

Treaty Authority Agreement

First Peoples' Assembly of Victoria
and The State of Victoria



**FIRST PEOPLES'
ASSEMBLY OF
VICTORIA**



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Preamble

The First Peoples' Assembly of Victoria is the voice for Aboriginal and Torres Strait Islander peoples in the Treaty Process. It is recognised under the *Advancing the Treaty Process with Aboriginal Victorians Act 2018 (Vic)* as the Aboriginal Representative Body that works with the State of Victoria to establish by agreement the elements necessary to support future Treaty negotiations. In doing so, the First Peoples' Assembly of Victoria is the voice for and represents the diversity of Traditional Owners and Aboriginal and Torres Strait Islander peoples living in and connected with the lands and waters in the place now known as Victoria.

The State of Victoria is a state of the Commonwealth of Australia under the Commonwealth Constitution and the Victorian Constitution. It is the successor of the colony of Victoria, which was established as a self-governing colony with responsible government by the Victorian Constitution. The colony of Victoria's establishment occurred without approval from or consultation with the First Peoples who were then (and remain) the Traditional Owners of the lands and waters in the place now known as Victoria.

The Parties, on behalf of those they represent, recognise the Treaty Authority as a necessary element to the Treaty Process and as the sole entity performing the functions under Part 4 of the Treaty Act.

The Treaty Process provides the opportunity for new relations between First Peoples in Victoria and the other people of the State that are built upon truth, justice and respect for First Peoples' self-determination and empowerment, consistent with the principles articulated in the *United Nations Declaration on the Rights of Indigenous People*. The Treaty Authority will facilitate the journey towards reconciliation and First Peoples' self-determination and empowerment. First Peoples in Victoria and the other people of the State entrust this important responsibility to the Treaty Authority. The Treaty Authority will respect and value this trust by safeguarding the Treaty Process for all people of the State, acting always with integrity, honour and cultural wisdom.

The Treaty Authority is a party to the Treaty Process under the Treaty Act and has the role of facilitating fair, effective and efficient dealings between Negotiating Parties. The Treaty Authority's oversight will assist Treaty negotiations to advance on equal footing and in accordance with the guiding principles under the Treaty Act.

The Parties will work with the Treaty Authority in good faith to advance the Treaty Process.

Part One - Introduction

1 About the Agreement

1.1 Purpose

The purpose of this Agreement is to establish the Treaty Authority by agreement between the Aboriginal Representative Body and the State in accordance with Part 4 of the Treaty Act.

1.2 Objects

The objects of the Treaty Authority are:

- to facilitate the journey towards reconciliation, mutual respect and tolerance between the First Peoples and other people of the State and
- to maintain, promote and advance the self-determination and empowerment, culture and human rights of First Peoples.

1.3 Central tenets

The central tenets for the Agreement that inform its every element are:

Guiding principles under the Treaty Act

- The Treaty Authority follows the guiding principles for the Treaty Process in the Treaty Act:
 - self-determination and empowerment
 - fairness and equality
 - partnership and good faith
 - mutual benefit and sustainability and
 - transparency and accountability.

Observe and uphold self-determination and empowerment of First Peoples

- The Treaty Authority comprises First Peoples and observes and upholds Aboriginal Lore, Law and Cultural Authority and the self-determination of First Peoples.
- In observing and upholding Aboriginal Lore, Law and Cultural Authority, the Treaty Authority recognises that the meaning of Aboriginal Lore, Law and Cultural Authority

varies between communities and are matters for Traditional Owner groups and other First Peoples' groups to self-determine.

- The Treaty Authority's processes are culturally strong, culturally safe, trauma-informed and address the power imbalance between First Peoples in Victoria and the State.

Independence and impartiality

- The Treaty Authority is free from interference by the Parties, the Negotiating Parties under the Framework, and other Traditional Owner and other First Peoples' groups.
- Members are appointed through an independent process to ensure an independent body.
- The Treaty Authority meets standards and has processes necessary to ensure that it remains impartial and it performs its functions so that its decisions and actions are fair and culturally sound.

Accountability

- The Treaty Authority is publicly accountable to the people of the State.
- The Treaty Authority is culturally accountable to First Peoples.
- In the performance of its functions and duties, the Treaty Authority will assume responsibility for and be accountable for its decisions and actions.
- The Treaty Authority respects and listens to Elders, through the Elders' Voice, whose role it is to provide cultural and ethical advice and share wisdom about the Treaty Process.

Relationships and facilitating Treaty-making

- In the performance of its functions and duties, the Treaty Authority adopts approaches that preserve, restore and build ongoing, just and respectful relationships between First Peoples and the State as well as between First Peoples' groups.
- The Treaty Authority supports the Negotiating Parties throughout the Treaty Process to work together to reach agreements and enter Treaties that observe and uphold the self-determination of First Peoples and lead to strong ongoing relationships.

