ESSENTIAL SERVICES COMMISSION

First Nations Self-Determination Framework

Enabling First Nations-led outcomes at the commission

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Acknowledgement

We proudly acknowledge Victoria's First Nations people and their ongoing strength in practising the world's oldest living culture. We acknowledge the Traditional Owners of the lands and waters on which we live and work, and pay our respect to their Elders past and present.

We recognise the contribution of First Nations people and their communities to Victorian life and how this continues to enrich our society more broadly.

We also acknowledge the long-lasting, far-reaching and intergenerational consequences of colonisation and dispossession. We acknowledge the impact and structures of colonisation still exist today, including within our organisation and the sectors we regulate and administer.

Finally, we acknowledge First Nations peoples' right to self-determination, and our role as a public sector body, employer, regulator and administrator, in enabling self-determination and driving improved outcomes for and with First Nations people.

Dill-ba-din Balluk Biik – Protect Community and Country
Artist: © Simone Thomson 2023

Language statement

First Nations

We recognise the diversity of First Nations people living throughout Victoria. While terms such as 'Aboriginal', 'Koori' or 'Koorie' are commonly used by First Nations people from south-eastern parts of Australia, we have used the term 'First Nations people' throughout this document when referring to all Aboriginal and/or Torres Strait Islander people across Victoria.

Vulnerability/vulnerable

The *Essential Services Commission Act 2001* requires the commission to consider 'vulnerable consumers' in our regulatory decision-making.[1]

The historic and ongoing impacts of colonisation, dispossession and exclusion mean that many First Nations people experience barriers to accessing and engaging in the essential services we regulate and administer and therefore experience vulnerability.[2]

However, we acknowledge the deficit framing of this language, and that First Nations people are not inherently vulnerable and continue to demonstrate immense strength and resilience.

We commit to driving improved outcomes for and with First Nations people through the prism of 'rights and interests', in addition to our legislative responsibility to consider vulnerability.

1 Section 8A(1)(e)(i), *Essential Services Commission Act 2001.*

2 Our *Getting to Fair: Advancing Equity* strategy includes our definition of vulnerability. Our definition identifies barriers as the biggest contributing factor in minimising access and engagement with essential services rather than the characteristics of the individual:
'a person experiencing, or at risk of experiencing, vulnerability is someone who experiences barriers to accessing or engaging in the essential services we regulate or administer. As a result of those barriers, that person experiences economic and/or social exclusion or harm. Barriers can include event-based circumstances, systemic factors, and market-based factors.'

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First Nations Self-Determination Framework: summary

Vision

First Nations people can equitably access, deliver, engage with and benefit from the essential services we regulate and influence.

Priorities

Strategic Priority One:
Building Capabilities and Workforce

Focus Area
1: Workplace Inclusion
2: Cultural Capability

Strategic Priority Two:
Regulatory Inclusion

Focus Area
3: Relationships and Engagement
4: Centring First Nations Rights and Interests

Strategic Priority Three:
Contributing to Treaty and Self-Determination Reform

Focus Area
5: Building Understanding, Knowledge and Expertise for Reform
6: Informing Better Regulatory Design

Enabling principles

- First Nations engagement principles
- Indigenous data sovereignty principles

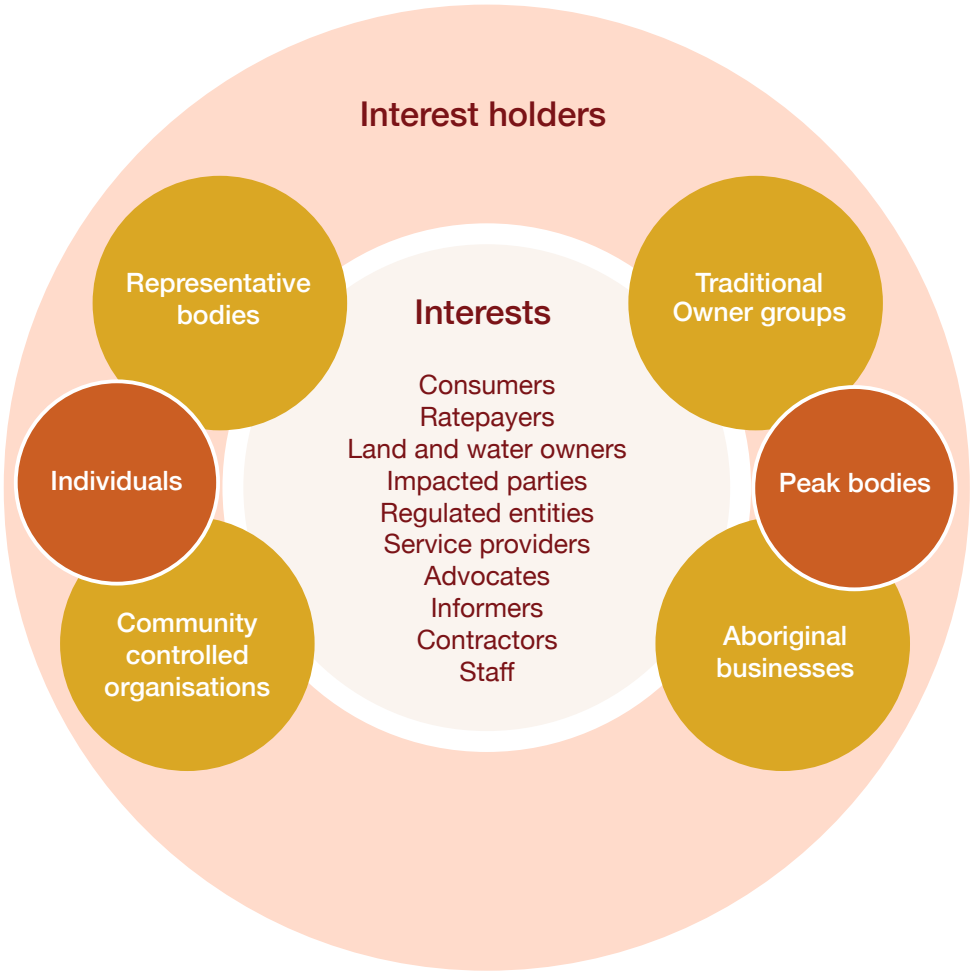
Why we need this framework

First Nations people are impacted by our regulatory activities

As Victoria's independent economic regulator of essential services, we are responsible for regulating Victoria's energy, water and ports sectors, administering the rate-capping system for the local government sector, and regulating the Victorian Energy Upgrades program. Our work therefore involves sectors that intersect with First Nations rights and interests on a daily basis.

First Nations people and organisations directly or indirectly interact with the commission in several different contexts across our regulatory system.

Figure 1: First Nations interest holders and interests within the sectors we regulate



'Interests' refer to the substantive concerns, needs or benefits that matter or motivate First Nations people or groups engaging with the commission, while 'interest holders' are the people or entities who hold and are affected by those interests.

First Nations people experience inequitable regulatory outcomes

As a direct result of the historic and ongoing impacts of colonisation, dispossession and exclusion, First Nations people continue to experience disparity and inequality in many aspects of life. This includes accessing, delivering, engaging with, and benefiting from the essential services we regulate and administer.

> Systemic racism, institutional rigidity and cultural insecurity exist within our regulatory system.[3]

First Nations consumers disproportionately experience factors which negatively impact their access to, and the responsiveness of essential services.[4]

This includes:

- intersecting and compounding event-based circumstances (for example, family violence and caring responsibilities)
- systemic factors (for example, racism and distrust)
- market-based factors (for example, culturally unsafe information and support).

