



First Peoples'
Assembly of
Victoria

DISCUSSION PAPER:
**Additional forms of recognition for
the purposes of a reserved seat in
the First Peoples' Assembly**



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Development of a model for additional forms of recognition

The Assembly is seeking community views on a model for an additional form of recognition for the purposes of eligibility for a reserved seat on the Assembly.

In May 2020 the Assembly's Review of Cultural Governance committee began work developing a model. Assembly Members passed a resolution on the same topic at the June Assembly Chamber, reiterating the urgency of progressing this work.

This discussion paper outlines questions that need to be answered to develop an additional system of recognition for the purposes of reserved seat eligibility on the Assembly. The focus is on developing a system which seeks to strengthen Aboriginal cultural ways of recognition, centres self determination and embodies the values of the *United Nations Declaration on the Rights of Indigenous Peoples*.

The current model for membership in the Assembly builds on existing self-determination in the Traditional Owner community in Victoria, while ensuring that unique political communities receive a minimum level of representation on the Assembly. This model includes members elected from regions and reserved seats for Traditional Owner groups who hold a level of formal recognition under State or Commonwealth legislation. These groups have responsibility for 74% of Country in the State for functions defined within the relevant legislation. An additional pathway for eligibility for a reserved seat would sit alongside these existing membership models.

An additional pathway for Assembly membership seeks to empower Traditional Owner groups who do not hold formal recognition under such legislation, for the purposes of strengthening inclusivity of Traditional Owner representation in the Assembly and further strengthening and diversifying community engagement with and contribution to the Treaty process. Through this process, the Assembly will continue to build community trust while supporting and inspiring Traditional Owners around Victoria to unite and mobilise through self-determination and nation-building.

This discussion paper steps through several structural questions and considerations for developing an additional recognition model for the purposes of eligibility for a reserved seat in the Assembly.

These include:

- The type of model to be developed
- Design of the new model
- Relationship of any new model to the other work of the Assembly

The Assembly is seeking community feedback on these questions to develop a final model to bring to the Assembly Chamber for consideration in November. A timetable is outlined at the conclusion of the paper.



Type of model to be developed

The Assembly could construct a new model for reserved seat membership that assess a group's eligibility against either general principles or specific criteria that a group must meet. A set of key principles could be developed under general principles, and a set of thresholds with supporting information could be developed under specific criteria. A model could also develop specific criteria founded on key principles.

Design of the new model

A general principles model could be based on key principles such as self determination, inclusivity, equity and strengthening rights. The Assembly would then need to determine what information a Traditional Owner group is required to provide demonstrate fulfillment of these principles and who decides whether these principles have been fulfilled. This model provides groups with flexibility as to how they determine. However, the broadness of principles places large amounts of discretion and responsibility with the decision-making body (to be decided) who must determine eligibility.

Under a specific criteria model, a set thresholds and requirements for supporting information would need to be developed. The Assembly would need to consider whether groups must meet threshold areas such as legal, governance, accountability, dispute resolution processes, membership, minimum number of members, general or specific Country descriptions, and how overlapping and disputed Country are addressed. A threshold model creates more detailed requirements and provides a more transparent process with less discretion for the decision-making body to determine eligibility.

- Should the model be based around general principles or specific criteria?
- What thresholds must a group meet, such as legal, governance, accountability, inclusiveness, and dispute resolution processes?
- Are there membership thresholds? Such as requirements for a minimum number of people, how the group is described, whether members must be Traditional Owners in Victoria, whether a group must name all members?
- Does the group need to represent a defined area of Country? Does this include a general description or specific boundaries? How is overlapping or disputed Country accounted for?
- Is evidence required to determine that a group has met the thresholds? How much evidence is required and how is that measured?
- Who should be consulted in considering whether a group has met a threshold (for example neighbouring groups)?

The Assembly would need to determine an application process and a decision-making body to decide whether a group has met key principles and/or criteria of a model. The Assembly would need to identify and appoint a person(s) or body that would be acceptable to Traditional Owners in Victoria. Some options may be for the full Assembly to be the decision-making body, or for the Assembly to appoint a committee made up of Assembly Members, and/or other Traditional Owners in Victoria. The Assembly would need to determine how the decision body selects members and how conflicts of interest are handled.