Integrity of the Treaty Process for all

- The Treaty Authority is entrusted by First Peoples and the other people of the State to perform functions under this Agreement, the Framework and the Treaty Act.
- In the performance of its functions and duties, the Treaty Authority observes and upholds Aboriginal Lore, Law and Cultural Authority, while recognising that it operates in a context with First Peoples and the State and other parties who are not First Peoples.
- The Treaty Authority will consider the cultural and operational context of all Negotiating Parties and in doing so ensure a strong Treaty Process for all people of the State.

1.4 Aboriginal Lore and Law and Cultural Authority

As recognised by the UNDRIP, Aboriginal Lore and Law forms a legal system. Aboriginal Lore and Law has equal footing with the Western legal system. It includes a body of authority that informs agreement-making, decision-making and governance structures, including rules about Eldership and who holds Cultural Authority.

Traditional Owner groups and other First Peoples' groups have differing governance systems, kinship structures, cultural protocols and obligations, and differing rules about who has Cultural Authority. For this reason, the meaning of Aboriginal Lore, Law and Cultural Authority varies between communities. They are matters for Traditional Owner groups and other First Peoples' groups to self-determine.

In circumstances where the Aboriginal Lore, Law and Cultural Authority of one community conflicts with another community's Aboriginal Lore, Law and Cultural Authority, the Treaty Authority will facilitate agreement between the relevant groups to a set of cultural protocols, obligations and rules to apply to the matters being discussed and decided, based on shared cultural values.

This section should be read in conjunction with the Framework. Together, these clauses set out the Parties' understanding of how Aboriginal Lore, Law and Cultural Authority will be observed and upheld in the Treaty Process.

2 Definitions

Aboriginal Lore and Law has the meaning given by clause 1.4.

Aboriginal Representative Body means the First Peoples' Assembly of Victoria Ltd declared to be the Aboriginal Representative Body under section 11 of the Treaty Act or any subsequent body declared to be the Aboriginal Representative Body under section 18 of the Treaty Act.

Agreement means this agreement made between the Parties dated 6 June 2022.

Cultural Authority has the meaning given by clause 1.4.

Elders' Voice means the Committee of the First Peoples' Assembly of Victoria or an equivalent body established with the approval of the Parties for Elders to provide cultural and ethical advice and share wisdom about the Treaty Process.

First Peoples means:

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

Framework means the Treaty Negotiation Framework established by agreement between the Parties under section 30 of the Treaty Act.

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 rights 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.

Member means an individual appointed to the Treaty Authority under clause 5.

Negotiating Party has the meaning given to that term under the Framework.

Panel means the panel established under clause 6.

Panellist means an individual appointed to the Panel under clause 6.2.

Party means the parties to this Agreement, being the Aboriginal Representative Body and the State of Victoria.

Recruiter means an Aboriginal or Torres Strait Islander person or Aboriginal or Torres Strait Islander controlled agency, which is independent of the Parties, and engaged by the Aboriginal Representative Body with agreement of the State to conduct the recruitment part of the appointment process under clause 7.

State means the State of Victoria.

Traditional Owner has the meaning given to that term under the Framework.

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

Treaty Authority means the Treaty Authority established by agreement between the Parties under section 27 of the Treaty Act.

Treaty Authority Act means the *Treaty Authority and Other Treaty Elements Act 2022* (Vic).

Treaty Process means Treaty negotiations under the Framework.

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

3 Interpretation

3.1 Principles of interpretation

This Agreement should be interpreted in a way that is consistent with the Treaty Act and the Treaty Authority Act. In the event of any conflict between this Agreement and the Treaty Act or the Treaty Authority Act, the Treaty Act or the Treaty Authority Act prevails (as the case may be).

An interpretation of the Agreement that promotes the purpose and the central tenets under clause 1 will be preferred to an interpretation of the Agreement that would not promote that purpose or those central tenets.

This Agreement should be interpreted by reference to Aboriginal Lore and Law as a substantive body of authority, including the collective nature of First Peoples' rights and responsibilities, except to the extent of any inconsistency with the Treaty Act and applicable laws of the State and the Commonwealth.

References to decisions and actions of the Treaty Authority are references to activities of the Treaty Authority done in the course of performing its functions and duties and exercising its powers under this Agreement, the Framework, the Treaty Act and the Treaty Authority Act. Such activities include advising, making recommendations, dispute resolution and giving directions to Negotiating Parties under the Framework and the Treaty Act.

3.2 Interpretation rules

The general interpretation rules in this Agreement are set out in Schedule A.

