

APRIL 2021



First Peoples'
Assembly of
Victoria

Submission to the Indigenous Voice Interim Report proposals

1. Executive Summary

The First Peoples' Assembly of Victoria (Assembly) welcomes the opportunity to make a submission to the proposals in the Indigenous Voice Interim Report (Interim Report).

First Peoples in Victoria have been engaged with the Victorian Government in a process towards Treaty since 2016. The Assembly was established in December 2019 with the primary function of negotiating a Treaty process with the State.

The Assembly's submission is centred on the position that as Treaty is a more ambitious and effective mechanism for securing First Peoples' rights, the Indigenous Voice should complement and not interfere with or undermine progress towards Treaty in Victoria. The Assembly makes submissions on:

- The Assembly's role in the Local and Regional Voice
- The number and organisation of regions in Victoria
- The Assembly's role on the National Voice.

The Assembly's submission also advocates for a national Treaty, alongside a national truth telling process, as the best way to secure First Peoples' rights across Australia.

2. About the First Peoples' Assembly of Victoria

The Assembly is the voice for Aboriginal communities across Victoria, representing them in negotiating the Treaty process with the State.

The Assembly is currently made up of 31 members – all proud Traditional Owners of Country in Victoria. These Aboriginal leaders were chosen by their communities to represent community views. Twenty-one representatives were determined by a statewide Aboriginal community vote based on five electorates and ten representatives were appointed to reserved seats by formally recognised Traditional Owner groups. The Assembly is led by a nine person Board elected by the Members and includes two Co-Chairs who are elected by the Board.

The Assembly is established as a public company limited by guarantee under the *Corporations Act 2001* (Cth). Its purpose and functions are set out in its constitution¹. Its functions in relation to establishing the building blocks for Treaty are set out in the *Advancing the Treaty Process with Aboriginal Victorians Act 2018* (Vic) (Treaty Act). Under the Treaty Act, the Assembly is required to work with the State to establish four foundational Treaty elements that will support future Treaty negotiations:

1 First Peoples' Assembly of Victoria, Constitution: www.firstpeoplesvic.org/download/constitution



- interim dispute resolution process to resolve disputes during the negotiation of the Treaty elements
- a Treaty Negotiation Framework that sets out the process and parameters for negotiating future Treaty or Treaties²
- a Treaty Authority that will act as an independent umpire to facilitate and oversee Treaty negotiations³
- a Self Determination Fund to support Victorian First Peoples to participate on an equal footing with the State in Treaty negotiations, as well as providing a financial resource to empower Victorian First Peoples to build future capacity, wealth and prosperity.⁴

To date, the Assembly has made a number of key decisions to progress its work on developing the Treaty elements.⁵ In February 2021, the Assembly and the State agreed on the interim dispute resolution process as required by the Treaty Act.⁶

The Assembly has worked with the State to develop Australia’s first truth-telling process, the Yoo-rook Justice Commission, announced on 9 March 2021⁷ and set to commence mid 2021. While the Terms of Reference for the Commission cannot be finalised until Commissioners are appointed, it is proposed that it will have a broad mandate, backed by powers of a Royal Commission to inquire into and report on both historic systemic injustices (such as cultural violations and massacres), as well as ongoing systemic injustices (such as those relating to the justice system and child protection). The Commission will be able to make recommendations about practical actions and reforms needed in Victoria, including cultural restoration and healing, public awareness and education, law and institutional reform and subject matters that should be included in Treaties. The Assembly believes truth provides a crucial basis for resetting relationships between First Peoples and the State, as well as with the wider Victorian community and will complement Treaty.

The Assembly is also progressing work to strengthen its cultural governance through the establishment of an Elders Voice, as well as through considering additional pathways to reserved seats.

For more information about the Assembly and its work see www.firstpeoplesvic.org and the Assembly’s Annual Report to Parliament (2020) (**Attachment A**).

