



# Guide for First Peoples

Finding Common Ground  
to Resolve Disputes



**TREATY  
AUTHORITY**

# Acknowledgement of Country

The Treaty Authority acknowledges First Peoples as sovereign peoples throughout the lands and waters now known as Victoria and across Australia. We pay deep respect to all Traditional Owners, their lands, waters and skies, their Elders and ancestors, languages, family and clan groups, and their Law, Lore, customs and traditions.

# Part 1

Introduction to this guide



## What is this guide?

This guide was developed by the Treaty Authority to provide practical information on the Treaty Authority's process for resolving disputes called 'Finding Common Ground'.

Treaty-making is about coming together in good faith to reach agreement. However, along the way, disagreements may arise. Where this happens, the Treaty Authority supports parties to find common ground in a flexible way that:

- Draws on Aboriginal ways and wisdom
- Observes and upholds Aboriginal Lore, Law and Cultural Authority
- Promotes equal footing, respect and fairness
- Promotes peacebuilding and healing.

This guide sets out how the Finding Common Ground process can start (Part 2) and the approaches the Treaty Authority may use to help parties reach agreement (Part 3).

This guide is based on the rules for Treaty-making in Victoria set out in the **Treaty Negotiation Framework** (also known as the 'Framework').

Key terms used in this guide are set out in **Attachment 1**.

## What is the role of the Treaty Authority?

The Treaty Authority is the independent body that oversees Treaty-making in Victoria. This includes supporting parties to find common ground when disputes arise (see Part 3).

The Treaty Authority is led by five respected Aboriginal people known as 'Treaty Authority Members'. The Members guide the Finding Common Ground process, bringing their collective experience, expertise and cultural knowledge to the process.

The Treaty Authority's values guide the process:

- Fairness
- Responsibility
- Honour, and
- Connection.

During the Finding Common Ground process, the Treaty Authority observes and upholds Aboriginal Lore, Law and Cultural Authority and respects human rights, including Aboriginal cultural rights under the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

**Get to know the Treaty rules:** See *clauses 2.7 and 2.8 of the Framework*.

### Treaty facts

#### The Treaty Negotiation Framework

The Framework is the agreement signed in 2022 between the First Peoples' Assembly of Victoria (known as 'the Assembly') and the State of Victoria that sets out the rules for Treaty-making.

The Framework includes a process for reaching agreement in a way that:

*'Supports agreement-making and preserves, restores and builds ongoing, just and respectful relationships, rather than through an adversarial dispute resolution process'* (clause 35.1).

## Guiding principles for Finding Common Ground

The guiding principles for the Finding Common Ground process are:

- **Listening** — Embedding deep and active listening to understand each individual or group's perspective and to allow for non-judgmental reflection. Dadirri is an example of deep listening and connection.
- **Culture** — Agreement-making will be grounded in ceremony, ritual, cultural practices and protocols. All participants should feel culturally safe.
- **Consent** — Consent requires a genuine willingness to participate from all parties and can be undermined where there is not equal footing between the parties.
- **Flexibility, Choice and Empowerment** — Encouraging self-determination, dispute processes should be flexible and designed with the input of the parties to ensure there is choice about where, how and with whom the parties will come together.
- **Fairness** — The processes will be developed in a way that recognises historical and current imbalances of power and the potential for future abuses of power. Fairness includes procedural fairness as well as ensuring equal footing.
- **Reciprocity and Mutual Benefit** — There will be a focus on culturally strong outcomes where both parties benefit, acknowledging the interconnectedness of parties and the need for sustainable agreement-making for Treaty.
- **Healing** — The process will seek to heal and restore, and to develop trust and enduring respectful relationships so Treaty negotiations can continue.

## How will the Treaty Authority protect my information?

The Finding Common Ground process is confidential between the parties to protect your information and the safety, privacy and integrity of the process.

In some cases, it may also be appropriate to discuss some or all aspects of your dispute with another party. This will only happen with the agreement of all parties or where the Treaty Authority considers that disclosing this information is justified under the Framework.