Part Two - Membership

4 Treaty Authority

The Treaty Authority is established on the date this Agreement is signed. The Treaty Authority is constituted by individuals appointed under clause 7.

The Treaty Authority will commence operation on the date of appointment of its fifth Member.

5 Treaty Authority Members

5.1 Number of Members

Subject to the following, the Treaty Authority will consist of not less than five and not more than seven Members.

The initial membership will not exceed five Members.

If the number of Members falls below five but is at least two, the Treaty Authority may continue to perform its functions and exercise its powers, consistent with any practices and procedures made under clause 14.2. New Members or Acting Members will be appointed under clauses 7 or 10 to ensure there are at least five Members as soon as possible.

If the number of Members falls below two, the Treaty Authority must cease to perform its functions and exercise its powers under the Treaty Act and the Framework until such time as it has at least two Members. The fact that the number of Members has fallen below two does not invalidate any acts taken by the Treaty Authority whilst it had at least two Members. New Members or Acting Members will be appointed under clauses 7 or 10 to ensure there are at least five Members as soon as possible.

Notwithstanding any vacancy or alteration in the Treaty Authority's membership, the Treaty Authority remains in existence.

5.2 Selection criteria

The Treaty Authority will comprise Aboriginal and Torres Strait Islander peoples who meet the selection criteria in Schedule B.

6 Panel

6.1 Establishment

The Parties will establish a panel of five individuals appointed under an instrument of appointment signed by the Parties.

The Panel will perform the functions and duties conferred on it under this Agreement and the instrument of appointment.

6.2 Appointment

The Panel will comprise five individuals, at least four of whom are Aboriginal and Torres Strait Islander peoples. The Panel will include:

- one individual nominated by the Aboriginal Representative Body
- one individual nominated by the State and
- three individuals nominated by agreement of the Parties, one of whom will have expertise and experience in facilitating negotiations or dispute resolution.

Panellists will meet the following eligibility criteria:

- high standards of integrity and honesty in public and professional life
- well respected and highly esteemed in their community
- demonstrated experience and ability to make impartial decisions
- demonstrated ability to identify and manage conflicts of interest
- demonstrated experience in working as part of a team
- demonstrated understanding of First Peoples' culture, Aboriginal Lore and Law, Cultural Authority and ways of doing business and
- demonstrated understanding of the workings of government.

6.3 Term

Panellists are appointed for a term not exceeding six years as specified in their instrument of appointment.

6.4 Reappointment

The Panellists are eligible for reappointment after the expiry of their term.

6.5 Panel guidance

The Panel will seek and take into account the guidance of the Elders' Voice in the development and conduct of the process for the appointment of Members under clause 7. Any such guidance provided by the Elders' Voice, and the Panel's consideration of that guidance, will be made publicly available.

The Panel may seek the assistance of the Elders' Voice in relation to its other functions under this Agreement, including the development of the standards of conduct under clause 20.1.

The Elders' Voice will not be involved in the assessment of applications or selection of Members under clause 7 or the removal or suspension of Members under clause 8.

In developing the standards of conduct under clause 20.1, the Panel may also seek the assistance of legal specialists. The reasonable expenses of legal assistance will be met by the Parties.

6.6 Senior Panellist

The Panel will appoint a Senior Panellist at its first meeting for a term of three years. The Senior Panellist must not hold that office for more than three consecutive terms.

6.7 Meetings

Meetings of the Panel will be chaired by the Senior Panellist.

The Panel must meet at least once each year and otherwise may meet as and when required to perform its functions and duties under this Agreement.

A quorum is a majority of the Panellists.

Meetings may be held in person or by videoconference.

Decisions will be made by consensus of Panellists. If consensus cannot be achieved, as a last resort, the majority view prevails. The Senior Panellist does not have a casting vote.

6.8 Instrument of appointment

A Panellist is appointed or reappointed under an instrument of appointment signed by the Parties.

An instrument of appointment must:

- be executed by the Panellist appointed under it
- provide that the Panellist is appointed on a sessional basis
- provide that the Panellist agrees to act consistently with the terms of this Agreement
- provide appropriate remuneration in accordance with clause 11 and
- provide for higher remuneration in the event that the Panellist is appointed as the Senior Panellist.

6.9 Resignation

A Panellist may resign from the Panel by notifying the Senior Panellist in writing of the resignation. The Senior Panellist must notify the Parties of the resignation.

A Senior Panellist may resign from the Panel by notifying the Parties in writing of the resignation.

6.10 Removal of Panellist

The Parties may remove a Panellist from the Panel if the Parties jointly hold a reasonable belief that one or more of the following grounds for removal applies.