3. The Indigenous Voice should not interfere with progress towards Treaty in Victoria

As noted at 1, the Assembly was established in December 2019 to work with the State to progress Treaty. Treaty will be an agreement or multiple agreements between the State and First Peoples underpinned by the principle of self-determination as reflected in the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP). Treaty will transfer decision-making power and resources to First Peoples for the matters subject to the Treaty.

2 Treaty Act, ss 30-31.

3 Treaty Act, ss 27-28.

4 Treaty Act, ss 35-36.

5 See First Peoples’ Assembly of Victoria communiqués on Chamber meetings: www.firstpeoplesvic.org

6 First Peoples’ Assembly of Victoria, Assembly Update – February 2021: www.firstpeoplesvic.org/news/assembly-update-february-2021

7 First Peoples’ Assembly of Victoria and The Victorian Government, Joint Statement on Victoria’s Truth and Justice process, 9 March 2021: www.firstpeoplesvic.org/media/joint-statement-on-victorias-truth-and-justice-process-9-march-2021



The Treaty process in Victoria is much more ambitious than the Local and Regional Voice proposal whose functions are limited to community consultation, providing advice to government and working with government to set strategic direction and operational priorities to improve policy, services and investment decisions.⁸

Because of this, it is the Assembly's strong view that the Indigenous Voice should complement and not interfere with or undermine progress towards Treaty in Victoria. This position informs the Assembly's submission on:

- The Assembly's role in the Local and Regional Voice
- The number and organisation of regions in Victoria
- The Assembly's role on the National Voice.

3.1 The Assembly's role in the Local and Regional Voice

The Assembly is pleased that the Local and Regional Voice Principles include 'Non-duplication and links with existing bodies' to build and enhance existing frameworks and to ensure it does not encroach on or undermine the mandate of existing bodies with statutory roles.⁹

The Assembly's position is the Local and Regional Voice in Victoria should align with Assembly structures and processes. This is based on the Assembly's current representative role and structure, its future role under its constitution and the broad scope of future statewide Treaty or Treaties.

3.1.1 The Assembly's current representative role

Assembly Members were elected by First Peoples in Victoria to represent them in the current stage of progress towards Treaty. Members consult with and represent the communities in their regions, supported by regionally based Engagement Officers employed by the Assembly. To avoid duplication and confusion, the Local and Regional Voice should build on this representative structure.

3.1.2 The Assembly's objectives under its constitution

The Assembly's current mandate as the Aboriginal Representative Body under the Treaty Act is to negotiate the building blocks for Treaty, not to negotiate Treaty. This is a point-in-time function until the building blocks for Treaty are in place.

However, the Assembly as a corporation may potentially exist beyond this stage into the future stage of negotiating Treaty. The Assembly's constitution provides for it to work with governments to establish or be a First Nations Voice to government or Parliament.¹⁰ Any current processes must take into account and align with the Assembly's possible future functions, even though the Assembly is not currently involved in negotiating Treaty or Treaties.

3.1.3 The broad scope of future statewide Treaty or Treaties

The scope of a possible statewide Treaty or Treaties could be very broad. Section 30(3) of the Treaty Act requires the Treaty Negotiation Framework to enable negotiation of a Treaty or Treaties that:

8 Interim Report, 71.

9 Interim Report, 79

10 First Peoples' Assembly of Victoria, Constitution, Clause 1.1: <https://www.firstpeoplesvic.org/download/constitution/>. Note that at its Chamber meeting in June 2020, based on community consultation, the Assembly agreed to advocate for a 'hybrid' model which includes a statewide Treaty (which could potentially be an overarching Treaty between the Assembly and the State) and local Treaties (which would be Treaties between Victorian Traditional Owners and the State).



- a. recognises historic wrongs; and
- b. addresses ongoing injustices; and
- c. helps heal wounds of the past; and
- d. supports reconciliation; and
- e. brings pride to Victorians; and
- f. has positive impacts for Victoria; and
- g. promotes the fundamental human rights of Aboriginal peoples, including the right to self-determination; and
- h. acknowledges the importance of culture to Aboriginal identity; and
- i. enhances the laws of Victoria.

