



Directions

to Trustee

Self-Determination Fund



**FIRST PEOPLES'
ASSEMBLY OF
VICTORIA**



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A Background

1 About the Self-Determination Fund

The Self-Determination Fund will be a financial resource to support and build economic self-determination, both through the Treaty process and into the future. It is administered by the Assembly as the Aboriginal Representative Body.

This is a new financial resource designed by and for First Peoples and controlled by First Peoples. The establishment of the Self-Determination Fund does not affect the State's continuing obligation to fund and deliver services (whether directly or indirectly) to the Victorian public, including to First Peoples through universal services and government-funded services delivered by Aboriginal Community Controlled Organisations.

The Self-Determination Fund activates self-determination by First Peoples which is a collective right held by First Peoples derived from the particular status of Indigenous Peoples as First Peoples, recognised in UNDRIP:

- a. First Peoples are empowered to make decisions about First Peoples' financial resources and by this, freely pursue their economic, political, social and cultural development (Article 3).
- b. First Peoples exercise their right to maintain and strengthen their distinct economic institutions and their right to participate fully, if they so choose, in the economic life of the State (Article 5).
- c. First Peoples enjoy their right to maintain and develop their political, economic and social systems or institutions and engage freely in their traditional and other economic activities (Article 20).
- d. First Peoples exercise their right to improve their economic and social well-being, and attend to the rights and special needs of Elders, women, youth, children and persons with disabilities (Article 21).
- e. First Peoples set their own priorities and directions for development of their communities (Article 23).

2 Role of the Self-Determination Fund

The Assembly expects the Trustee to be an active, strategic manager of the Self-Determination Fund in order to respond to the priorities and aspirations of First Peoples in furthering the Self-Determination Fund's charitable purposes.

The Self-Determination Fund will not directly deliver community and social services. The Assembly recognises the important role and work of our Aboriginal Community Controlled Organisations in delivering services and outcomes for First Peoples. The Self-Determination Fund is not intended to duplicate this work, but may, after consultation with First Peoples, be a resource to fund it.

The Self-Determination Fund may further its charitable purposes by funding or engaging collaboratively with other organisations or groups involved in community service delivery. It may also provide educative programs, advice or conduct other initiatives to support and empower First Peoples.

3 Structure of the Self-Determination Fund

As the representative body for First Peoples in the Treaty process, the Aboriginal Representative Body administers the Self-Determination Fund to:

- a. Support First Peoples to have equal standing with the State in Treaty negotiations.
- b. Provide a financial resource, independent from the State, that empowers First Peoples to build capacity, wealth, and prosperity.

The Aboriginal Representative Body has appointed the Trustee to operate the Self-Determination Fund under its direction and control. It gives direction and exerts control by:

- a. being the sole corporate member of the Trustee;
- b. appointing (or removing) the Trustee Board;
- c. setting the strategic direction and approving budgets; and
- d. issuing these Directions to Trustee that cover:
 - i. Principles
 - ii. Priority Spending Areas
 - iii. Advisory and Investment Committee
 - iv. Distribution Policy
 - v. Investment Policy
 - vi. Reporting
 - vii. Code of Conduct
 - viii. Dispute Resolution Policy
 - ix. Conflicts Policy
 - x. Fundraising

The Directions to Trustee are designed to reflect:

- a. strong cultural governance processes; and
- b. high standards of good governance and financial responsibility, including independence, transparency and accountability,

while always adhering to the principle of self-determination.

In performing its role, the Aboriginal Representative Body will ensure it reflects and adheres to:

- a. the priorities and aspirations of First Peoples;
- b. the Treaty Act, including the guiding principles;
- c. the legal documents creating the Self-Determination Fund:
 - i. the Self-Determination Fund Agreement, including the principles in clause 1.3 of that Agreement;
 - ii. the Trust Deed;
 - iii. the Company Constitution; and
- d. applicable laws, including respecting the Trustee's duties and discretions.

The Trustee can request that the Aboriginal Representative Body issue or modify a Direction to Trustee.

B Principles

The Self-Determination Fund Agreement between the Aboriginal Representative Body and State requires the Self-Determination Fund to operate according to seven Principles.

1 Self-determination and empowerment

The Self-Determination Fund will give effect to self-determination and empowerment and support First Peoples to make decisions about First Peoples' financial resources.

How will the Trustee implement this Principle?

- a. The Self-Determination Fund is a resource for First Peoples, independent from the State.
- b. The Self-Determination Fund will be managed by a Trustee with a Board comprised of majority First Peoples. This ensures First Peoples are making decisions about First Peoples' financial resources.

2 Fairness and equity

The Self-Determination Fund will be administered in a way that fairly and equitably benefits First Peoples.

How will the Trustee implement this Principle?

- a. The Self-Determination Fund is a resource for the benefit of First Peoples and must benefit them fairly and equitably now and into the future. The Trustee must particularly consider this in its approach to distributions from the Self-Determination Fund.

3 Responsiveness

The Self-Determination Fund will be a flexible and adaptive financial resource that First Peoples can access in line with their Treaty negotiation needs and their broader priorities and aspirations.

How will the Trustee implement this Principle?

- a. The broad priority spending areas and charitable purposes of the Self-Determination Fund enable the Trustee sufficient flexibility to administer the Self-Determination Fund for the benefit of First Peoples.
- b. The Trustee will have regard to First Peoples' priorities and aspirations as communicated through the Aboriginal Representative Body as the representative body for First Peoples in the Treaty process. The Trustee will implement the Directions to Trustee from the Aboriginal Representative Body and prepare a strategic plan in consultation with the Aboriginal Representative Body. The Trustee will consider advice from the Aboriginal Representative Body arising from consultations with First Peoples about their aspirations for the Self-Determination Fund.
- c. The Trustee will develop Funding Guidelines which ensure application and distribution processes are truly accessible, so that money is received by those who need it. The Trustee should ensure that its processes are not excessively bureaucratic or unduly burdensome on those seeking funding.

4 Innovation

The Self-Determination Fund will support innovative processes and programs, which transform and improve on existing approaches to resourcing First Peoples, so that First Peoples prosper in the modern economy in innovative, culturally strong ways.

How will the Trustee implement this Principle?

- a. The Self-Determination Fund's purposes are ambitious and historic. They allow First Peoples to imagine a future in which they take up opportunities in a modern economy, on an equal footing with other Victorians. The Self-Determination Fund will help First Peoples build their own path to get there.
- b. The Self-Determination Fund's public charitable trust model combines good financial governance with strong cultural practices.
- c. The model ensures the Self-Determination Fund will be managed with integrity and responsibly, to leave a positive mark on the communities and environment in which we live.
- d. Strong cultural guidance of First Peoples will be provided through the Aboriginal Representative Body. The Trustee will draw from this cultural guidance in producing Funding Guidelines and an Investment Strategy, which further the Self-Determination Fund's purposes.
- e. The Trustee will have the ability to develop funding initiatives to meet identified needs of First Peoples on their journeys to Treaties and prosperity.
- f. The Trustee must consider opportunities to stimulate First Peoples' entrepreneurship, business development and prosperity across its activities and functions, including its procurement and purchasing activities.

5 Respect

The Self-Determination Fund will reflect First Peoples' values and ways of doing business. The Self-Determination Fund will respect and support First Peoples' governance structures.

How will the Trustee implement this Principle?

- a. The Self-Determination Fund model was developed by the Assembly, incorporating extensive feedback from First Peoples' communities.
- b. The Trustee will develop distribution and investment processes which reflect First Peoples' values and ways of doing business. Those processes are required to be culturally strong.

6 Safety

The Self-Determination Fund will be administered with care, diligence, and prudence for the benefit of First Peoples now and into the future.

How will the Trustee implement this Principle?

- a. The Trustee's duties to manage the Self-Determination Fund as a public charitable trust require it to exercise care, diligence and prudence in furtherance of the Self-Determination Fund's purposes for the benefit of First Peoples now and into the future.

7 Transparency and accountability

The Self-Determination Fund will be administered with transparency and be accountable to First Peoples.

How will the Trustee implement this Principle?

- a. The Aboriginal Representative Body and Trustee will ensure that important information about the Self-Determination Fund's activities and operations are publicly reported. Public annual reports on the Self-Determination Fund's activities will include information about:
 - i. distributions from the Self-Determination Fund, including who has received funding and how much, and how the funding relates to the priority spending areas identified in these Directions to Trustee;
 - ii. administration costs;
 - iii. audited financial statements; and
 - iv. the strategic plan prepared under the Trust Deed.
- b. The Trustee will support the Aboriginal Representative Body to ensure such public reporting will be made.

C Paramount Provisions

The provisions of the Trust Deed, the Company Constitution, the Self-Determination Fund Agreement and Relevant Law prevail over any provision to the contrary in these Directions to Trustee.

D Priority Spending Areas

1 What are the priority spending areas?

The Trustee must distribute and invest funds from the Self-Determination Fund only for charitable purposes to the following three priority spending areas:

- a. Equal footing;
- b. Wealth and prosperity; and
- c. Future investments.