First Nations Victorians are 11 per cent more likely to have a debt on a closed energy account and are more likely than other energy users to be struggling to pay their bill (88 per cent compared to 62 per cent).[5]

Victorian Traditional Owner groups have broad-ranging rights and interests, including those recognised in Victoria through legal and policy instruments. This includes statutory and inherent rights, and cultural, spiritual and economic connections to, land, water and resources through traditional ownership of, and relationship with, Country. These rights and interests are impacted by the essential services we regulate and administer, including the electricity, gas, water and local government sectors. However, these rights and interests are not routinely understood or considered in our regulatory decision-making.

First Nations people, organisations, businesses and Traditional Owner groups have told us that they also experience barriers to participating in, and benefitting from, the sectors we regulate. This includes as regulated businesses, project leaders, contractors and as rightful recipients of other social and economic benefits.[6]

They have also reported experiencing barriers to participating in our regulatory activities and influencing our regulatory decision-making, such as price reviews, the development of codes and guidelines, performance monitoring and licensing decisions. This is compounded by:

- a lack of culturally supportive engagement and information
- insufficient First Nations data collection and analysis
- complexities in identifying First Nations consumers in the sectors we regulate and administer.

3 The Australia and New Zealand School of Government 2025, *First Peoples and regulatory practice: Looking back and building forward*, p.3; Consumer Action Law Centre and Victorian Aboriginal Legal Service 2024, *Money Yarns, Stronger Futures: The consumer, credit and debt issues of First Nations consumers in Victoria, Integrated Practice Project report 2021–2023*, p.11; Coalition of the Peaks 2020, National Agreement of Closing the Gap, Preamble.

4 Consumer Action Law Centre and Victorian Aboriginal Legal Service 2024, *Money Yarns, Stronger Futures: The consumer, credit and debt issues of First Nations consumers in Victoria, Integrated Practice Project report 2021–2023.*

5 Consumer Action Law Centre 2024, *Energy Assistance Report, Fourth Edition*, June, p.35; ACOSS 2025, *Heat in Homes Survey Report,* 2025, p.41.

6 See also the Australia and New Zealand School of Government 2025, *First Peoples and regulatory practice: Looking back and building forward,* p.11; Yoorrook Justice Commission 2025, *Yoorrook for Transformation Third Interim Report (Volume 2),* Chapter 14 on the harm caused by rules and regulations that deprive First Peoples of the rights to access, use and manage water resources.

We need a clear framework to enable First Nations-led outcomes

Self-determination is the right of First Nations peoples to freely determine their political status and to pursue their economic, social, and cultural development, ensuring they have a say in decisions that affect their lives and communities.[7]

The purpose of this framework is to provide an approach for working across our regulatory system to enable self-determination and drive equitable First Nations outcomes. This includes working with First Nations people and organisations, Traditional Owner groups, consumer advocates and regulated businesses. It is intended to support the commission's strategic decision-making and business planning, as well as our regulatory and administrative activities.

The commission is committed to being a leading regulator in this space, demonstrating the practical steps that all regulators can take to support equitable regulatory participation and outcomes for and with First Nations people.

Our 2025–29 Strategic Plan includes a focus on First Nations outcomes

This framework aligns with our *2025–29 Strategic Plan*, and our vision of 'Fair and dependable essential services, today and tomorrow'. It seeks to create long-term impact across each of the Strategic Plan's domains including:

- **Efficient Pricing:** by working to embed First Nations rights and interests into 'best value' pricing decisions.
- **Equitable Services:** by striving to make essential services more accessible, inclusive and responsive to First Nations consumers.
- **Resilience and Sustainability:** by advancing just outcomes for First Nations people as essential services adapt to long-term changes, including the transition to carbon neutrality.
- **Integrity and Trust:** by strengthening market and regulatory transparency, accountability and confidence for First Nations consumers.

It also specifically progresses our Strategic Plan commitment to strengthen First Nations engagement and improve opportunities for First Nations people to access, deliver, engage with and benefit from the essential services we regulate.

7 *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (13 September 2007) art 3.

This framework supports the goal of our Getting to Fair: Advancing Equity strategy

Getting to Fair: Advancing Equity is our strategy to address individual and system-level inequity to improve consumer outcomes, with a continued focus on consumers experiencing vulnerability. The goal of *Advancing Equity* is to promote just outcomes and equitable access to essential services for all Victorians, today and tomorrow. It seeks to ensure that the costs, benefits and risks of the essential services we regulate and administer are justly and equitably distributed among all Victorian consumers.

Our First Nations Self-Determination Framework supports the goal of *Advancing Equity* and is one of the two flagship frameworks identified in the strategy to progress just regulatory outcomes and equitable access.

We seek to align with broader First Nations legislation and policy commitments

The Victorian Government has committed to self-determination and agreed to a Victorian Statewide Treaty between First Peoples in Victoria and the State of Victoria. Enabling legislation to give effect to the Statewide Treaty:

- Establishes and grants functions and powers to Gellung Warl, a permanent representative and deliberative body for Traditional Owners and First Peoples, which will intersect with matters within our regulatory remit.
- Contemplates ongoing Treaty-making to negotiate the further transfer of decision-making, rule-making, advisory and other powers and functions, with new approaches to regulation likely to be an outcome of this process.

As a public sector body, the commission must build capacity to contribute to, and implement, self-determination reform and Treaty outcomes within its regulatory environment. We also have a responsibility as a public sector employer to grow our First Nations workforce and foster a culturally capable and safe workplace.

Broader Commonwealth and Victorian legislation and policy commitments are also relevant to the commission's work.

This includes:

- Obligations under the *Victorian Government's Self-Determination Reform Framework* and the *National Agreement on Closing the Gap* for systemic and structural transformation of government organisations (like the commission) to enable self-determination, improve accountability and respond to the social and economic needs of First Nations people.
- Commitments under *The First Nations Clean Energy Strategy 2024–2030* which supports First Nations peoples to participate in and benefit from the clean energy transition.

Within this context, it is critical that we have a clear framework in place which directs a common approach to enable self-determination, address barriers, and drive equitable regulatory participation and outcomes for and with First Nations peoples.

See Appendix 1 for more details about policy commitments.

First Nations Self-Determination Framework

Our vision

First Nations people equitably access, deliver, engage with and benefit from the essential services we regulate and influence.

Our strategic priorities and focus areas

Our strategic priorities are:

- Building Capabilities and Workforce
- Regulatory Inclusion
- Contributing to Treaty and Self-Determination Reform

We will take action across these three priorities as we work towards our vision.

The next section outlines each strategic priority, the broader legislation and policy commitments it supports, the focus areas within each priority and the performance measures we will use.

Strategic Priority One:
Building Capabilities and Workforce

Supporting:

Self-Determination Reform Framework 'People' Reform Domain

Closing the Gap Priority Reform Area 3

Focus Area 1: Workplace Inclusion

What this looks like:

- We are an employer of choice for First Nations employees.
- Our First Nations employees feel supported, valued and culturally safe at work.
- Our procurement practices support and encourage procurement from First Nations suppliers, contributing to broader economic and social outcomes.

Focus Area 2: Cultural Capability

What this looks like:

- Our staff have a strong understanding and awareness of the culture, history, lived experiences, rights and interests of First Nations people, and demonstrate cultural competency.
- As an organisation, we understand the ongoing structural impacts of colonisation, racism and unconscious bias on our regulatory activities and regulated sectors and have in place the appropriate approaches to address these impacts.
- Our regulatory governance and policies and practices, including regulatory postures, education, monitoring, compliance and enforcement strategies are inclusive, equitable and culturally safe.

Performance measures

- Increase in staff understanding and awareness of Aboriginal cultures, histories and contemporary contexts (% of staff reporting increase and whole-of-commission continuum classification using VPSC Cultural Capability in the Workplace Self-Assessment)
- Increase in First Nations employment to meet 2% target in line with VPS commitment (% of First Nations employees)
- Increase in First Nations procurement to meet 1% SME procurement target in line with VPS commitment (% of procurement with First Nations SMEs)

Strategic Priority Two:
Regulatory Inclusion

Supporting:

Closing the Gap Priority Reform Areas 1, 2, 3 and 4

Self-Determination Reform Framework 'Systems' and 'Outcomes' Reform Domains

Focus Area 3: Relationships and Engagement

What this looks like:

- We have strong, mutually beneficial relationships with First Nations people, organisations, consumer advocates, businesses and Traditional Owner groups.
- We have culturally appropriate engagement platforms, systems and processes in place to support First Nations consultation and collaboration on relevant regulatory activities, and ensure that First Nations voices, perspectives and expertise inform our regulatory activities.