A Panellist may be removed from the Panel if the Panellist:

- is incapable of performing their functions and duties as a Panellist
- is negligent in performing their duties as a Panellist
- engages in conduct that brings the Panel or the Treaty Authority into disrepute
- fails to attend three consecutive meetings without approval of the Senior Panellist
- is convicted of an offence:
 - that is punishable by imprisonment for 12 months or
 - involves fraud or dishonesty or
- is or becomes bankrupt.

The Parties may suspend a Panellist from office without pay for up to six months if the Parties jointly hold a reasonable suspicion that a ground for removal exists.

6.11 Removal of Senior Panellist

The Senior Panellist may be removed or suspended following the process and on the grounds set out in clause 6.10, subject to the following modifications.

The Parties must consult with the remaining Panellists before making a decision under this clause.

In addition to the grounds set out in clause 6.10, a Senior Panellist may also be removed from the office of Senior Panellist if the Senior Panellist:

- is incapable of performing their functions and duties as a Senior Panellist or
- is negligent in performing their duties as a Senior Panellist.

6.12 Vacancy

A vacancy arises if a Panellist:

- resigns under clause 6.9
- is removed under clause 6.10 or 6.11 or
- otherwise discontinues office.

The Senior Panellist, or in their absence the remaining Panellists, must notify the Parties of the vacancy.

Any vacancy is to be filled by the Parties consistent with the requirements under clauses 6.2 and 6.8.

7 Appointment of Members

7.1 Appointment and reappointment

The appointment process under clause 7.3 must be followed for appointment of new Members.

The reappointment process under clause 7.4 must be followed for reappointment of existing Members.

7.2 Requirements for the process

The Panel will ensure that the appointment and reappointment process:

- ensures the independence of the Treaty Authority
- ensures the Members are qualified and competent to perform the functions and duties of the Treaty Authority and
- has the following features:
 - culturally strong
 - culturally safe
 - transparency
 - fairness
 - impartial and free from bias including from other Members
 - appropriate management of conflicts of interest
 - respects the privacy of candidates and others involved in the process and
 - respects the right of candidates to not have their reputation or identity unfairly attacked.

7.3 Appointment process

The following process must be followed for appointments of new Members:

- a. the Panel publicly advertises the upcoming recruitment of Members, providing public information about the role of the Treaty Authority, the responsibilities of its Members and the appointment process

- b. candidates are attracted through:
 - a public call for nominations and
 - an Aboriginal led recruitment process conducted by a Recruiter overseen by the Panel
- c. the Recruiter compiles applications and provides these to the Panel
- d. the Panel reviews the applications and creates a shortlist of candidates
- e. the Panel interviews the candidates on the shortlist
- f. the Panel selects the candidates for recommendation to the Parties on the basis of their application and their interview
- g. the Panel provides its recommendation to the Parties
- h. the Parties appoint each recommended candidate as a Member by an instrument of appointment under clause 7.7 and
- i. the Panel publicly announces the successful candidates, including information demonstrating the strengths and suitability of the candidates.

7.4 Reappointment process

For the reappointment of existing Members, the following process must be followed:

- a. the Panel interviews the Member
- b. the Panel decides whether to select the Member on the basis of their interview and performance as a Member
- c. the Panel provides its recommendation to the Parties and the Parties reappoint or do not reappoint the Member as recommended and
- d. the Panel publicly announce the reappointment.

7.5 Parties must follow recommendation

The Parties must appoint or reappoint Members recommended for appointment or reappointment by the Panel.

7.6 Term

Members are appointed for a term not exceeding five years as specified in their instrument of appointment.

7.7 Instrument of appointment

A Member is appointed or reappointed under an instrument of appointment signed by the Parties.

An instrument of appointment must:

- be executed by the Member appointed under it
- provide whether the Member is appointed on a full-time basis or a part-term basis, including hours of work
- provide that the Member agrees to act consistently with the terms of this Agreement (including by meeting their duties under clause 19 and 20.1), the Framework, the Treaty Act and the Treaty Authority Act
- provide appropriate remuneration in accordance with clause 11
- provide for higher remuneration in the event that the Member is appointed the Chairperson and
- provide that the Member is indemnified out of assets held by the Treaty Authority on the following terms:
 - the indemnity is for any debts or liabilities incurred personally by a Member when acting on behalf of the Treaty Authority, so long as the Member was authorised to take that action and acting in good faith and in the best interests of the Treaty Authority
 - the indemnity is a continuing obligation and is enforceable by a person even if that person is no longer a Member and
 - the indemnity applies to the extent the person is not otherwise indemnified by another person including an insurer.

7.8 Chairperson

The Treaty Authority will appoint a Chairperson at its first meeting for a term of three years. The Chairperson must be a Member and not hold that office for more than two consecutive terms.