2 Priority spending area – equal footing

The equal footing priority area requires funds to be directed at supporting First Peoples to have equal standing with the State in Treaty negotiations.

- a. This priority area should be interpreted broadly, flexibly and holistically, with reference to First Peoples' priorities and aspirations as they relate to the different stages of the journey to Treaty (both Statewide and Traditional Owner Treaties).
- b. The Aboriginal Representative Body expects the Trustee to play a proactive role in meeting the aspirations and needs of First Peoples in this priority area.
- c. In the context of Traditional Owner Treaties, equal footing involves supporting Traditional Owners to exercise their rights and meet their responsibilities under the Treaty Negotiation Framework. This support can manifest in a variety of ways: for one group it could mean assistance to identify and assert Aboriginal Lore, Law and Cultural Authority; for another it may be access to facilitators or legal assistance.
- d. In the context of Statewide Treaty, equal footing includes enabling the diversity of First Peoples to participate in the Treaty process. All First Peoples should be empowered to be heard, to have the ability to exercise rights and to progress proposals for structural reform to government in Victoria for self-determination.

3 Priority spending area – wealth and prosperity

The wealth and prosperity priority area requires funds to be directed at providing resources that empower First Peoples to build capacity, wealth and prosperity.

Capacity, wealth, and prosperity are to be defined broadly, flexibly and holistically, and with reference to what First Peoples want for themselves and future generations. This priority spending area is about recognising that colonisation and dispossession have left First Peoples without equal access and opportunities to enable them to build wealth and prosper – in an economic, social and wellbeing sense. The Self-Determination Fund will address this by providing supports and opportunities – such as capacity-building – for the attainment of wealth and prosperity.

4 Priority spending area – future investments

The future investments priority area requires funds to be directed at growing the capital of the Self-Determination Fund (or a part of the Self-Determination Fund) and otherwise achieving and maintaining the sustainability of the Self-Determination Fund, including by generating income which may be applied towards the Self-Determination Fund's purposes, in perpetuity.

E Advisory and Investment Committee

1 Background

The Trustee is empowered to establish an Advisory and Investment Committee (under the Company Constitution) to provide guidance and advice to it.

Although the Advisory and Investment Committee's advice is not binding, the Trustee Board must consider the advice it receives.

The Aboriginal Representative Body wants to ensure that the Trustee has available to it guidance from relevant experts, including people with cultural and community experience. The Aboriginal Representative Body therefore provides these Directions regarding the Advisory and Investment Committee.

2 Functions

The functions of the Advisory and Investment Committee may include advising on:

- a. strategic direction of the Self-Determination Fund and spending priorities;
- b. Funding Guidelines;
- c. Investment Policy, Investment Strategy and opportunities for the Self-Determination Fund;
- d. decisions in relation to distributions and investments;
- e. reporting and budget processes of the Trustee; and
- f. any other functions the Trustee may determine from time to time consistent with the Trust Deed.

3 Composition of Committee

The Advisory and Investment Committee should include at least one:

- a. Elder, nominated by the Elders' Voice;
- b. person with First Peoples' cultural or community leadership experience;
- c. person with experience in managing investments or funds; and
- d. person with relevant experience in business or financial strategy.

The Directors may also consider providing the opportunity for Aboriginal or Torres Strait Islander young people to participate in or observe the work of the Committee.

4 Conduct

Members of the Advisory and Investment Committee should:

- a. act in the best interests of the Self-Determination Fund;
- b. carry out their role with honesty and integrity;

- c. comply with legal obligations, applicable policies and Cultural Protocols, including the Conflicts Policy;
- d. carry out their role with due care, competence and diligence, to a high professional standard;
- e. ensure contributions and decision-making are sufficiently informed;
- f. make decisions and fulfil duties in a timely manner;
- g. act in good faith; and
- h. not bring the Self-Determination Fund into disrepute or otherwise act to undermine the reputation of the Self-Determination Fund.

5 Consultations by the Aboriginal Representative Body

The Aboriginal Representative Body will undertake consultations and engage with First Peoples in relation to the Self-Determination Fund. The Aboriginal Representative Body will provide information on the outcome of those consultations and engagements to the Trustee to assist in its role for the purposes of its decision-making.

The Trustee will provide information on the outcome of consultations and engagements to the Advisory and Investment Committee, in the form it determines, to assist the Committee to fulfil its functions.

While it is not the function of the Advisory and Investment Committee to conduct consultations and engagements with First Peoples, the Committee may make enquiries for the purpose of providing advice. For example, it may collect information where the Trustee requests advice on the social impact of investments in communities that have been provided with funds.

6 Procedures

The Advisory and Investment Committee will prepare meeting protocols for approval by the Trustee that cover:

- a. meetings, including chairing, quorum and frequency;
- b. decisions, including voting;
- c. papers, including agenda, meeting papers and minutes;
- d. reporting to the Trustee;
- e. applicable Cultural Protocols; and
- f. amending the meeting protocols.

F Distribution Policy

1 Purpose

The purpose of this policy is to set the parameters, process and rules to be followed in relation to distributions made by the Trustee to further the charitable purposes of the Self-Determination Fund.

2 Establishment Period

2.1 When does the Establishment Period end?

The Establishment Period starts when the Self-Determination Fund is established and ends once all the following have occurred:

- a. the receipt into the Self-Determination Fund of the initial funding contribution from the State under clause 7.1 of the Self-Determination Fund Agreement;
- b. the publication of Funding Guidelines by the Trustee under clause 6 of this Distribution Policy; and
- c. the adoption of the strategic plan by the Trustee under clause 8.3 of the Trust Deed.

2.2 Accumulation

During the Establishment Period, the Trustee must accumulate and hold in the Self-Determination Fund:

- a. all contributions from the State that are received by the Trustee for allocation to the Self-Determination Fund;
- b. such other money, property, or benefits received by the Trustee specifically for allocation to the Self-Determination Fund; and
- c. all of the income (including any realised capital gains) of the Self-Determination Fund.

2.3 Distributions

The Trustee may only distribute the income or capital of the Self-Determination Fund during the Establishment Period:

- a. for payment of the reasonable expenses recoverable under the Trust Deed; or
- b. if the Trustee has determined it is in the best interests of the Self-Determination Fund, having regard to the Self-Determination Fund's purposes and with the consent of the Aboriginal Representative Body.

3 Capital Base

In each financial year following the Establishment Period, the Trustee may distribute so much of the income or capital of the Self-Determination Fund that exceeds the Capital Base for that financial year.

The Capital Base during the first financial year after the end of the Establishment Period is an amount which is 10% of the aggregate value of the Self-Determination Fund as at the end of the Establishment Period.

At the end of each financial year following the financial year in which the Establishment Period ends, the Capital Base must be adjusted by multiplying the Capital Base at the end of the previous financial year by the current Consumer Price Index for that financial year and dividing it by the Consumer Price Index of the previous financial year.

4 Minimum Distributions

In order to further the Self-Determination Fund's purposes, it is important that funding from the Self-Determination Fund reaches First Peoples who need it. In each financial year following the one year anniversary of the end of the Establishment Period, the Trustee must make distributions of at least a minimum amount (Minimum Distribution) to be determined by the Trustee in its discretion at the start of that financial year, taking into account the Self-Determination Fund's earnings in the previous financial year and the aggregate value of the Self-Determination Fund.

5 Excluded distributions

The Trust Deed requires that the Self-Determination Fund be applied only for the Self-Determination Fund's charitable purposes. There may be activities that fall within the priority spending areas but do not further a charitable purpose. The Trustee should seek legal advice if it is unsure whether an activity is for a charitable purpose.

The Trustee must not distribute funds:

- a. other than for charitable purposes;
- b. for the purpose of engaging in, or promoting, activities that are unlawful or contrary to public policy, promoting or opposing a political party or a candidate for political office and any other disqualifying purposes under the *Charities Act 2013* (Cth);
- c. to and for the benefit of the Aboriginal Representative Body (other than permitted payments under clause 3.3 of the Company Constitution);
- d. in breach of clause 7.3 of the Trust Deed; and
- e. for particular purposes or activities which the Trustee reasonably believes will adversely impact Treaty negotiations between the State and a negotiating party or parties under the Treaty Negotiation Framework.

6 Funding Guidelines

6.1 Content

The Trustee must develop, publish and maintain Funding Guidelines which include rules and procedures for the following:

- a. the application process for the distribution of funds from the Self-Determination Fund;
- b. how the Trustee will assess and make decisions on applications and distribution of funds, including in respect of:
 - i. conditions on the release of funds; and

- ii. whether certain applications have priority in relation to other applications;
- c. funding conditions, including:
 - i. what and how funding recipients must report to the Trustee in relation to the use of funds;
 - ii. conditions on the release and use of the funds; and
 - iii. consequences for failure to comply with funding conditions, including:
 - A. reducing, suspending or withholding payments to the recipient; and
 - B. requiring repayment of amounts;
- d. how the Trustee will ensure the costs of professional services funded from the Self-Determination Fund are value for money and not excessive; and
- e. the complaints process and pathways for review of Trustee decisions available to applicants and recipients under the Dispute Resolution Policy.