Performance measures

- Participation of First Nations people in the commission's engagement processes (# engaged)
- Satisfaction of First Nations people with the commission's engagement processes (overall satisfaction)

Focus Area 4: Centring First Nations Rights and Interests

What this looks like:

- Our regulatory decisions consider the specific perspectives, rights, interests and values of First Nations consumers and Traditional Owner groups wherever appropriate.
- Our regulatory activities and decisions are supported by First Nations data and evidence, collected and used in accordance with Indigenous data sovereignty principles.
- We steward best practice through our sphere of influence, including our regulated and administered sectors.

Performance measures

- Consideration of First Nations rights and interests as a part of decision-making processes (# decisions where considered)
- Improved First Nations outcomes and impact (# regulatory activities that achieved improved First Nations outcomes; First Nations-led qualitative case studies)
- Improved enabling environment for self-determination (continuum classification applying Self-Determination Continuum Self-Assessment)

Strategic Priority Three:
Contributing to Treaty and Self-Determination Reform

Supporting:

Closing the Gap Priority Reform Area 1, 2 and 3

Self-Determination Reform Framework 'Systems' and 'Outcomes' Reform Domains

Focus Area 5: Building Understanding, Knowledge and Expertise for Reform

What this looks like:

- We engage and collaborate with First Nations representative bodies, government and across our regulatory system, sharing our knowledge, expertise and unique insights into the sectors we regulate to:
  - build understanding about how regulation works in practice
  - identify broader regulatory issues, challenges and barriers impacting First Nations people, and existing and emerging opportunities to address these issues through self-determination reform and Treaty outcomes.

Performance measures

- Engagement with First Nations representative bodies on self-determination reform and Treaty outcomes (# of engagements)
- Engagement with government, regulators and regulated entities on self-determination reform and Treaty outcomes (# of engagements)

Focus Area 6: Informing Better Regulatory Design

What this looks like:

- We engage with First Nations representative bodies and government to inform self-determination reform and Treaty outcomes that achieve better regulatory design and achieve fit-for-purpose First Nations regulatory outcomes.

Performance measures

- Contribution to improved regulatory design through self-determination reform and Treaty outcomes (# of reforms contributed to; qualitative case studies)

Our journey so far

Our First Nations Self-Determination Framework seeks to consolidate and build on our previous and existing strategies and action plans to improve First Nations outcomes within our organisational and regulatory remit.

Getting to Fair 2021–2024 strategy

Our *Getting to Fair 2021–2024* strategy aimed at breaking down the barriers that inhibit access to essential services, focusing on consumers experiencing vulnerability.

This three-year strategy had three main objectives:

- supporting consumers experiencing vulnerability to understand their rights
- ensuring regulated services are more responsive and inclusive
- ensuring the commission itself is more inclusive as an organisation.

Getting to Fair was underpinned by extensive research and evidence – including engagement with First Nations representatives and advocates. The research found that there was insufficient information and support available to First Nations consumers and that better support and engagement was required, including to reduce rates of disconnection for First Nations consumers.

Getting to Fair included five key actions focused on First Nations outcomes (acknowledging self-determination as a guiding principle):

- Better understand the relationship First Nations people have with Country.
- Explore and adopt culturally appropriate ways for First Nations communities to directly guide and influence our work.
- Support effective engagement between water businesses and their First Nations consumers and community through our regulatory role.
- Develop and publish our plan to move from inclusion to self-determination.
- Build cultural safety across the organisation.

Other actions set out in the strategy also sought to drive outcomes that indirectly benefit First Nations people (for example, actions relating to social procurement).

Building Aboriginal Cultural Capability Action Plan 2022

We implemented our Building Aboriginal Cultural Capability Action Plan, with the commitment 'to be an organisation that is aware, respectful, and inclusive of Aboriginal people and their history … provide a culturally safe environment for all … [and be] respectful and inclusive with the communities we engage with externally'.

The Action Plan included 41 actions across 5 focus areas:

- People
- Leadership and Accountability
- Workplace Cultural Safety
- Systems and Processes
- Community Engagement and Procurement.

The Building Aboriginal Cultural Capability Action Plan was informed by a cultural competency assessment conducted with a small group of key stakeholders, as well as consultation with an internal working group and the Aboriginal Employment Unit at the Victorian Public Sector Commission.

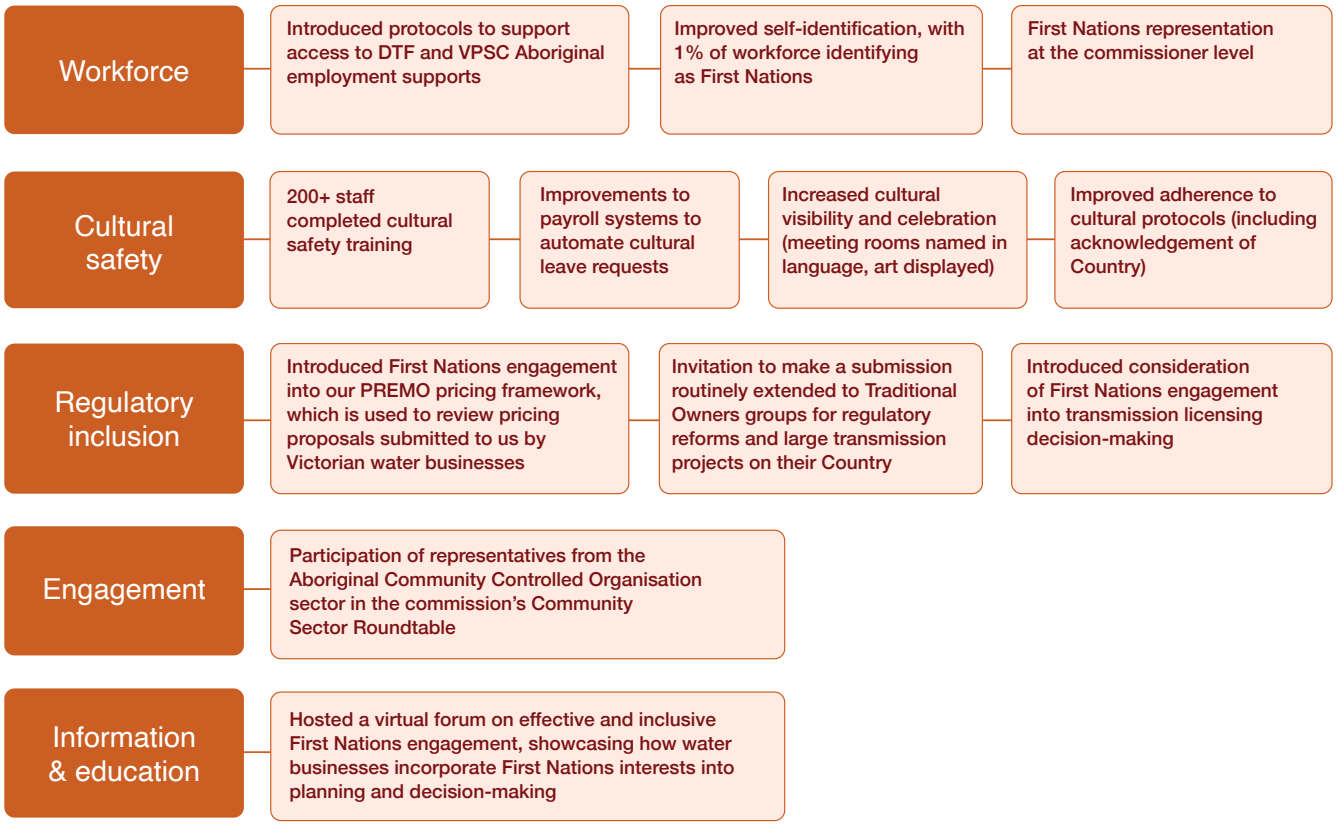
The Action Plan focused on greater diversity, equity and inclusion for First Nations people through improved organisational and employee cultural capability. Many (but not all) of its actions are related to human resource functions:

- recruitment and retention special measures
- staff engagement surveys
- active leadership engagement
- cultural capability training for all staff
- inclusive human resource processes
- active community engagement through the *Getting to Fair 2021–2024* strategy.