The Chairperson will chair meetings and perform other functions and duties provided under this Agreement.

8 Resignation and removal

8.1 Resignation

A Member may resign from the Treaty Authority by notifying the Chairperson in writing of the resignation. The Chairperson must notify the Panel and the Parties of the resignation.

A Chairperson may resign from the Treaty Authority by notifying the Panel in writing of the resignation. The Panel must notify the Parties of the resignation.

8.2 Removal of Member

The Parties, on the recommendation of the Panel, may remove a Member from office if the Panel holds a reasonable belief that one or more of the following grounds for removal applies.

A Member may be removed from office if the Member:

- is incapable of performing their functions and duties as a Member
- is negligent in performing their duties as a Member
- engages in conduct that brings the Treaty Authority into disrepute
- fails to attend three consecutive meetings without approval of the Chairperson
- is convicted of an offence:
 - that is punishable by imprisonment for 12 months or
 - involves fraud or dishonesty or
- is or becomes bankrupt.

The Parties, on the recommendation of the Panel, may suspend a Member from office for up to six months without pay if the Panel has a reasonable suspicion that a ground for removal exists.

The Panel must consult with the Chairperson before making a recommendation to the Parties under this clause.

The Parties must follow the recommendation of the Panel in relation to removing or suspending a Member under this clause.

8.3 Removal of Chairperson

The Chairperson may be removed or suspended following the process and on the grounds set out in clause 8.2, subject to the following modifications.

The Panel must consult with the remaining Members before making a recommendation to the Parties under this clause.

In addition to the grounds set out in clause 8.2, a Chairperson may also be removed from the office of Chairperson if the Chairperson:

- is incapable of performing their functions and duties as a Chairperson or
- is negligent in performing their duties as a Chairperson.

9 Vacancy

A vacancy arises if a Member:

- resigns under clause 8.1
- is removed under clause 8.2 or
- otherwise discontinues office.

The Chairperson, or in their absence the remaining Members, will notify the Panel of any vacancy that arises.

The Panel must notify the Parties of the vacancy.

If the vacancy causes the number of Members to be less than five then, subject to clause 10, a new Member must be appointed following the appointment process in clause 7.3. In such circumstances, an Acting Member must be appointed within 30 days to fill the vacancy until a new Member is appointed.

If the vacancy leaves at least five Members still appointed, the Panel may, in its discretion, decide to fill the vacancy. If the Panel decides that the vacancy should be filled, a new Member must be appointed following the appointment process in clause 7.3.

10 Acting Members

The Parties may appoint a person who meets the selection criteria in clause 5.2 as an Acting Member for a period of up to six months on the recommendation of the Panel.

The appointment of an Acting Member will be made by an instrument of appointment that meets the requirements under clause 7.7 and confers and imposes the same or similar entitlements, functions and duties as the Member for whom they are acting.

The Panel may make a recommendation for the appointment of an Acting Member under this clause if it is satisfied that the person meets the selection criteria in clause 5.2 upon being notified by the Chairperson or in their absence remaining Members of circumstances where:

- a vacancy has arisen under clause 9 and it is impractical to appoint a new Member under the appointment process within the following six-month period
- a vacancy has arisen under clause 9 which causes the number of Members to be less than five
- a Member is unable to act due to illness for a period of time
- a Member takes a leave of absence or other leave under their instrument of appointment for a period of time or
- a Member is otherwise unable to perform the functions and duties of a Member for a period of time.

An Acting Member may act in the office of the Member:

- during a vacancy in that office or
- during a period or all periods when the person holding that office
 - is absent from duty or
 - for any other reason, is unable to perform the functions and duties of that office.

An Acting Member holds office on the terms and conditions specified in the instrument of appointment.

11 Payments

A Member and Panellist will be remunerated for their services in accordance with their instrument of appointment and reimbursed for any reasonable fees incurred in performing their functions and duties.

Remuneration will be agreed and set by the Parties:

- for a Member, at least at the level payable to executives employed in public service bodies, as determined by the Victorian Independent Remuneration Tribunal, of similar skill and experience and
- for a Panellist, at least at the level payable under the Appointment and Remuneration Guidelines for a similar appointment.

Part Three - Functions and Powers

12 Functions of the Treaty Authority

12.1 Functions

The Treaty Authority has the functions provided by the Treaty Act. The Framework details the functions of the Treaty Authority and the processes by which the Treaty Authority will perform those functions.

In performing its functions, the Treaty Authority must, at all times, act with regard to the central tenets set out in clause 1 of this Agreement.

12.2 Additional functions

Pursuant to section 28(2) of the Treaty Act, the Treaty Authority has the additional function of providing for the resolution of disputes incidental to or in connection with Treaty negotiations in accordance with the Framework.