6.2 Development

In developing (or amending) the Funding Guidelines mentioned in clause 6.1, the Trustee must:

- a. ensure that distributions from the Self-Determination Fund, as a whole, fairly and equitably benefit a broad cross-section of First Peoples. For the avoidance of doubt, this principle does not require that each individual distribution, or any part of the Self-Determination Fund, be distributed for the benefit of a broad cross-section of First Peoples;
- b. comply with the requirements in the Trust Deed (see in particular clauses 7.1 to 7.3 of the Trust Deed);
- c. consult with the Advisory and Investment Committee, if established;
- d. have regard to the Principles for the operation of the Self-Determination Fund set out in Section B ('Principles') of these Directions to Trustee;
- e. ensure the Funding Guidelines:
 - i. are culturally strong;
 - ii. respect the right to self-determination of those seeking support from the Self-Determination Fund;
 - iii. are easily understood and accessible and are not unduly burdensome on those who wish to seek support from the Self-Determination Fund;
 - iv. confirm that funds will only be applied exclusively for charitable purposes and in furtherance of the Self-Determination Fund's purposes;
 - v. promote accountability for the use of funds;
 - vi. are designed to minimise risk of legal challenge to the Trustee's decision-making; and
 - vii. set out a transparent process for the Trustee's decision-making with respect to distributions;
- f. ensure that the Trustee will:
 - i. approve distributions only where it has received and assessed an application, in accordance with its established processes (including funding initiatives); and

- ii. in assessing an application, take into account the matters specified in the Funding Guidelines and decide on relevant conditions for release of funds.

The Funding Guidelines must be approved by the Aboriginal Representative Body before they are adopted by the Trustee.

The Trustee may amend the Funding Guidelines, with approval of the Aboriginal Representative Body.

7 Funding initiatives

7.1 Initiatives

The Trustee may develop funding initiatives on particular themes, within the priority spending areas. The Trustee may develop particular processes to facilitate and support applicants for funding through those initiatives, for example:

- a. identifying activities to focus on;
- b. conducting outreach to potential funding applicants; or
- c. designing or commissioning activities.

7.2 Identifying themes

The Trustee may identify themes arising from:

- a. applications for distributions;
- b. activities funded by distributions from the Self-Determination Fund;
- c. Treaty negotiations, conducted under the Treaty Negotiation Framework; or
- d. disparate impacts on potential recipients, both within and external to the Self-Determination Fund, for example, due to an external program indirectly benefiting a particular demographic of First Peoples over another,

so as to identify potential activities which might be funded by the Self-Determination Fund and improvements that may be made in relation to funding initiatives.

8 Support for potential recipients of funds

The Trustee must make available support for any potential recipient of funds to make an application for funding. This may involve the Trustee engaging capacity building coaches to support applicants and funding recipients. The scope of such support processes and services is subject to the Trustee's available resources and budget processes.

The Trustee's support processes and services must respect potential recipients' right to self-determine what support they may need. Not all applicants for funding may need or desire support. The type of support desired may differ between potential recipients of funding.

9 Distribution reporting

The Trustee must implement processes, taking into consideration:

- a. in the case of personal information of an individual, the person's privacy right; and
- b. in the case of Indigenous Data, Indigenous Data Governance and Indigenous Data Sovereignty,

To ensure that it can report on the distribution of funds made from the Self-Determination Fund which are required to be included in the annual report (see Section H ("Reporting to the Aboriginal Representative Body"), clause 3), including details of:

- a. the recipient of the distribution;
- b. the amount of the distribution;
- c. the proportion of total annual funds provided to each recipient to spend on professional services;
- d. the charitable purposes in clause 4.1 of the Trust Deed for which the distribution is applied; and
- e. reporting requirements that apply to the distribution.

10 Data

The Trustee will ensure it collects, stores and uses the information and data it holds about a recipient (where the recipient is a person) in a manner that is:

- a. responsible, honest, ethical, and lawful, and consistent with the Code of Conduct (Section I of these Directions to Trustee); and
- b. respects Indigenous Data Governance and Indigenous Data Sovereignty.

G Investment Policy

1 Purpose

The purpose of this policy is to set the parameters, process and rules to be followed in relation to investments made by the Trustee to further the charitable purposes of the Self-Determination Fund.

2 Investment principles

The Trustee must invest the Self-Determination Fund:

- a. in an appropriate asset mix that reflects the purposes of the Self-Determination Fund, as a public charitable trust;
- b. in accordance with a well-performing but sufficiently conservative investment strategy that preserves the Self-Determination Fund and so that the Capital Base requirement in the Distribution Policy is reasonably expected to be satisfied in each year;
- c. in a manner that does not prevent the Trustee from accessing part of the capital of the Self-Determination Fund which it considers might be required to make distributions in furtherance of the Self-Determination Fund's purposes in any given financial year; and
- d. in accordance with this Investment Policy.

3 Investment Strategy

The Trustee must develop and maintain an Investment Strategy for the Self-Determination Fund, having regard to the above investment principles.

The Investment Strategy must address:

- a. the investment objective for the Self-Determination Fund;
- b. the risk-return profile for the Self-Determination Fund (or any part of the Self-Determination Fund);
- c. asset allocation;
- d. consistent with clause 5 of this Investment Policy, how the Trustee will ensure the Self-Determination Fund's investments are responsible;
- e. appropriate benchmarks for the Trustee to report on actual performance of the Trustee's investments against investment performance benchmarks identified in the Investment Strategy, including the Trustee's costs and expenses for conducting the investments; and
- f. where relevant, how and on what terms the Trustee may engage a qualified investment manager.

The Investment Strategy must be approved by the Aboriginal Representative Body before it is adopted by the Trustee.

The Trustee may amend the Investment Strategy, with approval of the Aboriginal Representative Body.

The Trustee must review the Investment Strategy annually for ongoing accuracy and relevance.

4 Matters Trustee must have regard to

In exercising its powers of investment with respect to the Self-Determination Fund, the Trustee must have regard to the matters listed under section 8 of the *Trustee Act 1958 (Vic)*, specifically:

- a. the purposes of the trust;
- b. the desirability of diversifying trust investments;
- c. the nature of and risk associated with existing trust investments and other trust property;
- d. the need to maintain the real value of the capital or income of the trust;
- e. the risk of capital or income loss or depreciation;
- f. the potential for capital appreciation;
- g. the likely income return and the timing of income return;
- h. the length of the term of the proposed investment;
- i. the probable duration of the trust;
- j. the liquidity and marketability of the proposed investment during, and on the determination of, the term of the proposed investment;
- k. the aggregate value of the trust estate;
- l. the effect of the proposed investment in relation to the tax liability of the trust;
- m. the likelihood of inflation affecting the value of the proposed investment or other trust property;
- n. the costs (including commissions, fees, charges and duties payable) of making the proposed investment; and
- o. the results of a review of existing trust investments.

5 Responsible investments

The Trustee will ensure the Self-Determination Fund's investments (including any investments managed by an investment manager) are responsible. In this context, "responsible" means having regard to environmental, social and governance considerations in making investment decisions.

Ensuring investments are responsible may lead to the Trustee avoiding investments that create negative impact by:

- a. polluting land, air, or waters;
- b. destroying or wasting non-renewable resources;
- c. extracting, creating, producing, manufacturing, or marketing goods or services that have a harmful effect on humans and the environment, including tobacco;
- d. contributing to modern slavery or exploiting people through the payment of low wages or the provision of poor working conditions;
- e. acquiring and/or exploiting land or commodities primarily for the purpose of speculative gain and/or in disregard for Indigenous peoples' land rights;

- f. discriminating by way of race, age, religion, disability, or sex in employment, marketing, or advertising practices; or
- g. contributing to the repression of human rights and/or the rights of Indigenous peoples.

This may also lead to the Trustee making investments that: align with the work being done through the Self-Determination Fund's distributions for its charitable purposes; actively consider environmental, social and governance matters; and/or otherwise target positive social and environmental impact.

6 Monitoring investment performance

The Trustee will monitor the performance of the investments at least quarterly and as against appropriate benchmarks identified in the Investment Strategy, both at the total portfolio level and for each individual asset class.

The principal objectives of monitoring investment performance are to:

- a. assess the extent to which investment objectives under the Investment Strategy are being achieved;
- b. assess the ability of the asset mix and suggested benchmarks to meet their investment objectives; and
- c. ascertain any weaknesses in the Investment Strategy.

7 Duties of the Trustee in respect of investments

The Trustee must ensure that all persons responsible for investment decisions, management, consulting, or any investment advice with respect to the Self-Determination Fund are obliged to exercise the care, diligence and skill that a prudent person would exercise in managing the affairs of other persons.

The Trustee has duties under law that include:

- a. a duty to exercise the powers of a trustee in the best interests of all present and future beneficiaries of the trust;
- b. a duty to invest trust funds in investments that are not speculative; and
- c. a duty to take advice.