Key achievements to date

Figure 2 shows our actions to progress First Nations outcomes under our *Getting to Fair 2021–2024* strategy and our Building Aboriginal Cultural Capability Action Plan.

Figure 2: Key achievements to date in progressing First Nations outcomes



Getting to Fair: Advancing Equity strategy

In line with the commitment in our *Strategic Plan 2025–2029*, we updated our *Getting to Fair 2021–2024* strategy. *Getting to Fair: Advancing Equity* is the commission's 2026 strategy to address individual and systems-level inequity to improve consumer outcomes. The goal of *Advancing Equity* is to promote just outcomes and equitable access to essential services for all Victorians, today and tomorrow.

The strategy will be delivered through the development and implementation of two flagship frameworks and a program of priority actions. The flagship frameworks are areas of strategic focus identified to progress just regulatory outcomes and equitable access. This First Nations Self-Determination Framework is the first flagship framework to be released under our *Getting to Fair: Advancing Equity* strategy.

Developing this framework

Our First Nations Self-Determination Framework was informed by:

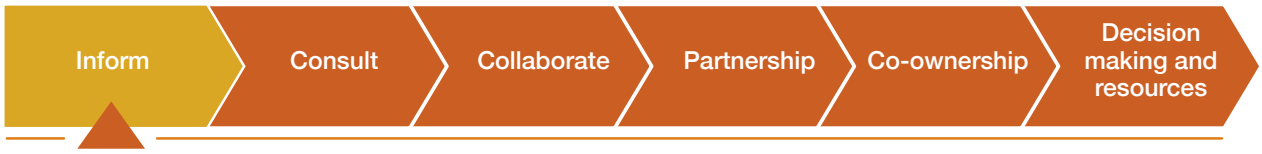
- Victorian and Commonwealth Government policy and legislative commitments (see Appendix 1).
- Recommendations about First Nations engagement approaches set out in a report prepared for us by First Nations consultants, Speaking in Colour.
- Existing reports and findings setting out First Nations perspectives on regulation and other matters relevant to this framework, including the work of the Yoorrook Justice Commission.
- Self-determination and cultural competency self-assessments conducted by the commission (see page 18).
- Internal engagement with our staff, including specific engagement with our First Nations staff.
- Engagement with representatives from:
  - the Aboriginal Community Controlled Organisation sector and other community organisations supporting First Peoples consumers
  - Victorian Traditional Owner groups
  - First Peoples' Assembly of Victoria
  - First Nations Clean Energy Network
  - Yoorrook Justice Commission
  - Department of Energy, Environment and Climate Action's First Peoples Self-Determination Group
  - Victorian Public Sector Commission's Aboriginal Employment Unit
  - Department of Premier and Cabinet's First Peoples – State Relations Group
  - Baan dhum-djerring Working Group (comprising representatives from Melbourne Water, South East Water, Yarra Valley Water, Greater Western Water and Barwon Water).

Current practice and opportunities for improvement

Domestic and international evidence consistently shows that self-determination is crucial to achieving effective and sustainable First Nations outcomes.

While self-determination is driven by First Nations people, the commission has a role to play in ensuring that our regulatory approaches and regulated sectors are responsive to First Nations rights and interests and are culturally competent and responsive.

Self-determination continuum self-assessment



The Victorian Government's *Victorian Aboriginal Affairs Framework* and *Self-Determination Reform Framework* set out a continuum of engagement leading to self-determination, ranging from informing community through to transferring resources and decision-making control. The commission has self-assessed its regulatory approaches as sitting at the lower end of the 'inform' stage of this continuum.

Through actions under this framework, we seek to develop First Nations relationships, engagement mechanisms and inclusive regulatory practices to move to the 'collaborate' stage and strive for the 'partnership' stage by 30 June 2028.

Cultural competency continuum self-assessment

Using the Victorian Public Sector Commission's Aboriginal Cultural Capability in the Workplace Self-Assessment, the commission has assessed itself as sitting at the 'cultural pre-competence' stage of the cultural competency continuum.

Individually, developing cultural competence requires commission staff being supported to:

- understand their own cultural assumptions, values and beliefs
- appreciate that First Nations people have different needs because of their cultural background, history and experiences
- develop the knowledge, skills and abilities to transfer these differences into appropriate attitudes, behaviours and work practices.

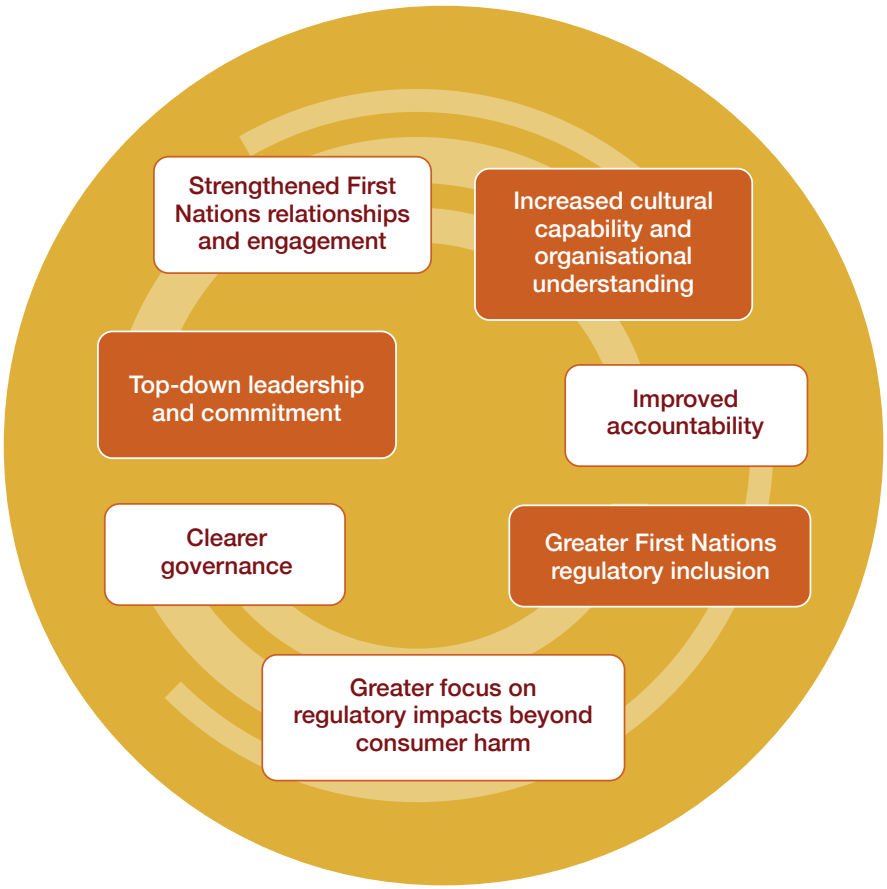
Organisationally, cultural competence involves developing systems, policies and processes that ensure First Nations perspectives are considered in all aspects of our work so that our organisational and regulatory activities and outcomes are culturally appropriate and accessible. It also involves addressing racism and unconscious bias within our regulatory activities and regulated sectors.