Pursuant to section 28(2) of the Treaty Act, the Treaty Authority has such additional functions hereafter agreed by the Parties and recorded in the Framework consistent with the Treaty Act. The Parties will consult with the Treaty Authority before conferring additional functions on the Treaty Authority under the Framework.

12.3 Human rights

In performing its functions and duties under this Agreement, the Framework and the Treaty Act, the Treaty Authority must not act incompatibly with human rights and must give proper consideration to relevant human rights when making decisions, as if it were a public authority within the meaning of section 4(1)(b) of the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

13 Powers of the Treaty Authority

The Treaty Authority has the power to do all such things that are necessary and incidental to performing its functions and duties under this Agreement, the Framework and the Treaty Act.

Nothing in the Treaty Act under which this Agreement is made allows the Treaty Authority to exercise coercive powers, the non-compliance with which carries a civil or criminal penalty.

The Treaty Authority also has those powers conferred by the Treaty Authority Act that enable it to perform its functions under this Agreement, the Framework and the Treaty Act and meet its duties under this Agreement.

Part Four - Procedures

14 Proceedings

14.1 Manner of performing functions and duties

The Treaty Authority may perform its functions and duties and exercise its powers in any manner that it considers appropriate, provided that it is consistent with this Agreement, the Framework, the Treaty Act and the Treaty Authority Act.

The Treaty Authority may issue practice directions, guidelines, statements or notes in relation to the performance of its functions and duties and exercise of its powers.

14.2 Day-to-day operations

In determining the manner in which it will perform its functions and duties and exercise its powers, the Treaty Authority will establish practices and procedures governing its day-to-day operations including:

- how Members individually or collectively perform the functions of the Treaty Authority
- how functions, duties and powers of the Treaty Authority may be delegated and
- any limits on how the Treaty Authority may operate if the number of Members falls below five but is greater than two. In establishing a practice and procedure of this type, the Treaty Authority must have regard to:
 - the need for the Treaty Authority to continue to operate, for example, for Treaty negotiations to continue to progress and essential operational decisions to continue to be made and
 - the desirability for five Members as a collective to participate in major and significant decisions and actions of the Treaty Authority.

14.3 Meetings

The Treaty Authority must hold its first meeting within 30 days of its commencement of operation.

The Treaty Authority must meet at least four times each year and otherwise may meet as and when required to perform its functions and duties and exercise its powers.

A quorum is a majority of the Members.

Meetings may be held in person or by videoconference.

Decisions will be made by consensus of Members. If consensus cannot be achieved, as a last resort, the majority view prevails. The Chairperson does not have a casting vote.

14.4 Chairperson

The Chairperson will chair the meetings of the Treaty Authority. If the Chairperson is absent or unable to chair a meeting, the Members present at the meeting will elect a Member to act as Chairperson for that meeting.

Members may appoint a Chairperson if the office of the Chairperson becomes vacant due to an expiry of term under clause 7.6 or vacancy under clause 9.

15 Indigenous Data Sovereignty

15.1 Indigenous Data Sovereignty policies

In consultation with the Aboriginal Representative Body, the Treaty Authority will develop policies and practices that uphold and respect Indigenous Data Sovereignty and Indigenous Data Governance to the extent possible having regard to applicable laws.

In developing policies and practices under this clause, the Treaty Authority must ensure that with regard to data created, collected, used, held and disclosed by the State to which Victorian or Commonwealth laws apply, the State is able to continue to comply with its obligations under those laws.

15.2 Records management

The State will work in good faith with the Treaty Authority to ensure that the Treaty Authority's records can be managed consistent with Indigenous Data Sovereignty and Indigenous Data Governance to the extent possible having regard to applicable laws.

16 Treaty Authority documents

In addition to any other duty relating to information, records or data, the Treaty Authority must also keep and make readily available to Members documents of the Treaty Authority, including:

- policies, procedures or decisions adopted by, made or relevant to the Treaty Authority
- a register containing the documents or class of documents relating to the accountability and reporting requirements of the Treaty Authority
- documents relating to Members, their terms of appointment, standards of conduct and other duties and responsibilities
- current and past strategic plans adopted by the Treaty Authority
- annual reports and
- any other document relevant to the performance of the Treaty Authority or a Member's functions and duties or exercise of powers, such as practice directions, guidelines, statements or notes.

Part Five - Accountabilities

The Treaty Authority is entrusted with the responsibility of overseeing and administering the Treaty Process. It is the guardian of the Framework. The accountabilities set out below are a necessary check on the Treaty Authority reflecting the trust placed in it and the power it holds.

