyers State Park that is subject to a telecommunications lease, due to various public land administration issues.

The review heard the Gunaikurnai have a significant desire for further land title and land resource management rights on their Country. This is the foundation of their aspirations and Whole-of-Country Plan. The strategic land assessment currently being undertaken by GLaWAC and the Elders Council is developing a list of types or categories of land that will progress Gunaikurnai aspirations identified in the Whole-of-Country Plan. This includes the option to improve and expand Aboriginal title estate and the expansion into the National Estate to support any future Indigenous Protected Areas (IPA) such as the Snowy Rover National Park. A staged approach to the increase of the grants of Aboriginal Title across more parks within the RSA area could be a viable option to meet these aspirations in the future and is discussed in further detail in section 3.4.4 Joint Management below.

3.4.2.2 Clause 5, RSA – purchase of crown land

The RSA identified four parcels of land that should have been included in the agreement for freehold ownership subject to further negotiation for 'grant of estate in fee simple'. However, this did not occur, primarily due to capability constraints within GLaWAC during its early days. The timeline provided by the State to action these transactions was also insufficient. GLaWAC's aspirations for freehold ownership of land is currently being considered as part of the Gunaikurnai Strategic Land Assessment considered in the section below.

3.4.3 Gunaikurnai Strategic Land Assessment

A foundational aspiration of the RSA as enshrined in the Gunaikurnai Whole-of-Country Plan is for Gunaikurnai to have "access to and management of [Gunaikurnai] County which will provide us with a means to improve our livelihoods."²⁴ An issue GLaWAC has raised with the State regarding the land negotiated for in the original RSA is that it does not allow sufficient flexibility to enable economic development opportunities. While some economic development is possible within Aboriginal title sites, broader opportunities that the Gunaikurnai community may be interested in such as renewable energy, agriculture and agroforestry are not suitable for the 10 conservation parks and reserves originally negotiated for transfer to Aboriginal title.

GLaWAC is currently developing a Gunaikurnai Strategic Land Assessment proposal. The purpose of the Assessment is to identify the Gunaikurnai community aspirations regarding land management and ownership in the short, medium and long term. This Assessment will include public and private land. When reviewing the public land, it may also include a recommendation regarding whether the land should be negotiated as Aboriginal title (JM) or freehold title (GLaWAC ownership). The GLaWAC Board, Elders Council and executive team are currently drafting principles, categories and themes aligned to their aspirations that will inform an assessment criteria for the identification of land to be considered in renegotiations with the State. The review understands that the broader Gunaikurnai community is currently being engaged to identify land and waters to be considered in renegotiations.

"We have lost some of our aspirations along the way...our aspirations is our land. Crown land that should be put aside...we shouldn't have to buy our land back."

Gunaikurnai community member

DELWP has indicated it is committed to supporting GLaWAC's strategic land assessment project. While GLaWAC has received some funding for this project from DELWP, further funding is required to continue the Strategic Land Assessment process. The positive outcomes from this process are vital for Gunaikurnai to making material steps forward in meeting their aspirations and a viable pathway for self-determination for the Gunaikurnai community.

²⁴ Gunaikurnai Whole-of-Country Plan, 2015, p14

3.4.3.1 Procedural consultation rights for GLaWAC in respect to Crown Land in the RSA area

In the negotiation of a LUAA as a result of the outcomes of the Strategic Land Assessment process, GLaWAC is seeking to implement a standard procedure to ensure that GLaWAC is consulted on all crown land use in the RSA area which will ensure that state decision making is fully informed of potential impacts for Gunaikurnai.

3.4.4 Joint Management

Effective JM partnerships are vital for the successful land and natural resource management of the jointly managed parks in the RSA area. The objective of a JM partnership is to establish “an equitable partnership between the State and the Gunaikurnai People to ensure innovation and excellence in JM of land/water.”²⁵ As such, the JM partnership aims to combine the Gunaikurnai People’s skills, expertise and cultural knowledge of land management with the skills and expertise of the State, putting the Gunaikurnai on equal footing with the State. The importance of the ongoing building of the capacity and capability of GLaWAC in this area is implied.

There continue to be different understandings and expectations between GLaWAC and its partner organisations regarding joint management. This has caused tension about what constitutes a genuine partnership. For example, implementation at the Knob Reserve, where DELWP relies on a Committee of Management, has been relatively smooth. However, in the other nine JM parks and reserves, where PV has a more active management role, changes to decision-making and governance arrangements have proven to be more challenging. In a recent evaluation into the management arrangements for the Knob Reserve, it was found that GLaWAC is not sufficiently engaged in the direct management of the JM parks and reserves under PV control.²⁶ However, the report noted that Gunaikurnai participation in governance on the Integrated Project Control Group (IPCG) and the Operational Group helps to meet its short-term goal for the Gunaikurnai community to influence joint management for the nine parks and reserves managed by PV. Further role clarity and stronger direction from PV and GLaWAC’s senior leadership to drive an effective partnering relationship for the JM of Aboriginal Title land is required.

3.4.4.1 Joint Management Plan Implementation funding

While the RSA funding includes establishment of a Traditional Owner Land Management Board, employment of a ranger team and preparation of a JMP, there is no dedicated budget for implementation.

When the JMP was approved for implementation by the Minister for Energy, Environment and Climate Change in September 2018, no dedicated State funds were provided for implementation of agreed actions. Having extremely limited implementation support to meet RSA obligations has been a challenge for State partners and for GLaWAC. For example, PV’s significant re-allocation of funds in the initial phases to support GLaWAC early in their transition processes has been unsustainable and has come at the cost of meeting other statutory obligations relating to park management. PV has very limited operational and discretionary budgets and is not in a position to fill such a significant gap. Both parties to the RSA have stated that seeking additional funding through annual ERSC processes is inefficient and uncertain and risks creating the perception within community that government is not committed to delivering on a core land justice outcome.

3.4.4.2 Current State investment in capacity and capability of GLaWAC for JM

The review understands that State partners are genuinely committed to working with GLaWAC to ensure an equitable partnership in joint management is built. Current efforts towards ensuring transfer of knowledge and collaboration between parties include:

- seconding DELWP staff into GLaWAC;

²⁵ Traditional Owner Land Management Agreement, Clause 3.4.