The Treaty Authority will also uphold and respect **Indigenous Data Sovereignty and Governance** principles to the fullest extent possible having regard to applicable laws.<sup>1</sup>

## Where can I get more information?

If you want more information on the Finding Common Ground process, you can get in touch with the Treaty Authority on 1300 133 033 or email us at [info@treatyauthority.au](mailto:info@treatyauthority.au).

If you want to know the rules about resolving disputes, you can have a look at the **Treaty Negotiation Framework**. The Assembly has also published a short explainer on the Framework called '**Get to know the Treaty Negotiation Framework**'.



# Part 2

How the process starts



## What is the first step for finding common ground?

Before raising a dispute with the Treaty Authority, the parties should attempt to resolve the dispute themselves, in an informal and genuine way.

**Get to know the Treaty rules:** See clause 36.1(a) of the Framework.

## How can a party raise a dispute?

Where you are unable to resolve a dispute informally, a party can raise a dispute with the Treaty Authority by providing a 'notice of dispute'.<sup>2</sup> The notice must be in writing and:

- Explain the nature of the dispute and
- Set out any genuine actions already taken to resolve the matter (if any).

A dispute can be raised:

- Prior to or during Treaty Negotiations

**Get to know the Treaty rules:** See clause 36.1(b) of the Framework.

## What can a dispute be about?

Under the Finding Common Ground process, a dispute can be about any matter that arises in or is connected to Treaty negotiations in Victoria.

This includes disputes about:

- Meeting the Minimum Standards
- Being entered on the Negotiations Database
- Forming or changing a First Peoples' Treaty Delegation
- Preparing for and involvement in Treaty negotiations
- The interaction between Statewide Treaty and Local Traditional Owner Treaties
- Formalising a Treaty.

## The Finding Common Ground process does not apply to matters that:

- Are trivial, frivolous or trouble-making
- Contain offensive or defamatory material
- Are unlikely to be resolved through the process
- Are premature and may be resolved more informally first
- Are irrelevant to Treaty negotiations
- Are not appropriate for dispute resolution.

**Get to know the Treaty rules:** See clauses 35.1(a) and 36.1(c)(ii) of the Framework.

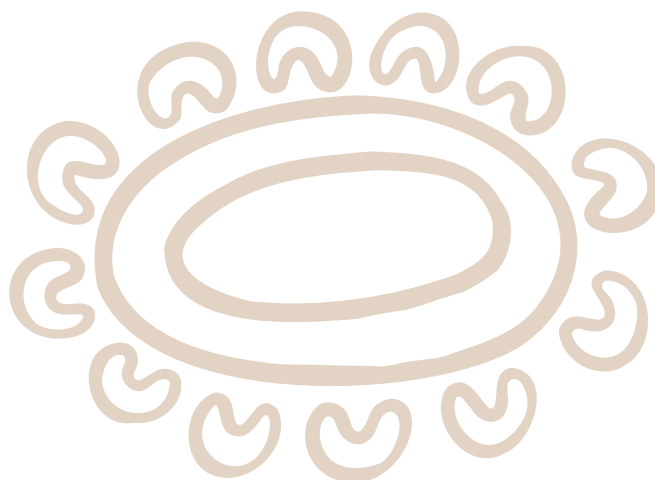
### Treaty facts

#### Key terms related to Treaty negotiations

The Minimum Standards are the criteria set out in the Treaty Negotiation Framework that parties must meet to be entered on the Negotiations Database.

The Negotiations Database is the electronic database managed by the Treaty Authority which holds information about Treaty negotiations. This includes public information such as who is negotiating a Treaty, the Country it will cover and the status of negotiations.

A First Peoples' Treaty Delegation is the Traditional Owner party that negotiates a local Traditional Owner Treaty (made up of one or more Traditional Owner Groups on the Negotiations Database).