The above duties do not limit other duties of the Trustee under law, the Trust Deed, the Company Constitution or these Directions to Trustee.

8 Conflict of interest

All persons responsible for investment decisions, management, consulting, or any investment advice with respect to the Self-Determination Fund must:

- a. comply with the Conflicts Policy adopted by the Trustee; and
- b. refuse any remuneration, commission, gift, favour, service, or benefit that might influence, or be seen to influence the discharging of their duties, unless otherwise disclosed in writing and agreed to by the Aboriginal Representative Body.

Failure to comply with the above requirement shall be grounds upon which the Trustee may take action, including termination.

H Reporting to the Aboriginal Representative Body

1 ARB Threshold

The Trust Deed requires that a proposed distribution or investment above a certain threshold (ARB Threshold) be notified to the Aboriginal Representative Body.

For the purposes of the Trust Deed, the ARB Threshold is any proposed distribution or investment that is equal to or exceeds \$5,000,000.00.

2 Quarterly report

The Trust Deed requires that the Trustee provides to the Aboriginal Representative Body quarterly reports.

Each quarterly report must address, for the previous quarter:

- a. the activities of the Trustee;
- b. proposed and actual distributions and investments from the Self-Determination Fund; and
- c. any agent or delegate appointments made by the Trustee (under clause 6.3 of the Trust Deed).

At least 10 days before providing the final quarterly report, the Trustee must provide a draft of the report to the Aboriginal Representative Body. The Trustee must consider any comments received from the Aboriginal Representative Body before finalising the report.

3 Annual report

The Trust Deed requires that the Trustee provides to the Aboriginal Representative Body an annual report.

Each annual report must address, for the previous year:

- a. the activities of the Trustee;
- b. the Minimum Distribution amount determined by the Trustee under the Distribution Policy;
- c. details on the distribution of funds made from the Self-Determination Fund, including details of:
 - i. the recipient of the distribution;
 - ii. the amount of the distribution;
 - iii. the proportion of total annual funds provided to each recipient to spend on professional services;
 - iv. the charitable purposes in clause 4.1 of the Trust Deed for which the distribution is applied; and
 - v. reporting requirements that apply to the distribution;

- d. a summary of investments made in the previous year and investments held by the Self-Determination Fund, including asset allocation;
- e. how the Trustee has delivered against the strategic plan;
- f. a summary of the Trustee's approach to procurement (including the engagement of external consultants and advisers), including the total value of contracts or dealings with First Peoples' businesses and Aboriginal Community Controlled Organisations;
- g. financial statements;
- h. administration costs;
- i. various financial and social outcomes of distributions and investments;
- j. advances in political, economic, social, and cultural self-determination for First Peoples considered by the Trustee to be relevant to the Self-Determination Fund; and
- k. any other information required by law or regulation.

The Trustee must ensure that the annual report is presented, and information is conveyed, in a manner which is as accessible as possible to a wider audience of First Peoples and other Victorians. The Trustee should give consideration to presenting information in a culturally appropriate manner, and in plain English.

At least 15 days before providing the annual report, the Trustee must provide a draft of the report to the Aboriginal Representative Body. The Trustee must consider any comments received from the Aboriginal Representative Body before finalising the annual report.

4 Monitoring and evaluation

The Trustee must monitor and evaluate various financial and social outcomes of Fund distributions and investments, to enable it to report as required by clause 3(i) above.

I Code of Conduct

1 Purpose

This Code of Conduct sets the standards of behaviour expected of the Directors of the Trustee to ensure that:

- a. the Self-Determination Fund is effective, transparent and accountable;
- b. high standards of honesty, integrity and sound judgment are achieved;
- c. there is understanding and respect for First Peoples' culture and ways of doing business;
- d. the working relationship between the Aboriginal Representative Body and the Trustee is respectful and productive; and
- e. the Trustee exercises its powers in good faith in the best interests of the Self-Determination Fund.

2 Who does this Code of Conduct apply to?

This Code of Conduct applies to each Director of the Trustee when:

- a. acting in their capacity as Director;
- b. interacting with Trustee staff;
- c. interacting with general and reserved members of the Aboriginal Representative Body, the Elders' Voice, and Aboriginal Representative Body staff;
- d. interacting with any stakeholders; and
- e. engaging with the wider public.

3 General standards

Directors must:

- a. have a clear understanding of their duties and legal responsibilities and not do anything to exceed their powers;
- b. carry out their role in good faith, with honesty and integrity, always acting ethically and in the best interests of the Self-Determination Fund;
- c. carry out their role with due care, competence and diligence, to a high professional standard;
- d. exercise their obligations and use their powers in ways that are economical, efficient, responsive, and responsible;
- e. exercise their power of delegation responsibly by taking into account the skill and experience of the proposed delegate;
- f. demonstrate good judgment and a sound approach to decision-making;
- g. seek professional advice and training where they do not have relevant expertise or skills, including maintaining and developing their knowledge of the purposes of the Self-

Determination Fund, the Trustee's strategic plan, and the understanding of First Peoples' history, aspirations, and values;

- h. treat colleagues and staff members fairly and equitably and with respect and sensitivity to their rights, cultural identity, and privacy;
- i. strive to earn and sustain confidence from First Peoples by exhibiting high ethical standards and a respect for self-determination in exercising their functions;
- j. integrate into their work and act in accordance with Cultural Protocols;
- k. identify and promote best practice; and
- l. not bring the Self-Determination Fund into disrepute or otherwise act to undermine the reputation of the Self-Determination Fund.

4 Impartiality

The Directors will be required to manage finite resources and competing spending priorities. It is important that Directors are, and are seen to be, impartial in making distribution and investment decisions.

Directors of the Trustee must demonstrate impartiality by:

- a. being fair, objective and open minded in performing their duties, fulfilling their responsibilities and exercising their powers;
- b. avoiding, declaring and managing conflicts of interests and competing interests; and
- c. not putting themselves in a position where they can be inappropriately influenced in performing their duties.

Directors must use their position to promote the best interests of the Self-Determination Fund. They must not use their position to seek an advantage for themselves or another person or to cause detriment to the Trustee or Self-Determination Fund.

Directors must not seek gifts or favours for themselves, members of their family or other close associates. They must decline gifts, hospitality or favours that may cast doubt on their ability to apply independent judgment.

5 Culture

Directors must be guided by Aboriginal lore and law, cultural authority and Aboriginal cultural values and practices. This includes respect for Elders, past and present.

Directors must ensure the Self-Determination Fund operates in a way that empowers diverse First Peoples' communities and respects their right to self-determination. Directors should encourage participation and engagement of young people in the work of the Trustee, where relevant and possible.

Directors must ensure cultural safety in the Self-Determination Fund's workplace and operations, including interactions with First Peoples' communities. This means creating an environment where people feel safe, culture and identity is respected and there is no tolerance for lateral violence.

Directors must uphold the sovereignty of First Peoples over their knowledge, stories, information and data, and respect Indigenous Data Governance and Indigenous Data Sovereignty.

Directors must:

- a. foster a culture that is free of intimidation and bullying;
- b. be courteous and respectful to others; and
- c. act in accordance with equal opportunity legislation which protects people from discrimination.

6 Uphold the law

Directors must comply with law and regulations and take steps to understand their duties under law. This includes complying with, and fulfilling responsibilities under, the legal documents which establish and govern the Self-Determination Fund: the Trust Deed; the Company Constitution; and Directions to Trustee.

Directors must comply with policies and Cultural Protocols of the Trustee as adopted from time to time.

7 Proper use of information

Directors must use the information they gain in the course of their Board duties only for its intended purpose. They must not use the information, including privileged information or commercially sensitive information, to obtain an advantage for themselves or another person or to cause detriment to the Trustee or Self-Determination Fund.

Directors must respect confidentiality and use their discretion, prudence and good judgment when deciding how to treat information.

Directors may obtain personal data and information in the course of their work. While the Trustee must operate in a transparent manner, the Trustee (and individual Directors) should ensure they protect the privacy and personal information of individuals and groups, and comply with applicable privacy laws.

Directors must respect Indigenous Data Governance and Indigenous Data Sovereignty.

J Dispute Resolution Policy

1 Purpose

This Dispute Resolution Policy sets out the principles and procedures that are to be applied when a Dispute arises, to assist in the resolution of that Dispute and maintain the operation of the Self-Determination Fund.

2 Who does this policy apply to?

This policy applies to any two or more of the following persons:

- a. a potential recipient, applicant or recipient of funds;
- b. the Trustee;
- c. a Director of the Trustee;
- d. a staff member of the Trustee or Self-Determination Fund;
- e. the Aboriginal Representative Body;
- f. a Director of the Aboriginal Representative Body;
- g. the Advisory and Investment Committee; and
- h. a member of the Advisory and Investment Committee.