²⁶ Evaluation – Management arrangements for The Knob Reserve (Sept 2019)

- dedicated regional positions within PV and DELWP to support RSA implementation to ensure that GLaWAC receives the appropriate support from all relevant business units;
- ensuring GLaWAC staff are involved in DELWP projects from strategic planning through to on-ground delivery;
- providing GLaWAC access to equipment such as firefighting equipment;
- inviting GLaWAC to participate in various DELWP training programs;
- State agencies committing to being on standby and letting GLaWAC determine the pace of culturally sensitive practices such as Cultural Burn;
- GLaWAC having direct access to seniors and ministers of State agencies through GKTOLMB;
- direct employment of eight Gunaikurnai rangers to work on Aboriginal Title land;
- delivery of a collaborative program that jointly funds trainees working across both GLaWAC and PV;
- sharing strategic priorities to ensure all parties are on the same path to success; and
- the development of the GEA agreement with all the local environmental agencies, which has the potential to open up more opportunities for GLaWAC.

There have also been investments made into GLaWAC other than what is required by the RSA to support GLaWAC's capacity to build skills and capability itself.

3.4.4.3 Uncertainty of marine environment management

Many Gunaikurnai stakeholders have aspirations for their traditional owner rights to be recognised in the Sea Country within the RSA area. The misalignment of the RSA and Native Title Determination boundary has created uncertainty around the nature and extent of Traditional Owner rights and recognition in the marine environment. As Traditional Owners increasingly seek changes to the governance and management of Sea Country, it would be beneficial to have greater clarity on the underpinning legislative and policy foundations for the hand back/joint management of marine protected areas and what the opportunities for commercial partnerships may be.²⁷

3.4.4.4 Water management

Water management is a key aspiration for GLaWAC as they look to expand their core business capabilities in the next phase of the RSA. The review heard that GLaWAC is seeking greater involvement in planning processes to ensure that more substantive water rights is a feature in the next phase of the RSA. In this context, GLaWAC would like an amendment to the *Water Act (Vic)*²⁸ to ensure it can play a more substantive role within the Victorian Water Management Framework and that it is considered in the negotiation phase of the RSA to ensure water management can be a potential pathway for economic development for Gunaikurnai.

The review heard that GLaWAC would like the negotiation phase of the RSA to consider the potential for a portion of the Victorian Government's Environmental Contribution Levy to be allocated to GLaWAC, and other TOCs to enable the following responsibilities and benefits:

- Greater capacity to fulfil cultural responsibilities in land and waterway management; and
- Less of a reliance upon a variety of government grants processes that have an environmental outcomes focus.

²⁸ *Water Act, 1989 (Vic)*

3.4.4.5 Community consultation process for Joint Management

The review heard that there is concern that currently a model is not in place for Gunaikurnai community input into joint management and broader issues under the RSA. Further work needs to be done to develop principles and a structured way forward to ensure that all Gunai/Kurnai clan groups have a means to be consulted and to have a voice on cultural business and JM within the RSA area. This was a distinct gap in the development stage of the Gunaikurnai JMP where there were no channels going into the community to seek input. A culturally appropriate model for community input into JM decision making is an outstanding action in the JM strategic plan and should be prioritised in the next phase of the RSA.

3.4.5 GLaWAC Rangers capability and skills transfer

The GLaWAC Ranger Program is a great source of pride for many in the Gunaikurnai community. However, there is some concern that the GLaWAC Rangers have missed out on capacity building by being a standalone entity rather than part of PV. Currently, GLaWAC Rangers employed are not progressing to middle management positions and above. Without Gunaikurnai representation at all levels, GLaWAC cannot participate in JM as equal counterparts to State agencies.

For GLaWAC, a major inhibitor for the development of its joint management capabilities is that GLaWAC is currently not an authorised land manager and does not have delegated authority like it does as a RAP under the *Aboriginal Cultural Heritage Act*. This creates tension in the relationships between parties and is counterproductive to the JM partnership intended by the RSA. TOSA does give GKTOLMB authority, however there are concerns that without the appropriate structures, this authority may result in a new rift between GLaWAC and GKTOLMB.

The Knob Reserve Evaluation Report found that GLaWAC's participation on the COM (and involvement in the delivery of on ground works) has contributed to its capacity building and enabled GLaWAC to have a greater influence over the day-to-day management of the Knob Reserve than it enjoys for the nine Gunaikurnai parks and reserves jointly managed with PV. This report recommended that GLaWAC explore opportunities to develop its capability for JM of its Aboriginal Title land in a similar model to the COM for Knobs Reserve.

State stakeholders state that their workforce planning and recruitment is increasingly coordinated to optimise resources, facilitate knowledge exchange and create learning and career pathways for Traditional Owners. A collaborative program that jointly funds trainees working across both GLaWAC and PV is currently being delivered

3.4.5.1 Embedding cultural knowledge into GLaWAC ranger program

The review heard there is a significant desire by the Gunaikurnai community for the GLaWAC Ranger program to be expanded to embed and build capability and cultural knowledge into their responsibilities and general processes for joint management. The Ranger program's connection to Country is seen as a significant benefit of the RSA and has had a transformational impact for many of the rangers' confidence and self-worth. Funding of biodiversity studies and cultural mapping of totems and habitats could create an important additional role for the GLaWAC rangers in the transmission of cultural knowledge and ensuring people connect to their culture on Country.

3.4.5.2 Fire and emergency management capability

The recent bushfires that have devastated a significant proportion of Gunaikurnai Country and the Gippsland area has meant that fire management and recovery is an important priority for GLaWAC and its State RSA partners. The physical assets at Buchan Caves Reserve, one of GLaWAC's 10 Aboriginal title sites, were destroyed.

GLaWAC's priorities are to develop fire recovery plans to support the community, heal Country and manage business continuity. However, bushfire management is a new area for GLaWAC that creates major opportunities but there must be certainty that the depth of skills and training required exists. In this context, State partner staff are aware that despite some internal state targets and initiatives to support the use of Indigenous knowledge in this space such as cultural burning, GLaWAC must dictate the speed at which their cultural burning journey moves. State partners respect that GLaWAC is choosing to take a considered

approach to building knowledge and confidence within their rangers and crew in this area and are ready to engage when the time is right for GLaWAC.

The 2019-20 bushfires and the COVID-19 pandemic provide two examples of how GLaWAC can play a role in emergency management planning that will benefit the Gippsland Aboriginal and wider community. GLaWAC would like to play a coordinated role across government in emergency management that is not limited to natural resource management related activities, but extends to providing subject matter expertise in emergency management for all Aboriginal people in Gippsland including planning support to the ACCO sector. GLaWAC has aspirations to build on the expertise provided for community recovery in the state's response to COVID-19 and the bushfires and sees this as a cultural responsibility.