- Who will make the decision that the group has met the relevant thresholds and what is the makeup of the decision-making body? Would this be the full Assembly, some Assembly Members, or a separate organisation?
- How are members of the body selected? And how many members should the body have?
- How does the body handle conflicts of interest in determining a group's eligibility?



- How does the body handle disputes when deciding whether a group is eligible for a reserved seat?
- What powers does the decision-making body hold, for instance, can applicants be requested to provide more information or undergo mediation to resolve any disputes raised in the process?

Relationship of new model to the work of the Assembly

The Assembly would need to ensure that a new model sits alongside existing models of Assembly membership, including reserved membership for formally recognised Traditional Owner groups and elected general Members. This ensures that the existing rights of current Members are maintained. A new model would focus on creating additional avenues to strengthen community representation in the Treaty process and recognition among Traditional Owner groups.

Some considerations for expanding Assembly membership may be:

- How does the model ensure the size of the Assembly is sustainable? How will it affect governance? Is there a limit on the number of Members the Assembly could have while still functioning effectively?
- How does the model interact with the rights of Traditional Owner groups with formal recognition?
- Does this model account for equitability of representation in the Assembly?

The Assembly would also need to consider how an additional model of recognition for reserved membership interacts with a Traditional Owner group's ability to negotiate individual treaties with the State. During 2021, the Assembly will begin negotiations with the State about who is eligible to negotiate individual Treaties.

The Assembly has not yet determined a position on a Traditional Owner groups' eligibility for individual Treaties to bring to negotiations with the State, as these discussions will not begin until 2021. Further community consultation and engagement will be undertaken in 2021 to shape the Assembly's position on group eligibility to negotiate Treaties.

The Assembly should also consider how a new recognition model may or may not align with potential positions the State may take on eligibility to negotiate for treaty. Some areas which may influence the State's position include pre-existing legal agreements, such as the *Native Title Act 1993* and the *Traditional Owner Settlement Act 2010*, as well as its obligations in the *Advancing the Treaty Process with Aboriginal Victorians Act 2018*. These legally binding arrangements may influence the State to support threshold requirements for Traditional Owner groups which are limited to current recognition systems and any pre-existing legal arrangements. The State may then also require groups to resolve overlapping and disputed Country claims, in line with Native Title requirements, as part of individual Treaty negotiations.

If the Assembly develops a new recognition model for the purposes of reserved seat eligibility, there is a risk that the Assembly may not be able to successfully align a new model with the future and unknown demands of the State around a group's eligibility to negotiate Treaty. This may result in a Traditional Owner group who is eligible for reserved membership in the Assembly but may not be eligible to negotiate Treaty with the State.

Despite this risk, the Assembly may not want the State to be involved in determining criteria for a group's eligibility for a reserved seat in the Assembly, and would likely not want to delay finalising a model according to the progress of negotiations with the State in 2021.

The Assembly could move to act on finalising and implementing additional forms of recognition for the purposes of a reserved seat in the Assembly in late 2020. Impacted Traditional Owner groups could then have decision-making capacity within the Assembly during negotiations with the State over who can and cannot negotiate individual Treaties.



- Should the Assembly adopt a new model if it creates two forms of recognition being developed, one for reserved seat eligibility and one for treaty-making?
- How can the Assembly address community concerns which may arise if some groups are able to participate in the Assembly but are not able to negotiate Treaty with the State?
- How can the Assembly navigate the State’s pre-existing legal agreements to ensure recognition for Traditional Owner groups is genuinely empowering during all stages of the Treaty process?

Timeline: 2020

The Assembly is currently seeking community views to decide on a model for additional forms of recognition for the purposes of reserved seat membership in the Assembly. At the end of October, Assembly Members will incorporate feedback with the aim of shaping a potential model. A model could then be taken for consideration to the November Assembly Chamber via the Board. If Assembly Members reach a decision on a model, being that 75 per cent of the Chamber agrees, the model could be implemented from December 2020.

September - October	October	26-27 November	December onwards
Member consultation with community, including Traditional Owner groups	Committee incorporates feedback to finalise potential model	Model taken for consideration to the November Assembly Chamber, via the Board	If agreed, model for additional eligibility for reserved seating in Assembly can be implemented