3 What is a Dispute?

A Dispute means a dispute, complaint, grievance or issue raised by a person (in their own capacity or on behalf of a body listed in clause 2) in relation to the Self-Determination Fund in respect of:

- a. the conduct of the Aboriginal Representative Body or a Director or staff member of the Aboriginal Representative Body;
- b. the conduct of the Trustee or a Director or staff member of the Trustee;
- c. the conduct of the Advisory and Investment Committee or a member of the Advisory and Investment Committee;
- d. a decision of the Trustee regarding distributions;
- e. conduct of an applicant or recipient of funds; or
- f. any other matter which the Disputes Coordinator considers should be resolved under this policy.

A Dispute does not include a dispute, complaint, grievance or issue that is:

- a. frivolous, malicious, vexatious, misconceived or lacking in substance;
- b. not directly related to the administration of the Self-Determination Fund; or
- c. a dispute between the Aboriginal Representative Body and the State to which the dispute resolution process under Part 7 of the Treaty Act applies.

4 Types of Disputes

Without limiting the meaning of Dispute under this policy, types of Dispute may include:

- a. failure to comply with the Trust Deed;
- b. failure to comply with the Directions to Trustee;
- c. failure to comply with a policy or Cultural Protocol of the Aboriginal Representative Body or Trustee;
- d. failure to comply with funding conditions or other non-compliance with funding arrangements;
- e. behaving in a way that is unacceptable in a cultural sense under a policy or Cultural Protocol of the Aboriginal Representative Body or Trustee; or
- f. concerns about administration of the Self-Determination Fund relating to:
 - i. the decision-making process followed for a particular decision;
 - ii. scope of information considered in making a decision; or
 - iii. the timeliness of a decision,

but not relating to the substantive outcome of a decision because the complainant simply disagrees with the decision or otherwise considers the decision is wrong.

5 Self-Determination Fund operations to continue

Despite the existence of a Dispute, the Self-Determination Fund must continue to operate.

6 Discretion not to consider Dispute

The Disputes Coordinator, Trustee Board and Dispute Resolution Panel has discretion to exclude a Dispute where it considers this course of action is appropriate.

The Disputes Coordinator, Trustee Board and Dispute Resolution Panel will not exercise its discretion to exclude a Dispute lightly. The discretion will only be used in cases where there are compelling reasons for deciding that the Dispute should not be considered under this policy.

Examples where the Disputes Coordinator, Trustee Board and Dispute Resolution Panel may consider excluding a Dispute include:

- a. if there is a more appropriate place to deal with the Dispute, such as a court, tribunal or other dispute resolution scheme;
- b. if the subject matter of the Dispute has already been adequately dealt with by the Disputes Coordinator, Trustee Board and Dispute Resolution Panel;
- c. if a determination has been made by the External Panel in relation to the Dispute;
- d. if the Dispute relates to the practice or policy of the Aboriginal Representative Body, Trustee Board or Advisory and Investment Committee and does not involve any allegation of either non-compliance or inappropriate application of the practice or policy; and
- e. if the complaint being made is frivolous, malicious, vexatious, misconceived or lacking in substance, and is therefore not a Dispute for the purpose of this policy.

7 Principles

The following principles apply to the dispute resolution process under this policy:

- a. A party should only lodge a Dispute in good faith, without frivolous, malicious or vexatious intent.
- b. The outcome or resolution sought by the party who lodges a Dispute must be proportionate, reasonable and deliverable.
- c. All Disputes must be treated as confidential. A Dispute will only be disclosed to persons where necessary to address the matters raised in the Dispute, unless all parties consent or there is an imperative reason for part or full disclosure (for example, in circumstances where the Trustee has legal obligations to report certain conduct).
- d. The dispute resolution process recognises the interconnectedness of First Peoples' communities that may be affected by a Dispute.
- e. All parties must be treated fairly, equitably and respectfully and all sides must be listened to.
- f. Disputes should be resolved as efficiently as possible in the circumstances.
- g. Unless the circumstances require, for example the Dispute involves sacred cultural knowledge, dispute resolution discussions between parties (and any other involved persons) should be open, transparent and focused on finding common understandings.
- h. First Peoples' cultural values and cultural practices inform the dispute resolution process. There is no one-size-fits-all approach to dispute resolution processes.
- i. Each party may have a support person present during meetings, discussions, interviews and hearings.

8 Dispute resolution procedure

8.1 Informal Discussions

Wherever possible, Disputes should be resolved informally. This may include an informal discussion with the party or parties to which the Dispute relates or that are affected by the Dispute. It might also involve arranging group discussions, training or other support services to address behaviour which is the subject of the Dispute.

If the Dispute cannot be resolved by informal means, a party to the Dispute may provide written notice to the Disputes Coordinator setting out the nature of the Dispute.

8.2 Disputes Coordinator

- a. The Trustee Board will appoint the Trustee CEO or a qualified staff member of the Trustee as the Disputes Coordinator.
- b. If a party does not wish to discuss the Dispute directly with another party to the Dispute or if the Dispute has been unable to be resolved via informal means, the party may by written notice:
 - i. formally raise the Dispute with the Disputes Coordinator; or
 - ii. if the Dispute concerns the Disputes Coordinator directly, formally raise the

Dispute with the Dispute Resolution Panel.

In the written notice, the party should clearly state their concerns, the party or parties involved, their preference as to the steps taken to resolve the Dispute and the outcome sought.

- c. Upon receiving a written notice of a Dispute, if the Disputes Coordinator considers a facilitated discussion or yarning circle would be an appropriate means of resolving the Dispute, they will arrange the facilitated discussion or yarning circle and monitor its progress and outcomes.
- d. In this context, a facilitated discussion or yarning circle means a meeting of the parties and a facilitator aimed at offering each participant an opportunity to speak in a safe non-judgmental place, share their thoughts in an inclusive environment, and collaborate to build a plan and a collective commitment to action. The facilitator will be the Disputes Coordinator or an experienced facilitator. Wherever possible, the facilitator will be an Aboriginal facilitator.
- e. Having regard to the purpose and principles of the Self-Determination Fund and the nature of the Dispute, the Disputes Coordinator must, within two weeks of receiving written notice of a Dispute, take steps to address the matters raised in the Dispute. Such steps will be determined in the Disputes Coordinator's sole discretion and will depend on the nature of the matters raised in the Dispute, but may include:
 - i. requesting further details from parties to the Dispute;
 - ii. discussing the Dispute and potential resolutions with the parties to the Dispute;
 - iii. arranging a facilitated discussions or yarning circles;
 - iv. conducting an internal or external investigation;
 - v. referring the Dispute to external mediation or conciliation;
 - vi. providing an opinion on the Dispute;
 - vii. obtaining legal advice regarding the Dispute;
 - viii. obtaining advice from an independent expert regarding the Dispute;
 - ix. determining that the Dispute has been adequately addressed;
 - x. determining that no further action is required;
 - xi. where appropriate, referring the Dispute to the Trustee Board; and
 - xii. where appropriate, referring the Dispute to the Dispute Resolution Panel.
- f. If a Dispute is raised in relation to the conduct of the Disputes Coordinator, the Dispute will be handled by the Trustee Board under clause 8.3.

8.3 Trustee Board

Where appropriate in the circumstances, the Disputes Coordinator may refer a Dispute to the Trustee Board. References to the Trustee Board in this policy include a Committee of the Board.

The Trustee Board can determine whether or not it will take any action in relation to the Dispute. The steps available to it include, but are not limited to, the matters set out in clause 8.2(e) above.

If a Dispute is raised in relation to one or more members of the Trustee Board, that or those members will be excluded from determining the Dispute.

8.4 Mediation and conciliation

Where a Dispute is referred by the Disputes Coordinator or the Trustee Board to mediation or conciliation:

- a. the mediation will be conducted in accordance with the Practice Standards under the Australian National Mediator Standards for Mediators operating under the National Mediator Accreditation System or equivalent standards, save for reasonable adaptations for cultural purposes;
- b. the conciliation will be conducted generally in accordance with Practice Standards under the Australian National Mediator Standards for Mediators operating under the National Mediator Accreditation System or equivalent standards, save for reasonable adaptations for cultural purposes; and
- c. the parties to the Dispute must participate in good faith and use their reasonable endeavours to resolve the Dispute.

8.5 Costs of facilitated discussions, yarning circles, mediation and conciliation

The Disputes Coordinator or the Trustee Board may request the parties to bear their own costs in relation to facilitated discussions, yarning circles, mediation or conciliation. Costs may later be reimbursed if the Dispute is substantiated or in cases of extreme hardship.

8.6 Dispute Resolution Panel

- a. The Dispute Resolution Panel may make a determination in relation to a Dispute where:
 - i. the Disputes Coordinator or the Trustee Board has referred the Dispute to the Dispute Resolution Panel for determination of its own motion; or
 - ii. the Disputes Coordinator has referred the Dispute to the Dispute Resolution Panel for determination at the request of a party. A request must be:
 - A. made within two months of the determination; and
 - B. in writing and clearly states the reasons why the determination should be reviewed and the outcome sought.
- b. A Dispute will be determined by the Dispute Resolution Panel by way of an internal review.
- c. The Dispute Resolution Panel may determine the method of internal review, including:
 - i. reconsidering all the information available, and relevant, including information that has previously been provided in relation to the Dispute; and
 - ii. seeking and considering new information.
- d. If the Dispute Resolution Panel considers new information, each party:
 - i. may be legally represented before the Dispute Resolution Panel at their own cost;
 - ii. will be entitled to produce to the Dispute Resolution Panel any materials or evidence which that party believes is relevant to the Dispute; and
 - iii. will make available to the Dispute Resolution Panel all materials requested by the Dispute Resolution panel which are relevant to the Dispute.