3.4.6 Gunaikurnai Traditional Owner Land Management Board

The TOLMB is a perpetual body with statutory recognition that reflects the State's commitment to JM with the TOs. A good working relationship between GKTOLMB, GLaWAC and the Gunaikurnai Community is critical to the success of JM and has been established since early 2018. In the past, the relationship between GLaWAC and GKTOLMB had stopped the JM partnership from thriving. Today, both parties work together to ensure that JM provides Gunaikurnai with the opportunity to care for Country and meet Gunaikurnai's aspirations. This renewed commitment to collaboration is evident in the recent success of gaining Minister approval for the *Gunaikurnai & Victorian Government Joint Management Plan* in 2018. The *Gunaikurnai & Victorian Government Joint Management Plan* is the first JM plan to be approved in Victoria.

3.4.6.1 GKTOLMB Governance

It was submitted to the review that the current GKTOLMB is robust and provides for some flexibility that is yet to be fully explored. However, its governance model is considered overly complex, especially the financial compliance requirements and it requires significant staff resources.

The GKTOLMB model is not designed to align with culturally appropriate planning and decision-making structures, protocols and information needs. For example, the current GKTOLMB can inadvertently inhibit the development of the strategic JM partnership between GLaWAC and the State. There is an underlying imbalance in 'power', preventing equality in the partnership between GLaWAC and the State as:

- Government retains control of settlement agreement funds;
- GKTOLMB is Ministerially appointed – with no equivalent level of authority for GLaWAC;
- JMPs are formally approved by the Minister with the corporation having no formal role in approving the JMP;
- the lines of accountability in the current model have the potential to disaffect the TO community because of built-in assumptions about the information flow via TO board members; and
- it is a legislative requirement for the GKTOLMB to have the majority of TO members nominated by GLaWAC, but they are appointed as individuals answerable to the TOLMB. Therefore, TO members are not at liberty to discuss the TOLMB's business with their GLaWAC colleagues due to confidentiality requirements and perceived conflicts of interest.

Section 82H of the *Conservation, Forests and Lands Act 1987* allows the TOLMB to have a role in consulting or informing matters relating to the land. This has resulted in duplication of effort and a lack of clarity over responsibility. It implies GKTOLMB, rather than GLaWAC, has the primary oversight role for matters impacting Aboriginal Title land.

3.4.7 Findings

Repossession of culturally significant land is a core aspiration for Gunaikurnai. This is embodied in the transfer of Crown land to Aboriginal Title of 10 significant sites to GLaWAC for joint management and the option to purchase Crown land in fee simple (schedule 5, RSA). This should be a significant area of focus in the renegotiation phase of the RSA.

A phased approach to expanding land title and joint management for GLaWAC will enable capability and capacity to develop in step with Gunaikurnai's strong aspirations in this regard. A new model for joint

management, such as the Committee of Management (COM) of The Knob Reserve, warrants further investigation if the commitment to an equitable partnership is to be realised in JM. In this context, further funding is also needed for both parties to ensure there are adequate resources for implementation of the RSA. A community consultation process should also be developed to provide all Gunaikurnai clan groups decision making input in matters of joint management.

GLaWAC's strategic land assessment is critical to furthering one of the foundational aspirations of the RSA to have "access to and management of [Gunaikurnai] County which will provide a means to improve the Gunaikurnai community's livelihoods."²⁹ This assessment should be supported and findings considered in the negotiation phase of the RSA to enable further self-determination for Gunaikurnai. In the negotiation of a LUAA as a result of the outcomes of the Strategic Land Assessment process, GLaWAC is seeking to implement a standard procedure to ensure that GLaWAC is consulted on all crown land use in the RSA area which will ensure that state decision making is fully informed of potential impacts for Gunaikurnai.

In step with the Gunaikurnai Whole-of-Country goals, the roles and responsibilities of the GLaWAC Ranger program should be extended to build the capability in transmission of traditional knowledge when caring for Country in JM of parks.

GLaWAC's greater participation in emergency management planning for all Aboriginal people in Gippsland including planning support for ACCO's would benefit the Indigenous community's recovery from both COVID-19 and the bushfires.

The Traditional Owner Land Management Board (TOLMB) provides an effective model in development of the joint management plans for the RSA area. However, the current governance model is administratively burdensome, can lead to tension with TOCs and duplication in efforts and it should therefore be reviewed.

Recommendations to improve land title and joint management

Recommendations for the Attorney General

- 22 Provide further funding to support GLaWAC's strategic land assessment and then enter into the renegotiations based on the findings.
- 23 Provide further funding to enable effective implementation of the actions contained within the Joint Management Plan.
- 24 Consider legislative reform to enable Traditional Owner Corporations to become a delegated Crown land manager.
- 25 Provide funding to GLaWAC for the Gunaikurnai Elders and knowledge holders to conduct biodiversity studies and cultural mapping of totems and habitats to create an important additional role for the GLaWAC rangers in the transmission of cultural knowledge on Country.
- 26 Amend the Water Act (Vic) to enable greater involvement of GLaWAC in the Victorian Water Management Framework to support water management as a potential pathway for economic development of the Gunaikurnai.
- 27 Review and amend current policy to provide greater clarity on the policy foundations for the joint management of marine protected areas and what the opportunities for commercial partnerships may be for Traditional Owner Entities.
- 28 Conduct a review of the TOLMB Governance model to address the underlying imbalance in power which can prevent equality in the partnership between GLaWAC and the State Minister for Energy, Environment and Climate Change.

²⁹ Gunaikurnai Whole-of-Country Plan, 2015, p14

29 Implement a standard procedure to ensure that GLaWAC is consulted on all crown land use, including reallocation, sales and leases, in the GLaWAC RSA area.

Recommendations for GLaWAC and Attorney General

30 Leverage the principles of the COM model in place. Develop a proposal to develop a staged approach for implementing an alternative joint management model for the six national parks in the RSA area that will enable a more equitable JM partnership.

31 Develop and implement a culturally appropriate and inclusive model for the Gunaikurnai community to provide input into joint management decision-making.

3.5 Further outstanding RSA negotiations

3.5.1 Introduction

A LUAA and NRA are mechanisms under the TOSA to formally entrench Traditional Owner rights into the management, access, activities and economic benefits that come from the land in the RSA area. In contrast to an ILUA, the mechanism under native title regime currently in place for procedural rights in the RSA area, a LUAA provides a simplified template and could potentially expand the current rights for Gunaikurnai Traditional Owners to the areas where native title no longer exists.

If negotiated, the NRA and LUAA will be critical in meeting the Gunaikurnai aspirations related to the use of and access to natural resources and their participation in the management of Country. The review heard from many Gunaikurnai stakeholders that clarifying and understanding their rights to access and use of natural resources is critically important. A LUAA and NRA will help support and ensure the economic and cultural sustainability of the Gunaikurnai traditional customs and ceremonies. A LUAA will also provide a more streamlined approach and easier to understand rights if this template is actioned.