The specified outcomes for the Framework demonstrate a vision for Treaty that could encompass wide ranging reforms (such as structural, political or institutional reforms) over a broad range of subject matters, limited only by constitutional constraints on State powers. Consequently, all matters that are raised at a regional and State level may be relevant to Treaty or Treaties so the Assembly must be at the table at a representative level on the Local and Regional Voice.

The Assembly's position is that the Local and Regional Voice in Victoria should align with Assembly structures and processes. It does not follow, however, that the Assembly wishes to adopt the role of coordinating input from, and facilitating communication between, the various local and regional groups and State and local governments. The Assembly does not have a view on how that should be done and notes there are a number of existing subject matter specific and place-based structures and forums in place that facilitate such input.

3.2 The number and organisation of regions in Victoria

The Assembly notes that it is proposed that there be between 25-35 regions nationally and that there be two regions for Victoria, the boundaries of which would be determined at the beginning of the implementation phase.¹¹ This structure does not align with the Assembly's structure which was designed in consultation with communities and so reflects self-determination.

The Assembly's representative structure is currently divided into five regions. The decision to have five regions was based on proportionate representation and respect for traditional boundaries. There are multiple Assembly representatives for each region, with one representative per 1,700 people. Where possible, the regions are drawn so not to divide existing traditional boundaries or cut across Local Council boundaries. Each region covers the Country of multiple Traditional Owner groups.

The Assembly's regions are:

- North West
- North East
- South West
- South East
- Metropolitan.

11 Interim Report, 90-91.



As noted at 1, the Assembly's structure includes directly elected representatives for each region based on population, as well as seats reserved for formally recognised Traditional Owner groups (known as 'reserved seats') within each region.¹² The Assembly is currently in the process of discussing with the community additional pathways for Traditional Owner groups to be eligible for reserved seats in line with Article 33 of the UNDRIP.¹³

The Assembly submits that the proposal for two regions in Victoria does not align with the Assembly's structure and does not respect traditional boundaries. It is the Assembly's strong view that there should be five regions for Victoria in line with the Assembly's structure and representation of Traditional Owners, and to avoid complexity. The Assembly also notes that the Local and Regional Voice structure should change to align with any change to the Assembly or Representative Aboriginal Body in the future.

3.3 The Assembly's role on the National Voice

The Assembly considers that the link between the Local and Regional Voice and the National Voice mechanisms will be important to coherently advocate for matters of national significance. The link will also be important to ensure that any decisions made on a national level do not impede or undermine Victoria's progress towards Treaty. For this reason, the Assembly should be the representative for Victoria on the National Voice.

4. Other matters

While noting other mechanisms for advancing First Peoples' rights is outside the scope of the Interim Report, the Assembly takes the opportunity presented by this submission process to advocate for a National Treaty process. As noted above, Treaty is a more ambitious approach than the Indigenous Voice to entrench and firmly secure First Peoples' rights. Treaty would go beyond providing advice to Parliament and Government and would involve a transfer of decision-making power. The Assembly would be happy to share its learned experience on Treaty building.

The Assembly also calls for a National truth-telling process, similar to the Yoo-rook Justice Commission. Truth-telling would complement Treaty and be an important step in recognising historic and ongoing wrongs. Establishing a Treaty and truth-telling process on the National level would align with the calls of the Uluru Statement from the Heart.

12 Formally recognised Traditional Owner groups are those who are a) a Registered Native Title Body Corporate for the purposes of the *Native Title Act 1993* (Cth) b) a Traditional Owner Group Entity for the purposes of the *Traditional Owner Settlement Act 2010* (Vic) or c) are a Registered Aboriginal Party under the *Aboriginal Heritage Act 2006* (Vic).

13 Article 33(2), UNDRIP provides that Indigenous peoples have the right to determine the structures and to select the membership of their institutions, in accordance with their own procedures.