- e. The Dispute Resolution Panel will not be bound by the rules of evidence or its previous decisions.
- f. Subject to the Dispute Resolution Panel abiding by the rules of procedural fairness, the Dispute Resolution Panel will have the power to inform itself independently as to the matters raised in the Dispute and take such measures as the Dispute Resolution Panel thinks fit to expedite the determination of the Dispute.
- g. The decision of the Dispute Resolution Panel will:
 - i. be binding on the parties;
 - ii. be provided to the Trustee; and
 - iii. determine what, if any, actions the parties must take to resolve the Dispute.
- h. Unless the parties otherwise agree the Dispute Resolution Panel will determine which party will bear the costs of the hearing and in what proportion, having regard to:
 - i. the capacity of a party to meet these costs; and
 - ii. the degree to which the Dispute Resolution Panel considers that party was at fault or unreasonable in failing to agree.
- i. The Dispute Resolution Panel will be appointed by the Disputes Coordinator and will comprise:
 - i. the Chair of the Aboriginal Representative Body's Audit, Risk and Remuneration Committee;
 - ii. the Chair of the Trustee Board; and
 - iii. a lawyer with expertise and experience in dispute resolution.
- j. The Disputes Coordinator may vary the composition of the Disputes Resolution Panel to manage an actual or perceived conflict of interest.

9 External Panel

- a. A party who is dissatisfied with a determination of the Dispute Resolution Panel under this policy may submit a request to the Disputes Coordinator that the determination is externally reviewed by the External Panel. The request must:
 - i. be made within three months of the determination; and
 - ii. be in writing and clearly state the reasons why the determination should be reviewed and the outcome sought.
- b. The Disputes Coordinator must refer the matter to the External Panel unless the matter is:
 - i. frivolous, malicious, vexatious, misconceived or lacking in substance;
 - ii. not related to the administration of the Self-Determination Fund; or
 - iii. not related to a determination of a Dispute under this policy.
- c. The External Panel will conduct an independent assessment of a determination of the Dispute Resolution Panel in relation to a Dispute to determine whether the correct and preferable determination was made in relation to the Dispute.
- d. The External Panel will take into account the information that was before the Dispute Resolution Panel to reconsider the facts, law and policy aspects of the determination.
- e. The Expert Panel will not re-investigate the determination of the Dispute Resolution

Panel. However, any new information taken into account in the external review process will be disclosed to the other party to ensure they can respond.

- f. The External Panel may, by majority agreement, determine an outcome of the external review of the determination of the Dispute Resolution Panel. The outcomes include:
 - i. confirming the determination;
 - ii. setting aside the determination;
 - iii. varying the determination; and
 - iv. referring the decision to back to the Dispute Resolution Panel.
- g. A decision of the External Panel will be:
 - i. made within 12 weeks of being referred to the External Panel;
 - ii. final and binding on the parties; and
 - iii. provided to the Trustee.
- h. The External Panel will comprise three suitably qualified and independent persons appointed by the Disputes Coordinator. At least one Panellist must have relevant expertise in the subject matter of the Dispute.

K Conflicts Policy

1 Purpose

The integrity of the Self-Determination Fund relies on the Trustee and others making fair, well-informed and commercial decisions. A strong policy and procedure for managing conflicts of interest is a key way to ensure decisions are both fair and seen to be fair.

The purpose of this policy is to ensure that the Self-Determination Fund has arrangements in place to manage:

- a. conflicts of interest; and
- b. related party transactions;

that may arise in the course of making decisions in relation to the Self-Determination Fund, in order to protect the integrity of the Self-Determination Fund and manage risk.

2 Who does this policy apply to?

This policy applies to the following persons when they are involved in making decisions in relation to the Self-Determination Fund:

- a. a Director of the Trustee;
- b. a member of the Advisory and Investment Committee (**Committee**); and
- c. employees of the Trustee or Self-Determination Fund

(Covered People)

The Assembly's Conflict of Interest Policy applies to decisions by the Aboriginal Representative Body and Assembly members in respect of the Self-Determination Fund.

3 Nature of obligations

Covered People are subject to laws relating to conflicts of interest and related party transactions, non-compliance with which may include that:

- a. the Trustee breaches its legal obligations;
- b. the Trustee or Self-Determination Fund contravenes not-for-profit requirements; and
- c. Directors and other officers of the Trustee could be exposed to legal liability, including for non-adherence with their legal duties.

Covered People are also subject to expectations of First Peoples communities and the general public. Covered People may have cultural and ethical duties that require them to act without bias or nepotism and must act in the best interests of the Self-Determination Fund. For this reason, Covered People should declare and manage any conflict of interest in the subject matter of the decision.

4 Conflict of interest

4.1 What is a conflict of interest?

A conflict of interest occurs when a person's personal interest conflicts with their duties owed to, or in connection with, the Self-Determination Fund, such as the duty to act in the best interests of the Self-Determination Fund.

Personal interests include direct interests, as well as those of family or other organisations a person may be involved with or have an interest in (for example, as a member of an organisation).

A conflict of interest also includes a conflict between a Covered Person's duty to the Self-Determination Fund and another duty that the Covered Person has (for example, to another board they sit on).

A conflict of interest may be actual or perceived and may be financial or non-financial.

A potential conflict of interest arises where personal interests are not yet in conflict with a person's responsibility, but it is foreseeable that a conflict might arise in future.

4.2 Meaning of personal interest

An interest is personal where the Covered Person (or a member of the Covered Person's family or a close friend) stands to benefit from the decision personally or through other relationships they have.

It also includes any competing interest that has the capacity to influence the decision of a Covered Person.

Many members of First Peoples are related through kinship systems and closely engaged with their communities. When a Covered Person makes a decision, First Peoples' community members or the general public may become concerned that the decision could be influenced by the Covered Person's connections within their community.

For this reason, Covered People should carefully manage situations where they may have a competing interest to ensure First Peoples have trust and confidence in the decision-making processes of the Self-Determination Fund.

For example, the Covered Person may stand to benefit as a member of:

- a. a Traditional Owner group;
- b. an Aboriginal Community Controlled Organisation; or
- c. an identifiable First Peoples' group.

Another example of a personal interest is where the Covered Person is, or has previously been, involved in a family or clan dispute in connection with a potential recipient group. These circumstances mean that the Covered Person might be unable to come to the decision with an open mind because of a relationship or some other connection they have to the matter under decision.

What amounts to a personal interest will depend on the circumstances. The guiding consideration is whether the Covered Person's involvement in a decision-making process may undermine the perceived fairness of the decision because the Covered Person is not seen as being impartial.

For persons responsible for investment decisions, management, consulting, or any investment advice, a personal interest will generally include any relationships, ownerships, or other interest that that person has with respect to an investment under consideration.

Caution should be exercised where a Covered Person has a connection with a potential recipient of funding from the Self-Determination Fund. If in doubt about whether there is a personal interest that may give rise to a conflict of interest, the Trustee Board should obtain legal advice.

5 Related party transactions

A “related party transaction” is a transaction through which a public company (such as the Trustee) gives a “financial benefit” to a “related party” (such as a director, their spouse and certain other relatives).

Related party transactions are generally treated as conflicts of interest because the potential benefit to the related party may influence the decision-maker. The Conflict of Interest Management Procedure below in section 8 covers related party transactions.

5.1 Meaning of related parties

The meaning of “related parties” is found in law and governance standards that apply to the Trustee. “Related parties” are defined by section 228 of the *Corporations Act 2001* (Cth). The ACNC defines a related party according to charity size, and it is likely that it would apply the definition from the Australian Accounting Standards (AASB 124) to the Self-Determination Fund.

Examples of related parties in the context of the Trustee of the Self-Determination Fund include:

- a. the Aboriginal Representative Body, being the entity that ultimately controls the Trustee;
- b. Directors of the Aboriginal Representative Body, and their spouses;
- c. Directors of the Trustee and their spouses;
- d. entities controlled by:
 - i. a Director of:
 - A. the Trustee; or
 - B. the Aboriginal Representative Body, being the entity that controls the Trustee;
 - ii. a spouse of a Director referred to in (i) immediately above;
- e. the parents and children of any Director or spouse referred to in (b)–(d) above;
- f. a person that was a related party of the Trustee in the preceding six months;
- g. a person that Trustee has reasonable grounds to believe will become a related party in the future;
- h. a person who acts in concert with a related party of the Trustee on the understanding that the related party will receive a financial benefit if the Trustee gives the person a financial benefit; and

- i. a member of the charity's key management personnel (people with authority and responsibility for planning, directing and controlling the activities of the charity directly or indirectly) or a close member of their family.