3.5.1.1 Commitment to negotiate a LUAA and a NRA

The RSA allows for Gunaikurnai's rights of public land use and management to be expanded through a LUAA or a NRA. In accordance with the RSA, negotiations for a LUAA and NRA must take place within 24 months of commencement of the RSA, meaning negotiations had to take place by October 2012. These negotiations never took place - below is a summary of the events which caused the delay as submitted to the review.

At the time in which the Settlement Package was entered into, there was no opportunity to develop the policy and template agreements to support the provision of Part 4 and Part 6 of the TOSA that enabled a LUAA and a NRA. Consequently, the 2010 Settlement Package did not include these two agreements. Instead, the ILUA (clauses 15 and 19.1) commits the parties to commence good faith negotiations with a view to entering into a LUAA "no later than" 12 months after the commencement date (i.e. by 8 February 2012) and an NRA within 24 months of the commencement date (i.e. by 8 February 2013) or "such other period as may be agreed."

For various reasons for both parties to the RSA, the negotiation of a LUAA and an NRA has not yet been negotiated. In 2013, the State prioritised the implementation of the LUAA and NRA with Traditional Owner Groups. The implementation of these LUAA and NRA, particularly the issue of Natural Resource Authorisation Orders (the Orders), revealed several complexities relating to the interaction of the Orders with the State's regulatory regime for NRM and planning. While these issues were resolved in 2014, they raised concerns for the State over the workability of the legislative framework for an NRA. This led to further delays in the Gunaikurnai LUAA and NRA. In early 2014, GLaWAC and some State agencies were anticipating the start of the LUAA and NRA negotiations, however in September 2014, the State advised GLaWAC of delays in the State's ability to commence these negotiations. In early 2015, GLaWAC and the State agreed to negotiate in late 2015 – no further discussion or negotiations occurred. Further issues also arose after the Federal Court judgment on the first Native Title compensation case in 2016, which raised concerns about the community benefits payable by the State under a LUAA. It is also understood that during this time, GLaWAC did not press the State to commence negotiations as GLaWAC was focused on building

its corporate governance from the beginning. Thereafter, GLaWAC's administration in 2016 put the LUAA and NRA negotiations on hold indefinitely.

Currently, the 'future act' regime of the Native Title Act 1993 (Cth) (the NTA) is the basis for procedural rights afforded to GLaWAC in relation to proposed uses of public land. However, the Future Act regime only applies to public land where native title is determined to exist. For example, from the execution of the Settlement Package until 30 June 2019, 20 Crown allotments have been alienated or sold by the State within the RSA area. As native title was determined not to exist on 17 of these allotments, only three of these allotments required the negotiated consent of GLaWAC.

Benefits of negotiating a LUAA

Negotiating a LUAA will formalise and expand the current rights for Gunaikurnai Traditional Owners within the RSA area. As a LUAA and NRA may apply to any public land, regardless of whether or not native title is determined to exist, negotiating a LUAA could potentially expand these rights to 43,700 hectares of public land in the RSA area where the Court has determined that Gunaikurnai native title no longer exists. This will necessitate further funding for GLaWAC.

Further, the Future Act regime under the ILUA places a significant administrative burden on GLaWAC and First National Legal and Research Service (FNLRS) with minor cash flow coming from it for community benefits activities. Negotiating a LUAA could potentially alleviate this burden and also provide further funding for its implementation. Currently, there is no funding support provided for ILUA administration and a focused role for ILUA or LUAA implementation would lower the administrative burden for GLaWAC.

GLaWAC has built strong relationships with relevant Government agencies and this factor along with an improved self-determination agenda of the Government has improved decision making rights and ability to influence policy. However, with a change in Government, policy or personnel at GLaWAC and State agencies these gains could be lost very quickly. A formal LUAA will entrench more formally rights to be used when required in future.

3.5.1.2 Benefits of negotiating a Natural Resource Agreement

It was reported to the review that there is still significant uncertainty in the Gunaikurnai community about their rights as Traditional Owners to access, and use of, natural resources on their Country. The negotiation of an NRA will clarify these matters and may include strategies to enable Gunaikurnai to participate in the management of natural resources in the agreement area as well as access and use provisions that authorise hunting and fishing for particular animal and fish species, harvesting particular plant species, collecting forest produce, harvesting water and camping on Crown land.

The review understands that 18 months ago, GLaWAC and DELWP put in place a partnership process and approach that supports the principle of an NRA. This initiative intends to change the culture of the partnership and engagement with GLaWAC within the DELWP in advance of an NRA. This process is anticipated to result in a smoother implementation process of the NRA between the Department and GLaWAC if one is negotiated.

The review heard from many Gunaikurnai stakeholders that clarifying and understanding their rights to access and use of natural resources is critically important. Under the TOSA, items must only be used for personal, domestic or non-commercial communal needs, except flora and forest produce, which may be taken for 'commercial purposes'. If negotiations of an NRA were to proceed, Gunaikurnai would like increased opportunities to access natural resources for commercial reasons to be considered by the State.

3.5.1.3 Community Benefits formulae

The requirement of an ILUA to enable the sale of any Crown land in the native title areas has impaired DELWP's Land and Built Environment team in Gippsland to progress some sales of Crown land due to GLaWAC withholding consent. There are in excess of 70 areas of Crown land that have private dwellings encroaching on public land where owners have no security of tenure for their primary residence. The current State Government approach to tackling these encroachments on Crown land, which has been to offer five per cent of the land value to GLaWAC as compensation for its loss of native title, is not resulting in acceptable offers. The state has also made an offer of compensation aligned with the State's Community

Benefits formulae which was not accepted by GLaWAC. A solution to resolve the 70 plus encroachments as part of the renegotiation should be investigated.

3.5.2 Findings

The negotiation of a Land Use Activity Agreement (LUAA) and Natural Resource Agreement (NRA) is recommended to formally entrench Traditional Owner rights into the management, access, activities and economic benefits that come from the land in the RSA area and to address ongoing challenges experienced under the Indigenous Land Use Agreement (ILUA) and Future Acts provision currently referred to for procedural rights. GLaWAC's Strategic Land Assessment and current initiatives with key State partners to commence negotiations for a formal NRA and LUAA are anticipated to benefit GLaWAC in this area and the outcomes of both should be taken into account in the renegotiation phase of the RSA.

