

Treaty Authority

DISCUSSION PAPER
NOVEMBER 2021



First Peoples'
Assembly of
Victoria

The Assembly is seeking feedback on its groundbreaking model for the Treaty Authority – the body that will oversee future Treaty negotiations between First Peoples and the Victorian Government.

We welcome all feedback by 10 January 2022.

Your input will build on community feedback that the Assembly has considered so far in shaping this model for the Treaty Authority.

There will be further opportunities to share your views with the Assembly. To stay up to date on the shared journey to Treaty, join our email list here: <https://www.firstpeoplesvic.org/#Team-Treaty>.

About this Discussion Paper

The First Peoples' Assembly is the voice representing Traditional Owners and Aboriginal and Torres Strait Islander peoples in Victoria to advance the Treaty process in Victoria.

We are pushing for both a state-wide Treaty that will cover state-wide matters, and also empowering Traditional Owners to negotiate local Treaties that reflect their needs and priorities.

We are working to reach agreement with the Victorian Government about the foundations to enable the future negotiation of Treaties:

- A Treaty Authority – will act as the independent umpire in Treaty negotiations
- A Treaty Negotiation Framework – will set the ground rules for Treaty negotiations
- A Self-Determination Fund – will be a financial resource to empower First Peoples to negotiate Treaties on a level playing field with the Victorian Government, and empower First Peoples to build capacity, wealth and prosperity for current and future generations

This Discussion Paper outlines the ideas we are taking into our discussions with the Victorian Government to reach agreement on a model for the Treaty Authority.

Our ideas on what the Treaty Authority should look like have been shaped by what we have heard from First Peoples on our journey so far and informed by best-practice examples of independent bodies overseas and in Australia.

We want your views to keep shaping the Treaty Authority's design as we take steps to reach agreement on the details over the coming months.

We look forward to hearing the feedback you have on the questions in this paper, as Traditional Owners and/or Aboriginal and Torres Strait Islander peoples in Victoria.

What is the Treaty Authority

The Treaty Authority will have the important role to:

- facilitate and oversee treaty negotiations
- help resolve disputes that arise between parties in treaty negotiations
- carry out research to support treaty negotiations
- administer the Treaty Negotiation Framework
- ensure treaty negotiations are consistent with the Treaty Negotiation Framework.

These functions for the Treaty Authority are set out in Part 4 of the *Advancing the Treaty Process with Aboriginal Victorians Act 2018*.

The Assembly has been exploring how the Treaty Authority can be set up to achieve our goal for it to be fully independent from Government and grounded in Aboriginal culture, lore and law.

To ensure the Treaty Authority is completely independent from Government, we are proposing a very different approach for its establishment and how it runs.

Although it would be created by agreement between the Government and the Assembly, this model for the Treaty Authority would be entirely separate and independent from the Victorian Government and not subject to Ministerial direction or control

This model for the Treaty Authority is consistent with the right to self-determination recognised in the [United Nations Declaration on the Rights of Indigenous Peoples](#) (UNDRIP), as First Peoples will have ownership over its structure and process, it will be made up of First Peoples and operate according to Aboriginal lore, law and cultural authority.

What are the Treaty Authority's Guiding Principles

We are proposing that the Treaty Authority will exercise its role guided by the following principles:

- **Self-determination and empowerment**
The Treaty Authority operates according to Aboriginal lore, law and cultural authority and can decide how to perform its functions and duties.
- **Independence and Impartiality**
The Treaty Authority is fully independent, impartial and free from interference from the Victorian Government, the Assembly, negotiating parties, Traditional Owners and First Peoples, and meets certain standards to ensure its decisions are fair and culturally sound.
- **Accountability**
The Treaty Authority is accountable to First Peoples living in Victoria and the broader community.

Who is on the Treaty Authority

We are proposing that the Treaty Authority will be made up of appointed members who enable the Treaty Authority to be impartial and objective in carrying out its role.