The definition of related party is a technical one and the Board should seek legal advice if it is unclear as to whether two or more persons or entities are, in fact, related parties.

5.2 Meaning of financial benefit

"Financial benefit" has a broad meaning. The concept of giving a financial benefit is defined in section 229 of the *Corporations Act 2001* (Cth) and includes the following:

- a. giving or providing the related party finance or property;
- b. buying an asset from or selling an asset to the related party;
- c. leasing an asset from or to the related party;
- d. supplying services to, or receiving services from, the related party; and
- e. taking up or releasing an obligation of the related party.

A financial benefit includes giving a financial benefit indirectly through an interposed entity, making an informal, verbal or non-binding agreement to give the benefit, and giving a benefit that does not involve paying money such as the use of an asset. This includes the Trustee providing a financial benefit ultimately through Self-Determination Fund assets.

In deciding whether a financial benefit is given, the economic and commercial substance of the transaction should prevail over its legal form.

5.3 Legal advice

In the course of operating the Self-Determination Fund, there may be circumstances in which the Trustee considers it in the best interests of the Self-Determination Fund to enter into transactions with related parties. For example:

- a. the Trustee may buy assets or services from, or sell or provide assets or services to, related parties;
- b. the Trustee may provide services to related parties in return for financial benefits (e.g. payment in kind or in cash); and
- c. the Trustee may receive financial accommodation from related parties.

If the Trustee proposes to enter into a related party transaction, it must seek legal advice before entering the transaction. The advice will assess whether the transaction is permitted under the *Corporations Act 2001* (Cth), for example, because it is at arm's length. In some circumstances, the advice may be that member approval processes required by the *Corporations Act 2001* (Cth) need to be followed (refer to Step 7 of the Conflict of Interest Management Procedure).

If there is legal advice indicating the transaction is permissible under law and the transaction proceeds, the transaction must be detailed immediately in the Related Party Transaction Register maintained by the Compliance Officer and reported to the ACNC.

6 Responsibility of the Trustee Board

The Board of the Trustee is responsible for:

- a. establishing procedures for identifying, disclosing and managing conflicts of interest across the Self-Determination Fund consistent with this policy;
- b. monitoring compliance with this policy; and
- c. reviewing this policy as needed and on an annual basis to ensure the policy is operating effectively.

The Board must ensure that all Covered People are aware of the ACNC governance standards, particularly Governance Standard 5 that they disclose any actual or perceived conflicts of interests.

It is the policy of the Self-Determination Fund, as well as a responsibility of the Board, that ethical, legal, financial or other conflicts of interest be avoided and that any such conflicts (where they do arise) do not conflict with the obligations to the Self-Determination Fund. It is also the policy of the Self-Determination Fund, as well as a responsibility of the Board, that decisions by a Covered Person are avoided, where possible, when the Covered Person may have a competing interest.

The Board will manage conflicts of interest and competing interests by requiring Covered People to:

- d. identify and disclose any conflicts of interest;
- e. avoid conflicts of interest where possible;
- f. carefully manage any conflicts of interest; and
- g. follow this policy, including the procedures below, and respond to any breaches.

In exceptional circumstances, such as where a conflict of interest is very significant or likely to prevent a Covered Person from regularly participating in discussions, it may be worth the Board or Committee considering if it is appropriate for the person conflicted to resign from their position.

7 Compliance Officer

The Trustee Company Secretary is the Compliance Officer for the Self-Determination Fund. All Covered People will be notified of the identity and contact details of the Compliance Officer, and will be notified as soon as practicable of any change in the identity of the Compliance Officer.

8 Conflict of Interest Management Procedure

8.1 Scope

This Procedure applies to conflicts of interest and related party transactions.

8.2 Steps in managing conflicts of interest

Step 1: Identify whether there are conflicts of interest present

To ensure that conflicts of interest are promptly identified, Covered People are required to identify whether there is an actual, potential or perceived conflict of interest. This should be done as soon as any Covered Person suspects that there may be a conflict of interest.

This is done by Covered People on an ongoing basis, and at any time it is proposed that the Self-Determination Fund enters into a transaction or arrangement, considering:

- a. whether any Covered Person making or involved in making the relevant decision has a personal interest (as set out under clause 4.2 of this policy) in that decision; and
- b. whether the transaction involves a related party and could therefore constitute a related party transaction (as set out in clause 5 of this policy).

Where every other Director shares a conflict, the Board should refer to ACNC Governance Standard 5 to ensure that proper disclosure occurs.

Step 2: Conflict of Interest Notice

To ensure that conflicts of interest are promptly reported and recorded, any Covered Person who becomes aware of an actual, potential or perceived conflict of interest must immediately notify the Compliance Officer by completing a “Conflict of Interest Notice”. This should be done as soon as an actual, potential or perceived conflict of interest is identified.

When providing a “Conflict of Interest Notice”, the Covered Person must provide the Compliance Officer with the following details:

- a. whether it is possible to avoid the conflict of interest (for example by the Covered Person recusing themselves from certain decisions);
- b. the nature and likely duration of the conflict of interest;
- c. the nature of any financial arrangements, including an estimate of the total amount of money received or paid (or to be received or paid) under a relevant proposed transaction;
- d. whether or not the transaction in question is at arm’s length terms and any evidence of this; and
- e. any other information known to the Covered Person that it is reasonable for the Compliance Officer and/or the Board to know in order to resolve or make a determination about the conflict of interest.

Step 3: Register the conflict of interest

To ensure that all reported conflicts of interest are recorded, the Compliance Officer must use the Conflicts of Interest Notices provided to record, maintain and update the Register of Interests. This should be done on receipt of the completed Conflicts of Interest Notice.

Step 4: Review, liaise and resolve the conflict of interest

The Compliance Officer will review the Register of Interests.

Where an actual, potential or perceived conflict of interest involves a Trustee Director or a member of the Committee, the Compliance Officer must refer the matter to the Trustee Board for Board resolution in accordance with Step 5. Generally, a Trustee Director who has a personal interest in a matter will not be permitted to be present at, or vote on that matter at, a Board meeting.

Where an actual or perceived conflict of interest involves a staff member, the Compliance Officer will review the Register of Interests and then take necessary steps to assess and resolve the conflict of interest. The Compliance Officer may meet with affected persons about the conflict of interest, and contact other relevant parties, as part of the process taken to resolve the conflict. Resolution of the conflict of interest will involve one, or a combination, of managing, disclosing or avoiding the conflict of interest. The Compliance Officer must compile a report in accordance with Step 5 detailing steps taken to resolve the conflict of interest. If the Compliance Officer cannot resolve the conflict of interest to their satisfaction, then it must be referred to the Trustee Board for Board resolution in accordance with Step 5.

Step 5: Compile report

To inform the Trustee Board of new actual, potential or perceived conflicts of interest and enable it to consider and make decisions required to control, approve or avoid the conflicts of interest, the Compliance Officer will provide a report to the Board. The report will contain information about any conflicts of interest that have arisen during the period, and details of the status of each conflict of interest, including how the conflicts of interest were resolved or, where applicable, highlighting conflicts of interest that require Board resolution.

The report is generated by the Compliance Officer as required, or, if a conflict of interest is material and urgent, without waiting until the next scheduled Board meeting.

Step 6: Resolve outstanding conflicts of interest

Upon receiving a report from the Compliance Officer under Step 5, the Board (excluding, if relevant, any individual who has the conflict of interest) must decide on the appropriate action to take in relation to unresolved conflicts of interest, including any of the following:

- a. determine whether the Covered Person should be excluded by refraining from:
 - i. voting, or otherwise participating in decision-making, on the matter (this is a minimum);
 - ii. participating in any debate; or
 - iii. being present during any debate and voting on the matter;
- b. require a party to implement action to resolve the conflict of interest;
- c. obtain independent expert advice;
- d. terminate an agreement with a party (subject to and in accordance with the terms of the agreement);
- e. authorise the party to maintain the conflict of interest, subject to appropriate management (for example, disclosure and ongoing reviews), on the following basis:
 - i. if, and only if, the Board passes a resolution authorising the party to maintain that conflict of interest; and
 - ii. the conflict of interest is considered by the Board to be not significant and to be unlikely to influence the party in performing its role or fulfilling its duties; or
- f. seek legal advice on the conflict of interest or the transaction involving or giving rise to the conflict of interest.

In deciding what action to take above, the Board will consider:

- a. whether the relevant interest will realistically impair the disclosing person's capacity to impartially participate in decision-making;
- b. whether the conflict of interest needs to be avoided;

- c. alternative options to avoid the conflict of interest;
- d. the Self-Determination Fund's purposes and resources; and
- e. the possibility of creating an appearance of improper conduct that might impair confidence in, or the reputation of, the Self-Determination Fund.

The approval of any action requires the agreement of at least a majority of the Trustee Board (excluding any Directors with a relevant interest) who are present and voting at the meeting. The action and result of the voting will be recorded in the minutes of the meeting and in the Register of Interests.

In the event that the conflict of interest involves the Chair of the Board, the Board must choose another Trustee Director to be the Chair while the Chair's conflict is in issue.