Recommendations to further outstanding RSA negotiations

Recommendations for the Attorney General

32 Create and fund a role within GLaWAC focussed on ILUAA or LUAA and NRA implementation.

Recommendations for GLaWAC and Attorney General

33 GLaWAC and the State to enter into negotiations to finalise a LUAA and NRA aligned to the agreed outcomes from GLaWAC's Strategic Land Assessment and current initiatives to negotiate a LUAA and NRA with key State partners.

34 GLaWAC and the State to agree a solution to resolve the 70 plus encroachments of private dwellings onto Crown land as part of the renegotiation to fairly compensate GLaWAC for its loss of native title.

4 Concluding insights

This review demonstrates that the foundation has been built by both parties for a genuine partnership under the RSA and to meet Gunaikurnai's aspirations and the State's commitment to self-determination for Aboriginal Victorians.

The first 10 years has seen numerous challenges and achievements within the RSA framework. Notably, GLaWAC was able to turn around quickly from its special administration period to make strident steps forward in its capability and capacity as well as taking up meaningful roles in operational and strategic initiatives with its RSA partners. They are now seen as a critical voice in land, natural resource management and cultural matters in the Gippsland region. Still, there is much more progress to be made if the commitment to an equitable partnership is to be realised. Critically, renegotiations should now be considered in land title, joint management, compensation and funding agreements to ensure that the spirit in which this RSA was entered into for the Gunaikurnai is upheld.

The foundation for the RSA and self-determination for Gunaikurnai has been set. The recommendations contained in this report will go a long way in taking the Gunaikurnai into the next phase of their long 'Journey Back.'³⁰

³⁰ Gunaikurnai community member consultation interview

Appendix A: Terms of Reference

The review will consider the following:

1. An assessment of the extent to which the objectives and outcomes of the settlement package have been met. In determining the objectives and outcomes relevant to this assessment, the reviewer will have regard to:
 - a) The purpose of the Traditional Owner Settlement Act 2010 (Vic)
 - b) The agreements which comprise the settlement package
 - c) The Gunaikurnai Whole-of-Country Plan (2015)
 - d) The 2016 report of the joint GLaWAC and State scoping workshop.
2. Where an objective or outcome has not been sufficiently met, any necessary legislative amendments and/or policy changes to achieve the objective in the future, and the action required to put the parties in the position the settlement package intended.
3. Those items that the RSA explicitly requires the review to consider.
4. Any issues that the parties have already identified in relation to the Settlement Package, including, but not limited to:
 - a) The parties' commitment to negotiate a Natural Resource Agreement (ILUA Clause 19.1) and a Land Use Activity Agreement (ILUA Clause 15)
 - b) The Traditional Owner Land Management Agreement and associated processes
 - c) The adequacy of funding provided to GLaWAC
 - d) Consideration of grants of freehold title and Aboriginal title of Crown land to GLaWAC
 - e) The efficacy of measures to develop the economic interests of GLaWAC
 - f) The impact of the Settlement Package on GLaWAC's corporate capacity and governance and relationships with Aboriginal Co-operatives, key State agencies and local government
 - g) The extent to which State agencies and local governments have understood and promoted the objectives of the Settlement Package
 - h) The Parties' commitment to building the corporation's capability, including the Corporation's ability to engage with, and work alongside, key stakeholders.
5. What partnership and/or dispute resolution arrangements could appropriately secure the achievement of pending commitments, and monitor the achievement of intended outcomes of the settlement package.
6. Taking into account the findings on the above issues, make appropriate recommendations to:
 - The Attorney-General, where change is required in legislation, or to government policy
 - The Chairperson, GLaWAC, where recommendations affect GLaWAC or Gunaikurnai People
 - The Attorney-General and the Chairperson, GLaWAC, where changes are required to the settlement package
7. With prior agreement of the Parties, any issues that require more attention beyond the timeframe of this review, and a suitable timeframe in which the issues are to be considered and resolved.

Appendix B: Gunaikurnai Aspirations

Gunai/Kurnai - Statement of Aspirations for presentation to the State of Victoria

Introduction

We, the Gunai/Kurnai, the sovereign owners of our lands and waters, assert our authority to protect our rights. We want to achieve a more constructive relationship with government that recognizes us as the Traditional Owners of our lands and waters who were illegally dispossessed of our lands and waters without treaty or other agreement. We want to achieve self-determination and real social justice for our people.

We, the Gunai/Kurnai have prepared this Statement of Aspirations for the State of Victoria as part of the process of resolving our native title claim. We have focused our aspirations on matters appropriately part of that settlement.

As a preliminary matter, the Gunai/Kurnai note that they need to be properly resourced by the State to participate effectively in these negotiations.

Our aspirations have been classified under the following general headings:

- Freehold transfer of Culturally Significant Crown Land
- Compensation for illegally taking of land by Government
- Control and Protection of Aboriginal Cultural Heritage
- Gunai/Kurnai Keeping Places and Cultural Centres
- Natural Resource Management and Use
- Cultural Recognition and Strengthening
- Prescribed Body Corporate
- Strategies for Economic Development
- Additional Matters.

The aspirations identified in this statement are not exhaustive, and are not in any priority order. They are intended to inform the State Government of the nature and scope of the matters important to the Gunai/Kurnai and to assist in the progression of negotiations. Accordingly, the Gunai/Kurnai reserve the right to refine our Statement of Aspirations and/or amend it to include additional matters as may be identified during the course of the negotiations.

1. Freehold Transfer of Culturally Significant Crown Land

For the Gunai/Kurnai all our land and waterways are very significant. We look at the whole landscape as one. We want our native title rights and interests recognized across all areas of Crown Land. It is very difficult to try to select areas of particular significance. The list below is therefore only indicative, and should not be seen as an exhaustive list of all of our culturally significant Crown land.