Through actions under this framework, we seek to move to the 'cultural proficiency' stage by 30 June 2028.

Gaps and opportunities for improvement

Through our consultant reports, self-assessments, staff surveys and engagement with First Nations organisations and consumer advocates, we have identified the following gaps and opportunities for improvement within the commission. These gaps and opportunities have also helped to inform this framework's strategic priorities and focus areas.

Figure 3: Gaps and opportunities for improvement for First Nations-led outcomes



Our regulatory role and context

Self-determination and the role of the regulator

Embedding and enabling self-determination requires action from a broad range of interconnected actors, including legislators, policy makers, service providers, regulators and regulated businesses. The Victorian Government's *Self-Determination Reform Framework* provides useful guidance to regulators on how to enable self-determination, including through First Nations engagement, data collection, workforce capability and service safety and access. However, the framework is intended to guide action by government departments. Many actions therefore focus on systemic and structural transformation, with the objective of transferring resources and power to Victoria's First Nations communities and Traditional Owner groups through legislative and policy reform.

Regulators like the commission do not set policy and legislation. Instead, we are responsible for implementing and ensuring adherence to laws and regulations that have already been established by policymakers and legislators. Within these frameworks, our regulatory decision-making is typically constrained by pre-determined legislative factors and tests, and compliance with legislated processes and timeframes.

This means that our scope and discretion to enable self-determination (for example, by empowering Traditional Owners to participate as equal decision-makers on specific matters), or to otherwise advance First Nations rights and interests (for example, requiring economic benefits to flow to Traditional Owners as part of a licensing decision) is limited by the specific legislative, regulatory and policy frameworks within which we operate. This can be a significant barrier to meeting First Nations aspirations and reflecting First Nations rights, interests and cultural values in our regulatory outcomes.

Broader legislative and policy reform is critical to embedding a consistent approach to First Nations rights and interests across regulatory systems and clarifying how these are to be balanced with other competing rights and interests. For example, the impact of regulatory burden on regulated businesses. Such reform is within the scope of government and parliament, and not regulators.

However, there are still existing regulatory powers and tools available to the commission that support progress towards achieving equitable, self-determined regulatory outcomes for and with First Nations people.

Enabling First Nations self-determination

Our role as regulator in enabling self-determination is two-fold:

- Adopting regulatory approaches that **maximise the effectiveness of our current regulatory settings** to enable self-determination and achieve equitable First Nations-led outcomes, with a focus on regulatory inclusion and addressing racism and unconscious bias.
- Where our ability to do so is limited by deficiencies in our regulatory framework or is otherwise outside our remit, **engaging proactively** with ministers, departments and First Nations representatives to highlight barriers and opportunities for reform.

Our regulatory objective

While the commission does not have a specific legislative requirement to consider First Nations rights and interests in its regulatory decision-making, our overarching legislative objective is to promote the long-term interests of Victorian consumers, having regard to the price, quality and reliability of essential services.[8]

In seeking to achieve our legislative objective, we must have regard to:

- efficiency in the industry and incentives for long-term investment[9]
- the relevant health, safety, environmental and social legislation applicable to an industry[10]
- the benefits and costs of regulation for both consumers and users of products and services (including low income and vulnerable consumers) and regulated entities[11]
- matters which are specified in empowering instruments.[12]

In the commission's view, broader social, cultural and environmental factors are also relevant to considerations of efficiency, because these factors shape the real costs and benefits that consumers bear over time.

Social outcomes such as affordability and accessibility influence demand, payment behaviour and ultimately the sustainability of service provision. Informed design and engagement improve uptake and trust – reducing dispute, enforcement and transaction costs.

Environmental and cultural heritage considerations, meanwhile, account for externalities that, if ignored, create hidden liabilities (for example, future remediation or climate-related disruptions) that consumers eventually pay for through higher prices or degraded service quality. By factoring these dimensions into regulatory and business decisions, we capture the full value of resources, build resilience into essential services and avoid shifting costs to future consumers – aligning economic efficiency with the long-term interests of the community we serve.

Listening to the views of First Nations people and considering their rights and interests not only delivers First Nations outcomes and benefits but can bolster the social licence and resilience of regulated businesses and avoid legal, operational and reputational costs that arise when such rights and interests are ignored. In turn, this more inclusive approach strengthens market transparency and competition, enhances economic efficiency, and safeguards the long-term interests of all consumers.

The matters specified in our empowering instruments provide further legislative grounds on which we may have specific regard to First Nations rights and interests in our regulatory decision-making.

While relevant legislation applicable to the industries we regulate will vary depending on the industry and precise context, broadly speaking, it includes (but is by no means limited to) the:

- *Aboriginal Heritage Act 2006* (Vic)
- *Native Title Act 1993* (Cth)
- *Traditional Owner Settlement Act 2010* (Vic).

Each of these legislative regimes imposes obligations on industry participants across our regulated sectors, with the purpose of protecting specific First Nations rights and interests, particularly with respect to land, waters and cultural heritage.

Certain empowering instruments (particularly when coupled with supportive policy settings) more explicitly empower our consideration of First Nations rights and interests. For example, an additional legislative objective under the *Water Industry Act 1994* (which empowers our regulation of the water industry) is to ensure that regulatory decision-making has regard to the social obligations of regulated entities. Policies and guidance applicable to the water industry include First Nations-specific obligations, as well as general obligations (for example, to engage with consumers and communities).[13]

8 Section 8, *Essential Services Commission Act 2001.*

9 Section 8A(1)(a), *Essential Services Commission Act 2001.*

10 Section 8A(1)(d), *Essential Services Commission Act 2001.*

11 Section 8A(1)(e), *Essential Services Commission Act 2001.*

12 Section 8A(1)(g), *Essential Services Commission Act 2001.*

13 See, for example, Department of Energy, Environment and Climate Action's *Water Is Life: Traditional Owner Roadmap to Access to Water* and *Guide to Governing in the Water Sector.*

PREMO Water Pricing Framework

Our PREMO (Performance, Risk, Engagement, Management and Outcomes) Water Pricing Framework, which we use to assess pricing proposals submitted to us by Victorian water businesses, specifically assesses whether businesses have demonstrated culturally appropriate and inclusive engagement with First Nations people as part of our pricing review process. This engagement has resulted in meaningful First Nations-led outcomes in the water sector, benefitting not only First Nations people, but water businesses, customers and communities.

Yarra Valley Water's case study shows the positive impacts of First Nations knowledge and perspectives informing water planning. This example demonstrates the broader benefits to all Victorians of regulatory approaches that consider First Nations rights and interests.

Yarra Valley Water's engagement with First Nations people

Among Yarra Valley Water's objectives set out in its 2023 pricing submission was ensuring appropriate collaboration with Traditional Owners/Custodians as inherent rights holders, and Aboriginal community members.

Building on existing relationships formed through its Reconciliation Action Plan, and with guidance and assistance from its First Nations Board Directors, Yarra Valley Water established an Aboriginal Community Working Group. This working group worked closely with Yarra Valley Water's executive leadership and the Citizens' Jury that Yarra Valley Water assembled to inform its pricing submission.

Areas of collaboration included working group members presenting to the jury on their personal connection to Country and their relationship with water and the environment. Working group members also shared the working group's perspective of the challenge the Citizens' Jury was tasked to solve.

Members of the working group and the board also met with all Yarra Valley Water directors and the executive team to share and discuss the importance of Caring for Country.

Outcomes of this engagement were that the Citizens' Jury identified a Caring for Country approach as a key rationale for several draft recommendations. It also made a primary recommendation – accepted by Yarra Valley Water – to embed Caring for Country in all decisions.