The Assembly Chamber has previously recommended that there should be five Treaty Authority members.

We are proposing that all Treaty Authority members will be First Peoples, from Victoria or elsewhere in Australia, who are selected through a rigorous and transparent process after meeting public selection criteria.

As individuals, Treaty Authority members will demonstrate:

- impartiality
- commitment to self-determination and empowerment
- good character, courage and integrity
- cultural knowledge, wisdom and humility
- relevant technical competence and experience.

Regarding cultural knowledge, each Treaty Authority member will be able to identify, understand and respect Aboriginal lore, law and cultural authority for different First Peoples in Victoria.

They will have the ability to identify and understand ways of doing business of different communities and the connections of different groups.

Collectively as a group, the Treaty Authority members will have experience in facilitating negotiations and dispute resolution.

They will also have expertise in cultural safety and healing for First Peoples, culturally respectful leadership and collaboration, and the use of culture to empower First Peoples in pursuit of self-determination.

How is the Treaty Authority selected

The selection process could maximise transparency and community participation by including:

- an open public call for nominations and an independent selection panel who would review applications, interview candidates, and shortlist and select Treaty Authority members with reference to publicly available selection criteria.
- publication of shortlisted candidates' statements and an opportunity for confidential public comment on candidates' ability to meet key selection criteria.

The independent selection panel would be made up of around five First Peoples: one appointed by the Assembly, one appointed by the Victorian Government, and three or more appointed by agreement between the Assembly and the Government.

This option for a selection process builds on the selection process model for Commissioners to the Yoo-rook Justice Commission, which the Assembly designed in agreement with the Victorian Government.

It builds on best practice in Australia and overseas to incorporate cultural strength, transparency, and community participation into the selection process.

What's next

The Assembly is aiming to reach final agreement with the Victorian Government on a Treaty Authority model in around March 2022.

The Assembly is inviting community feedback on the Treaty Authority model as we advance these discussions towards reaching a final agreement.

Once the Assembly and the State reach agreement on the model, work will begin to establish the Treaty Authority.

We welcome your feedback on our questions below, or any other feedback you would like to provide, by 10 January 2022.

Feedback can be provided in any form. Your feedback can be in writing, an audio recording or a video recording.

Feedback on this Discussion Paper can be provided by:

- Completing the form on our website:
<https://www.firstpeoplesvic.org/committees/treaty-authority/treaty-authority-online-form/>
- Email to **engagement@firstpeoplesvic.org**
- Letter to First Peoples' Assembly of Victoria,
48 Cambridge St, Collingwood VIC 3066
- Phone on **1800 873 289** (between 9:00am to 5:00pm AEDT Monday to Friday).
We can make a time with you to take your response over the phone.

Please contact us if you would like us to arrange for a presentation or a meeting on this Discussion Paper.

Our questions:

What does the Assembly need feedback on

The Treaty Authority must be grounded in First Peoples' culture and have the trust and confidence of all parties to a Treaty negotiation.

Treaty Authority members

Think about who you would have trust and confidence in to facilitate and oversee Treaty negotiations.

1. What are important skills and attributes for the Treaty Authority members?
2. Should there be a role for Elders to provide guidance on who should be appointed as Treaty Authority members?

How best can the Treaty Authority uphold the Guiding Principles

Self-determination and empowerment

3. How can Aboriginal lore, law and cultural authority be embedded into the Treaty Authority?

Independence and impartiality

4. What standards should apply to the Treaty Authority to ensure it performs its role in a fair and culturally sound way?

Accountability

The Treaty Authority must perform its functions with integrity, free from external influence and be accountable to Community.

5. How can the Treaty Authority ensure it is accountable to First Peoples in Victoria and the broader community?
6. How can the Treaty Authority incorporate, respect, and listen to Elders in performing its functions?

Treaty Authority

7. Does the name 'Treaty Authority' reflect the role it will play? If not, what language would you like to see used?