- a) The Gunai/Kurnai request that all National and State Parks and Reserves be transferred in freehold under a hand back - lease back arrangement, with increasing involvement in their management by Gunai/Kurnai.
 - i. Priority National Parks include:
 1. Mitchell River National Park
 2. Croajingolong National Park (area inside claim)

3. Alpine National Park (area inside claim)
4. Snowy River National Park (area inside claim)
5. Gippsland Lakes National Park
6. Mt Baw National Park
7. Tarra Bulga National Park
- ii. Other Parks and Reserves include:
 1. The Knob Reserve, near Stratford.
 2. Lake Tyers Forest Park
 3. Buchan Caves Reserve (birthing place)
 4. Cape Conran Coastal Park
 5. Colquhoun State Forest
 6. Boggy Creek Scenic Reserve
 7. Wood Point Flora Reserve & camping area
 8. Providence Ponds Flora & Fauna Reserve
- b) Other areas of Crown land and waters of significance:
 - i. Sites:
 1. Den of Nargun, in the Mitchell River National Park
 2. Legend Rock, Metung
 3. Butcher's Creek massacre site, Metung
 4. Burnt Bridge, in Lake Tyers Forest Park
 5. Blue Pools, a women's site in the state park, in the foothills behind Briagalong
 6. Sacred site in Mossiface: 'Boorunmunda'
 - iii. Waters:
 1. Lake Tyers including the lakebed itself
 2. Tambo River into Nungurner.
 3. Snowy River
 4. Monkey Creek, where it joins Tambo River out of Bruthen, Omeo Highway
 5. Waterways at Seaspray
 6. Coastal waters throughout the claim area
 - iv. Camping areas:
 1. Lindenow camping areas along the Mitchell River
 2. Camping areas at Wy Yung bridge
 3. Wuk camping areas
 4. Camping areas along the riverbank reserve in Eastwood
 - v. Crown Land – general:
 1. Crown land in Newmerella
 2. Crown land in Nowa
 3. Crown land between Newmerella & Nowa

4. Crown land in the Orbost / Marlo area
 5. Crown land in Tostaree
 6. Crown land in Gelantipy
- vi. Other areas:
1. Toorloo Arm
 2. Bushy Park (being the land around Heyfield where McMillan settled)
 3. Gilsenan's place (freehold)
 4. Tambo Bluff
 5. Haunted Hills, Newborough (along railway line reserve)
 6. Sand dunes at Orbost / Marlo
 7. Walking track north of Bellbird Creek
 8. Walking tracks from east of claim area heading south west
 9. Thorpe's farm, in Lakes Entrance
 10. Bogong Moth trail (trading trail)
 11. Corringale Slips
 12. Ramahyuck Mission Site
 13. Areas of significance around Omeo, Swifts Creek and Ensay.
 14. Lindenow Flats
 15. Tambo Crossing
 16. Caves at Lake Tyers
 17. Lindenow caves
 18. Wy Yung caves
 19. Caves at Newmerella.
 20. Raymond Island (areas of Crown land)
- c) The Gunai/Kurnai seek resources for Gunai/Kurnai to undertake a comprehensive survey to identify other areas of Crown/public land of significance.
- d) The Gunai/Kurnai seek exemptions from State Government taxes on all land transferred: including land tax, water taxes
- e) The Gunai/Kurnai seek exemptions from Council/Local Government rates and taxes on all land transferred
- f) The Gunai/Kurnai seek rent for leaseback of national parks to government

2. Compensation for illegal taking of land and waters by government

As a result of colonization, Gunai/Kurnai have had our land and waters taken away from us by successive governments, without our consent and without being recompensed. We therefore seek full, fair and just compensation for this illegal taking of land.

3. Control and Protection of Aboriginal Cultural Heritage

The control and protection of Gunai/Kurnai cultural heritage by Gunai/Kurnai is vital to the ongoing maintenance and promotion of our cultural and spiritual identity. Our cultural heritage is embedded in our land and waters through our stories, and is our link to our ancestors. For too long we have had non-

Gunai/Kurnai controlling our cultural heritage, misusing our cultural information, and making decisions leading to its destruction. We therefore seek the following:

- a) Protection of Cultural Heritage across Gunai/Kurnai Country by:
 - i. Registered Aboriginal Party (RAP) status for the Prescribed Body Corporate for all of our traditional lands.
 - ii. Increased protection and management of cultural heritage on Crown land by Gunai/Kurnai, above what is possible as a RAP.
 - iii. Resources for Gunai/Kurnai to do comprehensive site surveys for identification and maintenance.
 - iv. Resources to enable Gunai/Kurnai to develop and implement a comprehensive Cultural Heritage Strategy.
- b) Gunai/Kurnai cultural, genealogical and intellectual property rights recognised & protected by means of:
 - i. A central database for storage, with secure access for Gunai/Kurnai. The database to include archive, AAV, Museum records and records from other institutions etc
 - ii. Fees for approved access to the information by non-Gunai/Kurnai.
 - iii. Resources to enable involvement by Gunai/Kurnai to collect, maintain, protect, preserve and manage data, and original historical records.
- c) Recognition of rights of access to land, rivers/riverbanks and sites, including access to places such as Buchan Caves without having to pay an entry fee.
- d) Cemeteries

In relation to cemeteries, the Gunai/Kurnai seek the following:

- i. Restoration & management of cemeteries (based on the Boole Poole model):
 1. Ramahyuck (graves are outside of the fence line)
 2. Lake Tyers
 3. Johnsonville
 4. Newland Arms, just out of Bairnsdale
 5. And others
 - ii. Resources to restore and manage the cemeteries.
 - iii. Access to cemeteries generally, and in particular to Ramahyuck cemetery.
 - iv. Where graves are unmarked, a monument to be erected at the cemetery identifying who is buried there.
- e) Burial Grounds

The Gunai/Kurnai seek recognition and protection of all burial grounds, including:

- i. Raymond Island
- v. Round Head
- vi. Jack Smith's Lake
- vii. And others identified as a result of surveys.

f) Massacre Sites

The Gunai/Kurnai seek the following in relation to massacre sites:

- i. Memorials on all massacre sites for those Gunai/Kurnai who died in massacres. For example, Millie Creek massacre site, Butcher's Ridge, Butcher's Creek.
- ii. Project to identify all massacre sites & to put a memorial at each one recognizing Gunai/Kurnai who died there.
- iii. Process for this project to be agreed to by the Gunaikurnai Land & Waters Aboriginal Corporation on behalf of and with the support/permission of Gunai/Kurnai.

g) Human and skeletal remains

The Gunai/Kurnai seek the following:

- i. The return of Gunai/Kurnai human & skeletal remains from Museum Victoria, other Victorian institutions, Australian institutions and from institutions around the world;
- ii. resources for appropriate identification and reburials; and
- iii. the repatriation of cultural objects to be permanent.
- iv. Burial rights at selected places

4. Gunai/Kurnai Keeping Places & Cultural Centres

The protection, preservation and promotion of Gunai/Kurnai culture is of vital significance to Gunai/Kurnai. The Gunai/Kurnai see the establishment of Keeping Places and Cultural Centres as an important way of ensuring that current and future generations of Gunai/Kurnai are able to maintain their culture and identity. The Gunai/Kurnai therefore seek the following:

- a) Keeping Places for Gunai/Kurnai to:
 - i. appropriately store and protect cultural objects & photos,
 - ii. facilitate education of young people, and
 - iii. be a culturally appropriate meeting place for Gunai/Kurnai.
- b) Cultural Centres to enable visitors to learn about Gunai/Kurnai law and culture and to operate as arts/crafts centres at agreed tourism centres, e.g. Morwell, Lake Tyers.
- c) There should be at least 5 Cultural/Information Centres, one for each of the 5 clans.
- d) Keeping Places need to be appropriately resourced, including for:
 - i. identification and repatriation of remains & objects for return,
 - ii. preservation, maintenance and protection, and
 - iii. insurance costs.
- e) There should be a Keeping Place at Lake Tyers
- f) There should be a central office for the database of cultural, genealogical, intellectual property rights material.