The Covered Person who has the conflict of interest must not seek to influence members of the Board with responsibility for making a decision under Step 6.

The Board may at any time review any previously acknowledged conflict of interest, and may request further information from the relevant party about the management of that conflict of interest. The Board may, in its discretion, require additional or alternative action by the relevant party or withdraw any prior authorisation.

Any resolution of the Board in relation to a conflict of interest or action to be taken to manage a conflict of interest must be recorded by the Compliance Officer in the Register of Interests, in addition to a summary of the Board's findings and the action taken (or to be taken).

The Board must assess whether any disclosures can be given which will adequately manage the conflict of interest. If necessary, the Board may resolve to avoid the conflict of interest by declining to enter into a transaction or agreement.

Step 7: Determine whether Trustee company member approval is required

In the case of a related party transaction, the Trustee Board, with assistance of the Compliance Officer, and taking into account legal advice, will determine whether approval of the Trustee's member is required under the *Corporations Act 2001* (Cth) in relation to the transaction.

If approval of the Trustee's member is required, the Trustee Board must obtain member approval before making a decision to enter the transaction, in accordance with the requirements of the *Corporations Act 2001* (Cth).

Step 8: Update and retain records

To retain a record of actions taken to monitor and demonstrate compliance with its conflicts management arrangements, the Trustee must keep conflict of interest records updated with actions taken. The Compliance Officer has responsibility for this when any action is taken in relation to a conflict of interest.

The Register of Interests is the primary record of the management of conflicts of interest. The following records will be kept for at least seven years:

- a. copies of all Conflicts of Interest Notices and the Register of Interests;
- b. copies of any reports given to the Board or senior management about matters relating to conflicts of interest; and
- c. records of any gifts received.

The Related Party Transaction Register will record any related party transactions entered into in accordance with the requirements set out under this procedure.

The Trustee will report related party transactions to the ACNC as part of its reporting requirements.

Step 9: Review procedure

The Trustee Board will review the Conflict of Interest Management Procedure to ensure the Board adequately identifies, assesses, evaluates and controls conflicts of interest. The review may be undertaken by the Compliance Officer, another internal party or an independent external party, such as an auditor or legal adviser.

The party conducting the review of the Conflict of Interest Management Procedure or assessment of conflicts must provide a report to the Board at least annually.

9 Compliance with policy

If the Trustee Board has a reason to believe that a person subject to the policy has failed to comply with it, it will investigate the circumstances. If the Board determines that this person has failed to disclose a conflict of interest, the Board would discuss next steps as a collective. If a person suspects that a Director has failed to disclose a conflict of interest, they must either discuss with the person in question or, notify the Board or the Compliance Officer responsible for maintaining the Register of Interests.

10 Amendment

The Trustee Board may amend this policy with the consent of the Aboriginal Representative Body, and in accordance with clause 11 of the Self-Determination Fund Agreement. Any amendments must be consistent with the Company Constitution.

L Fundraising

1 Donations policy

An important aspect of building a Self-Determination Fund, which is an independent financial resource from the State, is that the Trustee be able to accept donations and other non-government sources of financial assistance. The Trustee must do so in a way that complies with applicable law including charities and fundraising laws.

The Trustee must manage the Self-Determination Fund with integrity and responsibly. This extends to ensuring that it manages donations and other non-government sources of financial assistance.

The Trustee must develop a policy for when it will accept or refuse:

- a. a donation to the Self-Determination Fund; or
- b. a business partnership, sponsorship or other type of financial assistance.

In developing the policy, the Trustee Board must consider:

- a. the purposes of the Self-Determination Fund;
- b. compliance of the policy with applicable law; and
- c. the reputation of the Self-Determination Fund if the Trustee refuses or accepts a donation, business partnership, sponsorship or other type of financial assistance.

The policy must be approved by the Aboriginal Representative Body before it is adopted by the Trustee.

M Definitions

Aboriginal Community Controlled Organisation is an organisation based in Victoria that delivers services to Aboriginal people and a community or communities and is:

- a. incorporated under relevant legislation and not-for-profit;
- b. controlled and operated by Aboriginal people;
- c. connected to the community, or communities, in which it delivers services; and
- d. governed by a majority Aboriginal governing body.

Aboriginal Representative Body means the entity that is declared to be the Aboriginal Representative Body under section 11 of the Treaty Act or under section 18 of the Treaty Act. As at the date of these Directions to Trustee, the Aboriginal Representative Body is the First Peoples' Assembly of Victoria Limited (ABN 51 636 189 412).

ACNC means the Australian Charities and Not-for-profits Commission.

ACNC Act means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth).

ACNC Governance Standards means the governance standards established in accordance with Chapter 3, Division 45 of the ACNC Act, with which an entity Endorsed as a Charity must comply.

ARB Threshold has the meaning given in the Trust Deed and is specified in Section H ('Reporting to the Aboriginal Representative Body'), clause 1.

Assembly means the First Peoples' Assembly of Victoria Ltd.

Capital Base means an amount calculated in accordance with Section F ('Distribution Policy'), clause 3.

Company Constitution means the constitution of the company that is the Trustee.

Compliance Officer is a person mentioned in Section K ('Conflicts Policy'), clause 7.

Conflict of Interest Management Procedure is the procedure set out in Section K ('Conflicts Policy'), clause 8.

Covered People has the meaning given in Section K ('Conflicts Policy'), clause 2.

Cultural Protocols means Aboriginal ways of doing business and cultural practice that are adopted by the Trustee from time to time, noting they vary from community to community.

Directions to Trustee means these directions issued by the Aboriginal Representative Body which are binding on the Trustee pursuant to the Trust Deed.

Dispute has the meaning given in Section J ('Dispute Resolution Policy'), clause 3.

Disputes Coordinator means the person appointed in accordance with Section J ('Dispute Resolution Policy'), clause 8.2.

Dispute Resolution Panel means the panel appointed in accordance with Section J ('Dispute Resolution Policy'), clause 8.6(i).

Elders' Voice means the Committee of the Assembly established under the Assembly's Constitution.

Establishment Period has the meaning given in Section F ('Distribution Policy'), clause 2.1.

External Panel has the meaning given in Section J ('Dispute Resolution Policy'), clause 9(h).

First Peoples means:

- a. Traditional Owners of Country in Victoria; and
- b. Aboriginal and Torres Strait Islander persons who are living in the place now known as Victoria.

Funding Guidelines means the guidelines developed and adopted by the Trustee under the Section F ('Distribution Policy').

Indigenous Data as endorsed by delegates at the 2018 Indigenous Data Sovereignty Summit, refers to information or knowledge, in any format or medium, which is about and may affect First Peoples both collectively and individually.

Indigenous Data Governance as endorsed by delegates at the 2018 Indigenous Data Sovereignty Summit, refers to the right of First Peoples to autonomously decide what, how, and why Indigenous Data is collected, accessed, disclosed and used. It ensures that data on or about First Peoples reflects First Peoples' priorities, values, cultures, worldviews, and diversity.

Indigenous Data Sovereignty as endorsed by delegates at the 2018 Indigenous Data Sovereignty Summit, refers to the right of First Peoples to exercise ownership over Indigenous Data. Ownership of Indigenous Data can be expressed through the creation, collection, access, analysis, interpretation, management, dissemination and reuse of Indigenous Data.

Investment Strategy means the document developed and adopted by the Trustee under the Investment Policy.

Minimum Distribution has the meaning given in Section F ('Distribution Policy'), clause 4.

Relevant Law means:

- a. any law which is applicable to the Trustee in the exercise of its powers or performance of its obligations under this deed;
- b. any provisions in the ACNC Act which apply to the Trustee or Self-Determination Fund; and
- c. any requirement of the Corporations Act, the *Australian Securities and Investments Commission Act 2001* (Cth) and any other present or future law of the Commonwealth of Australia or any State or Territory which the Trustee must satisfy in order for the Trustee to avoid a relevant penalty, detriment or disadvantage.

Self-Determination Fund means the assets held as a public charitable trust and administered by the Aboriginal Representative Body pursuant to the Self-Determination Fund Agreement in accordance with Part 6 of the Treaty Act.

Self-Determination Fund Agreement means the agreement entered into between the Aboriginal Representative Body and the State for the purposes of section 35 of the Treaty Act.

State means the State of Victoria.

Traditional Owner has the meaning given to this term in the Treaty Negotiation Framework.

Treaty Act means the *Advancing the Treaty Process with Aboriginal Victorians Act 2018* (Vic).

Treaty Negotiation Framework means the treaty negotiation framework established by agreement between the Assembly and the State under section 30 of the Treaty Act.

Trustee means Self-Determination Fund Limited as the first trustee of the Self-Determination Fund (and any successor for the time being as trustee of the Self-Determination Fund).

Trust Deed means the trust deed governing the Self-Determination Fund.

UNDRIP means the United Nations Declaration on the Rights of Indigenous Peoples adopted by the General Assembly on 13 September 2007.



**FIRST PEOPLES'
ASSEMBLY OF
VICTORIA**