As a result of this work, Yarra Valley Water continues to engage with, and to pursue initiatives in partnership with Traditional Owner groups Wurundjeri, Boon Wurrung and Bunurong. This includes partnering in planning and managing land, such as Yarra Valley Water's work in partnership with the Wurundjeri Woi-wurrung Narrap Rangers to rehabilitate and manage the land and biodiversity of key sites.

Understanding regulatory inclusion

Under this framework, regulatory inclusion is a key mechanism for driving First Nations outcomes in the sectors and markets we regulate.

Regulatory inclusion involves identifying how our regulatory approaches, powers and tools can be used and coordinated to achieve equitable regulatory participation and outcomes for and with First Nations people. This may include using both routine regulatory approaches, as well as innovating and testing new approaches and developing tailor-made interventions.

Types of regulatory inclusion include:

- **Engagement:** adopting culturally appropriate engagement practices and reflecting First Nations voices in regulatory outcomes.
- **Empowerment:** equipping First Nations people with the tools, resources and avenues to actively participate in and benefit from our regulated sectors, including as consumers, regulated businesses and contractors.
- **Decision-making:** enabling First Nations people to have a genuine and influential role in decisions that affect their communities and Country.
- **Effective safeguards:** ensuring enforceable rules and conditions are in place that protect First Nations rights and interests at risk of being impacted by the activities of regulated businesses.
- **Responsive services:** ensuring essential services are culturally safe and accessible.
- **Rights recognition:** ensuring First Nations rights and interests are recognised, including through the sharing of social, economic, environmental and cultural benefits.

A key principle informing our approach to regulatory inclusion is self-determination. We will do this by listening and responding to First Nations priorities, perspectives and lived experiences, and holding ourselves accountable to First Nations people for our progress. (See page 26 for details on our First Nations engagement mechanisms.)

We will consider opportunities for regulatory inclusion across our regulatory system, including action involving the commission, regulated businesses, government, Traditional Owner groups, First Nations networks, service providers, consumers and businesses.

Regulatory inclusion in practice

To provide practical guidance on what regulatory inclusion might look like in practice, illustrative examples relating to our key regulatory activities are set out below. These examples are not informed by engagement with First Nations people or our regulated sectors, and have not been assessed to determine whether they are legally, economically or operationally feasible. Their inclusion here is intended to illustrate the scope of possibilities only.

Figure 4: Possible regulatory inclusion practices for the commission

1

Setting rules and standards (such as protections or specific obligations)

- Including First Nations consumer protections in enforceable codes.
- Establishing industry standards or guidance for First Nations engagement and agreement-making.

2

Making pricing determinations

- Developing pricing incentives for regulated businesses to achieve First Nations outcomes.
- Considering business costs in undertaking First Nations engagement and activities in setting benchmarks or prices.

3

Overseeing markets and business performance

- Monitoring a regulated business' performance by reference to First Nations metrics. This might include assessing the performance of a regulated business' First Nations engagement and outcomes as part of pricing reviews, and enabling Traditional Owner involvement in assessing performance.
- Collecting and analysing First Nations data from regulated businesses or reporting on First Nations metrics.

4

Promoting compliance and enforcement

- Promoting and monitoring compliance with rules and standards relating to First Nations consumers and Traditional Owners (general or specific).
- Enforcing rules and standards relating to First Nations consumers and Traditional Owners.

5

Licensing and accrediting businesses

- Considering the risk/impact of licensed activities on First Nations rights and interests before making a decision to grant a license, including by leveraging other regulatory processes.
- Proactively consulting with impacted Traditional Owners in relation to licensing decisions.
- Assessing a licensee's engagement/agreement making with impacted Traditional Owners as part of considering a license application.
- Including license conditions relating to compliance with First Nations agreements.
- Proactively engaging with Aboriginal businesses and developing culturally appropriate application processes to support the accreditation and licensing of Aboriginal businesses.

6

Stewarding best practice

- Providing information and tools (for example, voluntary standards for best practice engagement with First Nations consumers).
- Promoting best practice and voluntary uplift.
- Promoting procurement from Aboriginal businesses.
- Sharing knowledge and lessons learnt, including via communities of practice.
- Harnessing industry-led action and spotlighting industry leaders.

7

Carrying out inquiries, studies and reviews

Undertaking a review of First Nations consumer experiences within a regulated sector and making recommendations for regulatory reform.

8

Regulatory policy stewardship

Contributing to regulatory policy and legislative reform to address barriers and promote equitable First Nations participation in and access to essential services.

Our First Nations engagement and data principles

First Nations engagement mechanisms

Given our various regulatory touchpoints that intersect with First Nations people and organisations, and the differing rights and interests involved (for example, First Nations consumer protections, Traditional Owner rights, Aboriginal business accreditation and licensing), we will take a multi-pronged approach to First Nations engagement.

In doing so, we acknowledge that different mechanisms will be appropriate depending on the type of issue or action on which we seek to engage. For example, if an issue relates to a specific geographic area impacting Traditional Owner rights and interests, we may seek to engage directly with the impacted Traditional Owner group. We will tailor engagement to the relevant issue, with the appropriate engagement mechanism/s selected accordingly.

To support this approach, we will ensure that our general engagement mechanisms and approaches are culturally safe and accessible, and establish bespoke First Nations engagement processes, leveraging existing First Nations mechanisms wherever possible (see Figure 5).

Essential Services Commission First Nations Forum

We will establish a dedicated annual First Nations Forum to ensure First Nations oversight and accountability for commitments and actions under our First Nations Self-Determination Framework. The forum will also provide a mechanism for coordinated consideration of First Nations issues within our regulatory remit. We will work towards establishing the forum from July 2027. In the interim, we will continue to grow our collaboration with First Nations people through our existing engagement mechanisms, such as our Community Sector Roundtable held three times a year.

See 'Our governance and approach' section for further details on the role of First Nations engagement mechanisms.

Figure 5: First Nations engagement mechanisms

First Nations engagement principles

Our engagement approach acknowledges that First Nations communities and organisations experience significant demands on their resources, including multiple engagement requests from across the public and private sectors. When engaging through our First Nations mechanisms, we seek to maximise meaningful engagement and minimise the burden and cultural load by adhering to the following First Nations engagement principles:

- **Strong, trusted relationships:** we will build trusted relationships with First Nations communities and organisations, based on mutual benefit and understanding.
- **Informed:** we will provide easily understood and meaningful information to support First Nations engagement, including clearly articulated regulatory goals, options, benefits, costs, risks and assumptions.
- **Clear and honest:** we will be clear about why we are engaging, and honest about what can and cannot be achieved (including any regulatory, policy and legislative limitations and timeframes).
- **Respect for First Nations expertise and values:** we will respect and clearly demonstrate how First Nations expertise and values have shaped our regulatory activities (or if not, why not).
- **Self-determined:** we will only progress First Nations specific actions where these are agreed through a relevant First Nations engagement mechanism, consistent with the principle of self-determination.
- **Outcomes focused:** we will agree on the outcomes that we want to achieve with the relevant First Nations engagement mechanisms and how to best achieve them. The focus will be on achieving results, rather than just completing tasks.
- **Empowered:** we will provide the resources and support needed for First Nations communities and organisations to engage in our regulatory activities, including to partner in the design of regulatory interventions and evaluation of their impact.
- **Accountable:** we will agree on First Nations outcomes, timeframes and evaluation approaches with our First Nations engagement mechanisms and be accountable for our progress.
- **Culturally safe:** we will conduct all engagement activities in a culturally safe way, fostering cultural respect, understanding and self-reflection and prioritising First Nations values, protocols and voices.
- **Effective:** we will select the most effective engagement approach that ensures adequate time and poses minimal burden, relying on existing engagement mechanisms wherever possible to minimise engagement fatigue.