5. Natural Resource Management & Use

We, the Gunai/Kurnai, have been managing and using the natural resources on our land and in our waters over many thousands of years. Because of our unique relationship with our land and waters, Gunai/Kurnai have valuable skills and knowledge in natural resource management and use. Gunai/Kurnai skills and knowledge should be recognized and respected as an integral part of natural resource management and use, and should be promoted and supported by the following means:

- a) Role in Management of all Crown land & waters, including:
 - i. An Advisory Council for all NRM agencies/Departments, (e.g. CMA, PV, DSE, DPI, marine etc) to consult with. The Advisory Council to have binding decision-making power on matters affecting native title rights & interests
 - ii. Active management of all cultural heritage sites within parks and reserves
 - iii. A set % of Gunai/Kurnai employment in parks & reserves, to increase over time, including cadetships & traineeships. Traineeships/cadetships to lead to ongoing employment opportunities & careers.
 - iv. Continuation of Conservation & Land Management training (such as DSE's Conservation and Land Management Cert III course based on the Lake Tyers model occurring now)
 - v. Training of Gunai/Kurnai:
 1. to be fisheries and wildlife officers;
 2. in coastal issues/coastal management;
 3. to be DSE, DPI, PV, CMA officers/employees.
 - vi. Gunai/Kurnai cultural specialists to teach Gunai/Kurnai land management skills as part of the above training.
- b) Hand-back & leaseback of parks and reserves; management arrangements in parks & reserves:
 - i. Majority role for Gunai/Kurnai in Boards/Committees of Management on Public Land
 - ii. Appropriate training for Gunai/Kurnai to undertake their role on such Boards/Committees
- c) Recognition of traditional rights, including:
 - i. food gathering
 - ii. hunting
 - iii. fishing
 - iv. collecting bush medicines
 - v. collecting basket grass, ochre, fibre, wood, seeds, plants, nuts, herbs & other cultural material
- d) Exercise of rights to be for commercial, cultural and ceremonial needs.
- e) Exercise of native title rights to hunt, gather, fish and camp without fees or licences
- f) Water:
 - i. involvement in management of water flows
 - ii. recognition of cultural water flows
- g) Involvement in biodiversity, re-forestation, re-vegetation, fauna management (eg rehabilitation, culls) etc.
- h) Involvement in fire management, eg incorporation of Gunai/Kurnai fire management practices, rights to have ceremonial fires.
- i) Protection of intellectual property rights in Gunai/Kurnai ecological knowledge

- j) Signage and re-naming rights
- k) Natural Resource Management Strategy

6. Cultural Recognition and Strengthening

Since colonization, successive governments, government agencies, other organisations and individuals have tried to deny the right of Gunai/Kurnai to practice our law and culture, and maintain connection to our land and waters. Despite this, we have managed to maintain our connection to our land and waters, and have continued to practice our law, lore and culture. Recognition and strengthening of Gunai/Kurnai culture and connection to our land and waters will help to heal the wounds of the past, enable us to feel proud of our rich heritage and cultural practices, promote reconciliation, and ensure that Gunai/Kurnai culture is respected by all. Recognition and respect can be achieved by the following means:

- a) A clear statement from Government that Gunai/Kurnai are the traditional owners of our land and waters [Consent Determination].
- b) Recognition and Respect to include the five clan groups.
- c) Local & State Government:
 - i. Heads of agreement about services.
 - ii. Plaques and signage, including in council offices/chambers, and at entrances to townships.
 - iii. Opening of public functions, and payment for such openings.
 - iv. Review of current place names and signage.
 - v. Changing names of places to Gunai/Kurnai names, to come through the Gunai/Kurnai's Corporation for approval.
 - vi. Removal of the name McMillan from public use in Gippsland (eg. From monuments, street names, electorate name etc.).
- d) Gunai/Kurnai history & culture curriculum in schools in the area. This is to be resourced by the Education Department to enable Gunai/Kurnai to develop the curriculum, and to ensure that it is taught in schools by Gunai/Kurnai.
- e) Restoration & preservation of Gunai/Kurnai language by and for Gunai/Kurnai people.
- f) Promotion of Gunai/Kurnai artists and clan art markings.
- g) Regular family clan gatherings.
- h) Projects:
 - i. Documented history of the Gunai/Kurnai people's struggle.
 - ii. Annual cultural festival at Lake Tyers.
 - iii. Festival in each of the 5 clan areas.
- i) Agreements with local government, including protocols for Country.
- j) Hand back of land that can be used as Cultural Camps – to heal, and to teach kids about culture, including teaching about men's and women's business.
- k) Gunai/Kurnai website, set up by Gunai/Kurnai people.
- l) Audio and DVD's of Gunai/Kurnai business for Gunai/Kurnai.
- m) Education centres and colleges to teach Gunai/Kurnai history and culture, such centres to be staffed by Gunai/Kurnai, to go hand in hand with Keeping Places.
- n) Gunai/Kurnai leadership centre, multipurpose centre.
- o) Leadership programs/camps.

7. Prescribed Body Corporate (PBC): to hold native title rights and interests and carry out obligations to protect and manage Crown land

Under a consent determination, the Gunai/Kurnai PBC is required to hold native title rights and interests on behalf of the Gunai/Kurnai, and to carry out obligations to protect and manage Crown land. In order for it to fulfil its obligations under the Native Title Act 1993 and any agreements reached in settlement of the Gunai/Kurnai Native Title claim, as well as the other objectives contained in its constitution, the Gunai/Kurnai PBC will require the following:

- a) Recognition of the PBC as the peak Aboriginal organization representing Gunai/Kurnai:
 - i. By government
 - ii. By peak non-government bodies
- b) Funding for the PBC for properly equipped offices, with permanently employed staff and facilities.
- c) Funding and capacity building to enable informed consent by Gunai/Kurnai for:
 - i. investment strategies;
 - ii. economic development strategies with CMAs and other NRM agencies; and
 - iii. other business.
- d) Resources for the PBC to set up/support:
 - i. An Elders council
 - ii. A youth council
 - iii. A sports council