17 Cultural accountabilities

The Treaty Authority is culturally accountable to First Peoples and will respectfully observe and uphold Aboriginal Lore, Law and Cultural Authority.

It is guided by cultural values that include First Peoples' sovereignty, Country, and self-determination. These cultural values are grounded in traditions and include amplifying the voice of Elders and respecting Cultural Authority.

To give effect to its accountability to First Peoples and maintain legitimacy, the Treaty Authority's standards of conduct under clause 20.1 will include building and maintaining respectful

relationships with the relevant representatives for Traditional Owner and other First Peoples' groups, as well as the Aboriginal Representative Body and its Elders' Voice.

18 Public accountabilities

The Treaty Authority is accountable to the Panel, the Parties, the Negotiating Parties, First Peoples and also to all other people of the State who place their confidence and trust in it to oversee and administer the Treaty Process.

The Treaty Authority is a party to the Treaty Process under the Treaty Act and will fulfil that role so as to maintain public confidence in its processes, decisions and actions.

19 Decisions and actions

This clause applies to decisions made and actions taken by the Treaty Authority in the course of performing its functions under the Framework and the Treaty Act.

Members must form their own views of the preferable decision or action in each case based on their cultural knowledge and the materials before them. Members will assume responsibility for and be accountable for their decisions and actions.

Members will keep appropriate records about decisions made and actions taken. Members will give reasons for decisions and actions that affect the Negotiating Parties.

The Treaty Authority will develop an appropriate internal review process by which decisions and actions can be reviewed.

The Treaty Authority may consult with the Elders' Voice and legal specialists, as appropriate, in developing these processes.

20 Members' conduct

20.1 Standards of conduct

Members are required to meet the standards of conduct developed by the Panel.

The purpose of the standards of conduct is to ensure that Members, at all times, perform their functions and duties and exercise their powers in good faith in the best interests of the Treaty Authority.

The standards of conduct will be publicly available and will cover:

- impartiality
- independence
- integrity
- respect
- relationships
- fairness
- cultural competence
- cultural safety
- care and diligence
- timeliness
- transparency
- conflict of interest and disqualification
- conduct in their role as a Member
- proper use of position
- proper use of information
- activities in their personal or other professional capacity
- professional development and
- Member wellbeing.

20.2 Instrument of appointment

In addition to the items listed at clause 7.7, a Member's instrument of appointment will also include a requirement to adhere to the standards of conduct at clause 20.1 and may provide additional duties and key performance indicators.

21 Annual report

The Treaty Authority must prepare an annual report that will be made publicly available. The annual report must include:

- activities undertaken by the Treaty Authority in performance of its functions under the Framework and the Treaty Act, including acting compatibly with and taking into account human rights
- ways in which the Treaty Authority has met its accountabilities under this Part
- other operations of the Treaty Authority
- finances and governance and
- any other matter that the Treaty Authority considers appropriate.

If the Treaty Authority considers it appropriate, the annual report may be tabled in Parliament.

Part Six - General

22 Finance

The State will provide ongoing funding and, subject to a special appropriation passing through Parliament, secure a capped special appropriation, sufficient to ensure that the Treaty Authority can effectively undertake its functions and duties and exercise its powers under this Agreement, the Framework, the Treaty Act and the Treaty Authority Act.

The Treaty Authority will provide audit reports to the Parties within 30 days of the audit being concluded. Financial information must also be included in the annual report under clause 21.

The Treaty Authority must make and keep written financial records that:

- correctly record and explain the Treaty Authority's transactions, financial position and performance and
- enable true and fair financial statements to be prepared and audited.

The Treaty Authority must also keep written records that correctly record its operations and be able to produce these records if required by law.

The Treaty Authority must retain its records for at least seven years, or as otherwise required by the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) or any other laws that may apply, for example, taxation law.

The Members must take reasonable steps to ensure that the Treaty Authority's records are kept safe.

23 Treaty Authority Bill

The State commits to working closely with the Aboriginal Representative Body and keeping the Aboriginal Representative Body informed of all developments during the debate of the *Treaty Authority and Other Treaty Elements Bill 2022* (Vic) in Parliament.

24 Not-for-profit

The assets and income of the Treaty Authority will be applied solely to further its objects and no portion shall be distributed directly or indirectly to Members, except as genuine compensation for services rendered or expenses incurred on behalf of the Treaty Authority.

25 Winding up

In the event of the Treaty Authority being wound up, all assets that remain after such winding up and satisfaction of all debts and liabilities:

- must not be distributed to Members or former Members of the Treaty Authority and
- subject to the requirements of Australian laws and any Australian court order, shall be distributed to another organisation or organisations with similar purposes to the Treaty Authority which is or are charitable at law and which is or are not carried on for the profit or personal gain of Members.