Indigenous data sovereignty principles

Where we collect information, data and evidence about First Nations people, we will treat and manage that information, data and evidence in the following ways, consistent with Indigenous data sovereignty principles:

- Collected freely, with prior and informed consent, including respect for confidentiality.
- Be used to advance self-determination and First Nations rights, interests, cultural values and priorities.
- Be stored securely.
- Be interpreted by First Nations experts, ensuring it reflects First Nations lived experiences and perspectives.
- Be accessible, appropriate and meet First Nations needs.
- Only be used how First Nations people and/or organisations agree it should be used.
- Be presented in an easily understood and meaningful way.

Our governance and approach

Plan, Act, Measure, Evaluate

This framework is designed to be dynamic. A First Nations Action Plan will be developed every two years to support and guide action aligned with our strategic priorities.

Our inaugural action plan will predominantly focus on Strategic Priority One (Building Capabilities and Workforce) and Strategic Priority Two, Focus Area 3 (Relationships and Engagement), with the aim of establishing a strong enabling environment for driving First Nations-led outcomes. These actions will focus on:

- Building internal cultural capability and understanding of self-determination and regulatory inclusion among staff, management and commissioners.
- Establishing strong relationships and engagement with First Nations people and organisations.

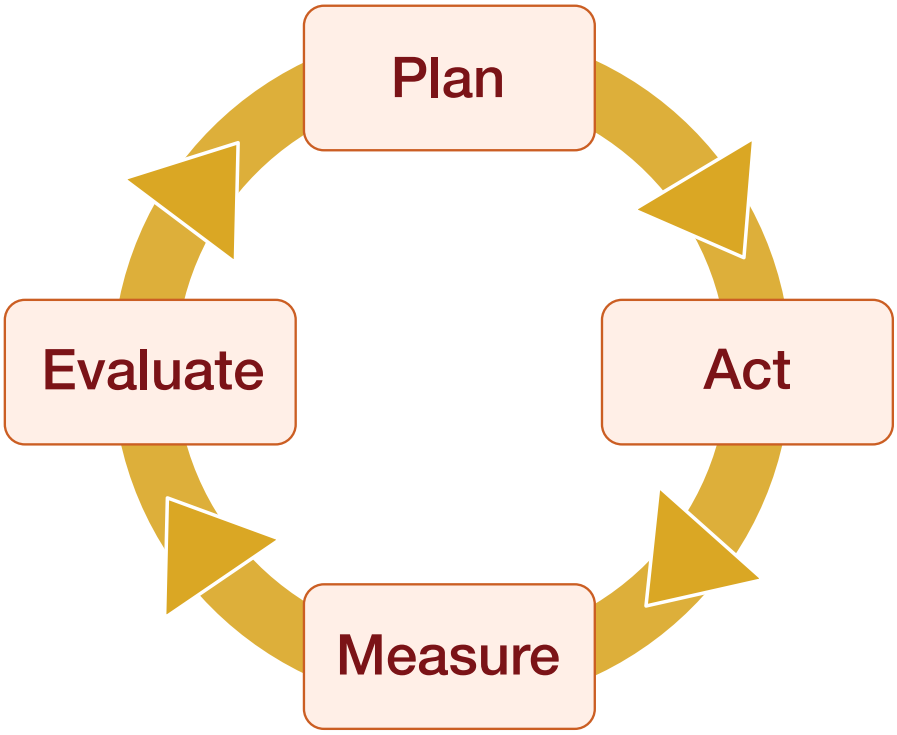
Key actions will be published on our website. Annual reporting against the actions and measures of success set out in each First Nations Action Plan will assist in tracking progress.

This dynamic approach enables our actions to be reviewed and updated over time:

- as our organisation improves its cultural capability and becomes more advanced and proficient at embedding First Nations rights and interests into its core business
- in response to First Nations aspirations, or changes in the legislative, policy and regulatory landscape, particularly as self-determination reform, Treaty outcomes and other First Nations commitments are implemented or otherwise agreed between First Nations peoples and government.

Consistent with the Victorian Government's Self-Determination Reform Framework, we will 'Plan', 'Act', 'Measure' and 'Evaluate' our work to enable self-determination and deliver equitable regulatory outcomes for and with First Nations Victorians.

Figure 6: The commission's approach to enabling First Nations-led outcomes



Plan

We will plan our actions to deliver First Nations outcomes by developing a First Nations Action Plan every two years, including clear Action Owners, deliverables and timeframes.

To support the development of this plan, the Sponsoring Commissioner will work with Executive Directors and Divisional Champions to coordinate internal divisional regulatory inclusion workshops to proactively identify opportunities to improve regulatory inclusion for First Nations people across our workstreams.

Each First Nations Action Plan will also be informed by engagement with our First Nations staff, First Nations engagement mechanisms and other key stakeholders.

Act

We will carry out actions set out in our First Nations Action Plan, with Action Owners supported by their relevant Divisional Champion and Executive Director, the First Nations Working Group and Sponsoring Commissioner (as appropriate).

Measure

We will internally measure and monitor deliverables under each First Nations Action Plan, reporting annually to the commission (as responsible body).

Evaluate

We will publicly report on our achievement of outcomes annually under each First Nations Action Plan and support biannual evaluation of our efforts through our First Nations Forum (and other First Nations engagement mechanisms, as appropriate).

We will also evaluate the impact of regulatory interventions to understand their benefits and costs and ensure they are efficient and effective.

Governance

This flagship framework delivered under our *Advancing Equity* strategy, supports a whole-of-commission approach to achieving First Nations outcomes, acknowledging that it is everyone's responsibility to understand, take action and embed supportive practices within their work.

Our governance of this framework – including oversight and responsibility for planning, acting, measuring and evaluating our efforts – reflects this whole-of-organisation approach.

Commission

The commission as responsible body is responsible for approving and championing this framework and overseeing its implementation and evaluation, including the completion of actions set out in each First Nations Action Plan.

First Nations Working Group

Our First Nations Working Group will support the implementation of this framework by acting as the key body coordinating the development of each biannual First Nations Action Plan. The group will provide strategic advice to staff and divisions, monitor progress, and report annually to the commission as responsible body.

The First Nations Working Group will comprise at least:

- A Sponsoring Commissioner (who will also act as the Working Group chairperson).
- One 'Divisional Champion' from each operational division within the commission.
- A sponsoring executive.
- A representative from the Price, Monitoring and Regulation Division's Customer and Engagement Team.
- Any interested First Nations staff.

The Working Group will meet at least three times a year, and at other times as necessary, as determined by the Sponsoring Commissioner.

Executive Directors

Executive Directors are accountable to the Working Group and the commission for the timely completion of actions that have been allocated to Action Owners within their division in each First Nations Action Plan.

Divisional Champions

Divisional Champions are nominated by their relevant Executive Director. They are responsible for:

- Championing this framework and providing strategic advice to staff within their division.
- Participating in Working Group meetings and First Nations engagement mechanisms.
- Coordinating regulatory inclusion workshops for their relevant division, in partnership with the Sponsoring Commissioner and Secretariat.
- Overseeing and reporting on actions allocated to Action Owners within their division, and escalating issues to their Executive Director as required.
- Preparing papers to the Working Group and Commission as required.
- Attending relevant training and development activities.
- Supporting the biannual evaluation of framework outcomes and impacts.

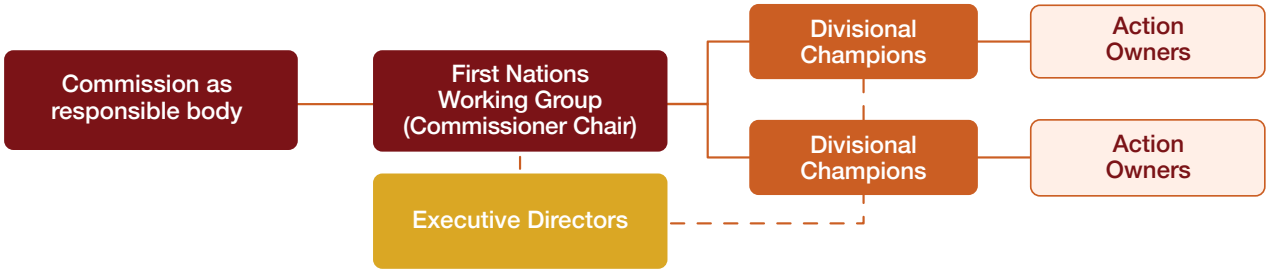
Action Owners

Action Owners are responsible for completing actions allocated to them in the First Nations Action Plan and supporting Divisional Champions to meet reporting requirements under this framework.