8. Strategies for Economic Development

We, the Gunai/Kurnai want to be self sufficient in our engagement with government and the wider community and want an economic base from which to pursue the goals of the Gunai/Kurnai. We see the following strategies as helping us to achieve these goals, and seek the assistance of the State to implement these strategies:

- a) Employment and Enterprise opportunities.
- b) First option for concessions to operate businesses within parks.
- c) NRM Employment (e.g. in national parks, forests & reserves).
- d) ILC funding to purchase property & businesses, e.g. Ex-shire offices, Lakes Entrance.
- e) Full range of employment opportunities in state and local government.
- f) Access to a share of State Revenues - receive royalties and/or % of gross profits from all mining on Gunai/Kurnai land and waters, including oil gas and coal, and any other natural resources such as timber, water, and others.
- g) Opportunity to participate in carbon trading.
- h) Tourism, guided tours and walkabout tracks, with associated skills training in small business, cultural knowledge, etc.
- i) Identifying and harvesting of seeds and plants, Gunai/Kurnai nurseries.
- j) Bush farms for farming native flora for commercial use.
- k) Farming of native animals/fauna for commercial use.
- l) Establishment of farms.
- m) Revenue stream from DSE from money DSE raises from seeds.

- n) Employment from snow Country and other tourist resort areas including beach, bush, caves, lakes and waterways.
- o) Gunai/Kurnai employment strategy for all levels of government to employ Gunai/Kurnai where possible; Gunai/Kurnai designated positions.
- p) First option on purchase of commercial abalone, crayfish and fishing licences.
- q) Gunai/Kurnai green waste facility.

9. Additional Matters

Resolution of our native title claim is but just one part of a much wider picture of land and social justice for Gunai/Kurnai. Following are additional matters forming part of that wider picture, which will not only redress inequality but will ensure that we as Gunai/Kurnai are and continue to be a vital part of the wider community.

- a) Looking after the elders: including land and compensation for elders over 65 years of age.
- b) Resolution of issues relating to the Lake Tyers Aboriginal Trust, including:
 - i. Shareholdings
 - ii. Tenure
 - iii. amendments to legislation
 - iv. role of Gunai/Kurnai
- c) Recognition and protection of Indigenous rights (WGIP).
- d) Funeral Fund and waiver of burial fees.
- e) Establishment of a Gunai/Kurnai cemetery.
- f) Provision of a gold card for health services for all Gunai/Kurnai to help "close the gap".
- g) Security for future generations:
 - i. Scholarships
 - ii. Safe houses for Gunai/Kurnai
 - iii. Social development for Gunai/Kurnai living within Gunai/Kurnai boundaries and for those who live outside
 - iv. home ownership opportunities in any location for all adult Gunai/Kurnai.

Appendix C: References

- Australian Government**, 2014, *Funding Indigenous Organisations: improving governance performance through innovations in public finance management in remote Australia*
- Department of Environment, Land, Water and Planning**, 2020, *Initial Outcomes Review: Gunaikurnai Recognition and Settlement Agreement (Combined Submission)*
- Department of Health and Human Services**, 2018. *Volume 3: Human services policy and funding plan 2015-2019*
- Department of Jobs, Precincts and Regions Response**, 2020, *Gunaikurnai Land and Waters Aboriginal Corporation Recognition and Settlement Agreement Review*
- Department of Justice and Community Safety**, 2014, *Performance Report under Implementation Plan for Victorian Native Title Settlement Agreements (National Partnership Agreement on Native Title): Gunaikurnai Recognition and Settlement Agreement*
- Department of Justice and Community Safety**, 2013, *Performance Report under Implementation Plan for Victorian Native Title Settlement Agreements (National Partnership Agreement on Native Title): Gunaikurnai Recognition and Settlement Agreement*
- Department of Justice and Community Safety**, 2010, *Recognition and Settlement Agreement - Volume 1 of 2*
- Department of Justice and Community Safety**, 2010, *Recognition and Settlement Agreement - Volume 2 of 2*
- Department of Justice and Community Safety**, 2012, *Gunaikurnai RSA 18 month Implementation Review & Commonwealth NPA Performance Report*
- Department of Justice and Community Safety**, 2020, *DJCS Submission to Initial Outcomes Review of the 2010 Gunaikurnai Settlement Package*
- Gunaikurnai Land and Waters Aboriginal Corporation**, 2020, *About Us: Gunaikurnai Native Title Agreement*, Available at: <https://gunaikurnai.org/gunaikurnai-native-title-agreement/>
- Gunaikurnai Land and Waters Aboriginal Corporation**, 2015, *Gunaikurnai Whole-of-Country Plan*
- Gunaikurnai Land and Waters Aboriginal Corporation**, 2020, *Gunaikurnai Land and Waters Aboriginal Corporation written submission to RSA review*
- Gunaikurnai Land and Waters Aboriginal Corporation**, 2020, *Gunaikurnai Strategic Land Assessment Report*
- Gunaikurnai Land and Waters Aboriginal Corporation**, 2020, *Snapshot and comparisons of current staffing levels, classifications and pay rates at GLaWAC.*
- Gunaikurnai Land and Waters Aboriginal Corporation**, 2020, *Report- Operational Budget to run a Large Traditional Owner Corporation.*
- Gunaikurnai Land and Waters Aboriginal Corporation**, 2016, *Scoping workshop for the five year review of the Gunaikurnai Recognition and Settlement Agreement*
- Gunaikurnai Land and Waters Aboriginal Corporation**, 2019, *2019 Annual Report: Victorian Traditional Owners Trust – Gunaikurnai*, Available at: <https://gunaikurnai.org/glawac-annual-report-2018-2019/>
- Office of the Registrar of Indigenous Corporations**, 2017, *Gunaikurnai native title corporation back in members' control: media release*, Available at: <https://www.oric.gov.au/publications/media-release/gunaikurnai-native-title-corporation-back-members%E2%80%99-control>
- Parks Victoria**, 2020, *Parks Victoria submission on Gunaikurnai RSA Outcomes Review*
- PWC**, 2017, *Outcome Based Budgeting*
- The Public Land Consultancy**, 2019, *Evaluation – Management of the Knob Reserve Report – (Final Report – 9 September 2019)*
- Victorian Premier**, 2010, *Media Release 28th July*, Available at: <http://www.landjustice.com.au/document/Department%20of%20Justice%20-%20Media%20Release%20-%2028%20July%202010.pdf>
- Victorian State Government**, 2018, *Victorian Aboriginal Affairs Framework 2018-2023*, Available at: <https://www.aboriginalvictoria.vic.gov.au/victorian-aboriginal-affairs-framework-2018-2023>

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