26 No partnership

Nothing in this Agreement creates a relationship that is a partnership. The Members will not be in receipt of income jointly.

27 Amendments

Except as otherwise provided by law, this Agreement may only be amended by agreement of the Parties in writing.

28 Review

The Parties will review the effectiveness of the Treaty Authority within three years of its commencement. The review will take into account the views of the Treaty Authority, including in relation to:

- a. adequate resourcing and
- b. the need for additional functions, including but not limited to the implementation of Treaties.

Following the initial review, the Parties will review the Treaty Authority every five years to assess the matters set out in a and b above. The Parties will take into account the views of the Treaty Authority in conducting any subsequent review.

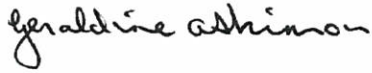
29 Duration of the Treaty Authority

The Treaty Authority will continue until dissolved by agreement of the Parties.

The Parties may only dissolve the Treaty Authority if, after consulting with the Elders' Voice, they are satisfied that the Treaty Authority:

- has no further functions or duties to perform under this Agreement, the Framework or any Treaties made under the Framework or
- is unable to perform its functions or duties under this Agreement, the Framework or any Treaties made under the Framework.

Executed by First Peoples')
Assembly of Victoria in accordance)
with section 127 of the *Corporations*)
Act 2001 (Cth):



Signature of Director

Geraldine Atkinson
Name of Director



Signature of Director

Marcus Stewart
Name of Director

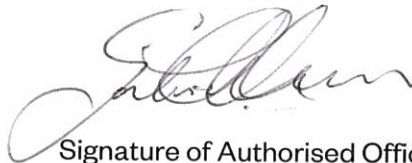
Signed for and on behalf of **The**)
State of Victoria in the presence of:)



Signature of Witness



Name of Witness



Signature of Authorised Officer

Gabrielle Williams MP, Minister for Aboriginal Affairs
Name of Authorised Officer

Schedule A – General interpretation

In this Agreement, and unless the context indicates a contrary intention:

- a. headings are for convenience only and do not affect interpretation
- b. 'person' includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust
- c. a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation
- d. a reference to a document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time
- e. a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements
- f. a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender
- g. a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Agreement, and a reference to this Agreement includes all schedules, exhibits, attachments and annexures to it
- h. if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning and
- i. 'includes' in any form is not a word of limitation.

Schedule B – Selection criteria

Assessment and selection of the preferred candidates will be based on the selection criteria below.

Individual key selection criteria

All candidates must demonstrate they meet the key selection criteria below:

- **Impartiality** – the Treaty Authority must be, and must be seen to be, impartial and objective in carrying out its functions. All candidates must demonstrate that they are free from any external influence which may undermine their ability to be impartial and objective, or which could be perceived by others as undermining their ability to be impartial and objective. For the avoidance of doubt, a person’s status as a Traditional Owner alone does not remove a candidate’s ability to be impartial. All candidates must understand that impartiality builds trust in their ability to make decisions and take action.
- **Commitment to self-determination and empowerment** – the Treaty Authority will observe and uphold self-determination and empowerment and must be accountable to the First Peoples’ community. Candidates must be connected with and be a valued member of the First Peoples’ community and demonstrate that they are committed to achieving self-determination and empowerment for First Peoples.
- **Good character, courage and integrity** – the candidates must demonstrate that they have high moral character and integrity and are widely respected. They must have the courage to listen, learn and make sound decisions.
- **Cultural knowledge, wisdom and humility** – the Treaty Authority will observe and uphold Aboriginal Lore and Law and develop its mandate to uphold Cultural Authority. Candidates must have a demonstrated ability to identify and understand Aboriginal Lore and Law for different First Peoples’ groups, Cultural Authority for different First Peoples’ groups and ways of doing business in the Victorian context.
- **Supporting positive relationships** – the Treaty Authority will engage with people with different lived experiences working within different operational contexts. The candidates must have a demonstrated ability to bring people together to find shared understandings and promote clear communication and respectful interactions.
- **Technically competent and experienced** – the candidates must have a demonstrated ability to perform one or more of the functions of the Treaty Authority to a high standard.

Group key selection criteria

The Members must collectively meet the group selection criteria below. Candidates should demonstrate whether they meet one or more of the following:

- demonstrated expertise in cultural safety and healing for First Peoples

- demonstrated expertise in the use of First Peoples' culture to empower First Peoples in the pursuit of self-determination
- demonstrated expertise in culturally respectful leadership and collaboration
- demonstrated experience in facilitating negotiations and dispute resolution, including mediation experience
- contributing to a gender balance across the Members and
- demonstrated understanding of the practices and processes of government.