First Nations Forum

In addition to public reporting, from July 2027 the commission will report annually to its First Nations Forum on the achievement of outcomes under this framework and its current First Nations Action Plan.

Figure 7: Framework governance



Appendix 1 – Policy commitments

Victorian Government

Victorian Aboriginal Affairs Framework 2018–2023*

The *Victorian Aboriginal Affairs Framework* sets out the Victorian Government's overarching strategic framework for working with Aboriginal Victorians to drive improved outcomes, with corresponding socio-economic targets. The framework also commits to advancing Aboriginal self-determination, and includes key enablers and guiding principles to support this commitment.

Self-Determination Reform Framework*

The *Self-Determination Reform Framework* provides structure and guidance for Victorian Government departments and agencies to enact the *Victorian Aboriginal Affairs Framework*'s self-determination priorities across four reform domains: People, Outcomes, Systems and Accountability.

It also provides the architecture for Victorian Government departments to report on their progress in advancing Aboriginal self-determination.

Within the Department of Energy, Environment and Climate Action, commitments under this framework are delivered under *Pupangarli Marnmarnepu 'Owning Our Future' Aboriginal Self-Determination Reform Strategy 2020–2025*.

Treaty for Victoria

In October 2025, the Victorian Government passed enabling legislation to give effect to the first Statewide Treaty between First Peoples in Victoria and the State of Victoria and to recognise and restore First Peoples inherent rights.

The legislation establishes Gellung Warl, an accountable, democratically elected and culturally strong representative of First Peoples. Gellung Warl will enable First Peoples to exercise self-determination and come together politically to make collective decisions, including to design and deliver practical solutions to improve outcomes by doing what works for their communities.

Gellung Warl has three parts:

- First Peoples' Assembly of Victoria: a democratically elected body to inform Parliament and the Victorian Government on matters that affect First Peoples, and make decisions about issues that impact First Peoples. This includes the potential to make recommendations about regulatory design.
- Nginma Ngainga Wara: an independent oversight and accountability mechanism to evaluate and monitor how effective the Victorian Government is in achieving better outcomes for First Peoples, including under the National Agreement on Closing the Gap.
- Nyerna Yoorrook Telkuna: a functional arm supporting truth-telling, ongoing education, healing and reconciliation in local communities.

The legislation also contemplates ongoing Statewide Treaty-making to negotiate the ongoing transfer of decision-making, rule-making, advisory and other powers and functions from the State Government to Gellung Warl.

Barring Djinang Strategy 2017–2022*

Barring Djinang is a five-year whole-of-Victorian Government Aboriginal Employment and Career Development strategy. The two per cent Aboriginal Employment target in the strategy is underpinned by a range of Aboriginal employment, career development and cultural capability programs and resources which are available to the Victorian Public Sector. The strategy is coordinated by the Aboriginal Employment Unit, Victorian Public Sector Commission.

Social Procurement Framework

The *Social Procurement Framework* seeks to strategically use Victorian Government procurement to drive social, economic and environmental outcomes. Opportunities for Victorian Aboriginal People is one of seven social procurement objectives under the framework, aiming to increase purchasing from Victorian Aboriginal businesses and employment of Victorian Aboriginal people by suppliers to the Victorian Government.

Yuma Yirramboi Strategy

Yuma Yirramboi is the Victorian Government and Aboriginal Victorians' shared vision to generate greater individual and collective wealth for Aboriginal Victorians by:

- Investing in Aboriginal knowledge, cultural beliefs and practices to realise economic benefits for Aboriginal Victorians.
- Supporting Aboriginal Victorians throughout their careers.
- Supporting Aboriginal business growth and economic development.
- Facilitating greater wealth-generating resources and commercial expertise to accelerate the growth of the Aboriginal Estate in step with the pursuit of Treaty.
- Generating more jobs and meaningful careers (working with public, private and community sectors).
- Providing structured and transparent reporting of impact.

Water Sector

Water for Victoria is the Victorian Government's climate change adaptation plan for water. It coordinates activities across water corporations, catchment management authorities, the Victorian Environmental Water Holder, Traditional Owner groups, local government and community partners. It has a broad scope, with Aboriginal cultural, spiritual and economic values being one of eight areas of action. The latest action status report on these commitments was published in July 2023.

Water is Life is a Victorian Government strategy aimed to increase access to water for Traditional Owners. It includes policy commitments and pathways relevant to Victorian water businesses relating to partnership agreements and water entitlements. It includes a policy commitment to require water businesses to enter formal partnerships with Traditional Owners.

The *Statement of Obligations (General)* issued under the *Water Industry Act 1994* specifies Victorian water businesses' obligations in relation to performing their functions and exercising their powers. These obligations include integrating social obligations into business operations, as well as supporting sustainable and liveable communities. Due to be updated, an exposure draft circulated by the Department of Energy, Environment and Climate Action in 2024 proposed including First Nations and Traditional Owner objectives into business operations, and a specific obligation on formal partnerships and on integrating Traditional Owner involvement in water management.

Victorian Aboriginal and Local Government Strategy 2021–2026

The *Victorian Aboriginal and Local Government Strategy* aims to help local councils recognise and enable Aboriginal self-determination. It recommends actions for local governments, the Victorian Government and Aboriginal communities to progress Aboriginal self-determination and reconciliation.

The strategy includes a clear framework for shared decision-making processes and actions for Aboriginal Victorians working together with local government based on mutual control, shared power and decision-making, fairness, respect and trust.

To support the strategy, the Minister for Local Government issued a *Ministerial Good Practice Guideline and General Guidance for Councils Engaging with Aboriginal Victorians*. The guidance provides a step-by-step guide for councils on how to identify, engage and build connections and develop mutually beneficial relationships with Aboriginal Victorians.

*These strategies continue as Victorian Government policy commitments, despite their official expiry.

Australian Government

National Agreement on Closing the Gap

The Victorian Government signed the National Agreement on *Closing the Gap* in 2020 to enable Aboriginal and Torres Strait Islander people and governments to work together to overcome the inequality experienced by Aboriginal and Torres Strait Islander people and achieve life outcomes equal to all Australians.

The National Agreement is underpinned by a range of targets set to improve socio-economic inequalities for First Peoples and their communities, as well as priority reform areas:

- Formal Partnerships and Shared Decision Making.
- Building the Community-Controlled Sector.
- Transforming Government Organisations.
- Shared Access to Data and Information at a Regional Level.

First Nations Clean Energy Strategy

The *First Nations Clean Energy Strategy* includes the following guiding principles to achieve a just and fair transition, designed to underpin clean energy legislative and regulatory frameworks, policies, guidance, standards, programs and projects:

- Aboriginal and Torres Strait Islanders, being the First Nations peoples of Australia, must be enabled to self-determine how they lead, participate in, and benefit from the clean energy transition.
- First Nations peoples maintain their right to live on their land, with access to reliable and affordable clean energy.
- First Nations peoples are stewards and custodians of Country, including the land, waters, skies and seas. This connection is ongoing and enduring.
- Access to clean energy and a safe climate benefits all human and non-human life.
- First Nations peoples cultural heritage must be recognised, protected and celebrated throughout the clean energy transition.
- Building genuine partnerships and collaboration is a shared responsibility. Government has a special duty of care to lead these efforts and ensure they are underpinned by robust and transparent data collection, monitoring and reporting.