## Who can be a party to a dispute?

Under the Finding Common Ground process, a party to a dispute can include:

Party	Overview
Negotiating parties that are on the Negotiations Database	<p>The Treaty Authority primarily facilitates disputes that arise between parties that are entered onto the Negotiations Database.</p> <p>This includes:</p> <ul style="list-style-type: none"><li>— First Peoples’ negotiating parties (including a Traditional Owner Group or First Peoples’ Treaty Delegation)</li><li>— The Assembly</li><li>— The State of Victoria.</li></ul>
Other individuals or groups that are not on the Negotiations Database	<p>The Treaty Authority may also facilitate disputes related to Treaty negotiations that are raised by other individuals and groups, such as a Traditional Owner Group that is likely to meet the Minimum Standards but is yet to be entered onto the Negotiations Database. The Treaty Authority will only facilitate these types of disputes if attempting to resolve the matter is necessary to progress Treaty negotiations.</p>

## How does the Treaty Authority decide to start the process?

After a dispute is raised, the Treaty Authority will decide whether to start the Finding Common Ground process. The Treaty Authority will take into account:

- whether the matter is considered a ‘dispute’ (see page 7)
- whether the person is eligible to raise a dispute (see table above)
- whether there have already been attempts to resolve the matter informally
- whether the matter is ‘out of scope’ because it:
  - Is trivial, frivolous or trouble-making
  - Contains offensive or defamatory material
  - Is unlikely to lead to an agreement
  - Is best dealt with using a different complaint process.

If the Finding Common Ground process does not apply, the Treaty Authority will provide you with confidential reasons why and may suggest alternative options to resolve the issue.





# Part 3

How parties may  
find common ground



The Treaty Authority may use a range of different approaches to support you to find common ground and reach agreement — from yarning circles to making a final determination.

Although there are different steps in the process (set out below), not all steps will apply to every dispute. The approach the Treaty Authority takes will consider the nature of your dispute, and work with you to understand what is culturally appropriate and how you would like to move forward together. The Treaty Authority respects different cultural protocols and ways of doing business.

The first step for all parties is to get ready to start the process (step 1).



## Step 1 Getting ready

### 1.1 Understanding your dispute

If you have raised a dispute, the Treaty Authority will yarn with you to understand:

- The nature of your dispute
- Who your dispute is with
- Whether you have already attempted to come to an agreement
- How you would like the dispute to progress, including any Aboriginal Lore, Law or Cultural Authority you would like observed and upheld during the process
- The outcomes you are seeking.

The Treaty Authority is happy to yarn with you on Country to learn more about how you would like the process to run.

### 1.2 Support and preparation

Before the process starts, the Treaty Authority will make sure all the parties understand:

- Some different options for finding common ground
- How your information will be protected in the process.

We will work with you to decide on the next step in the process (such as a yarning circle) and how it will run. For example, if we are holding a yarning circle, we will talk about:

- Where and when the yarning circle will be held
- Who will participate and the role of different participants
- Any guidance and support you may need to get ready.

## Step 2 Coming together

### 2.1 Yarning circles and facilitated discussions

Once the parties are ready to start the process, the Treaty Authority will aim to bring you together in a culturally safe, respectful, non-judgmental and open way. The Treaty Authority will be guided by the parties on how this can best occur. One option is to bring parties together in a yarning circle or facilitated discussion.

#### What is the difference between a yarning circle and facilitated discussion?

Yarning is an ancient Aboriginal way of having conversations with a purposeful sharing of stories. There are different types of yarning circles that Treaty Authority Members may decide to use depending on the context, nature of the dispute and what might work best to find common ground. A facilitated discussion is where a Treaty Authority Member or Members play a more active role in facilitating discussion between the parties by bringing their cultural knowledge and knowledge of the Treaty process to the discussion. They may also invite an Elder, another First Nations or other relevant person to help the parties find common ground.

A yarning circle or facilitated discussion may happen on Country or at a neutral place and may involve coming together in different ways (such as through ceremony or over a meal).

During a yarning circle or facilitated discussion, you will be able to share your own perspectives and can hear what others have to say.

**Get to know the Treaty rules:** See clause 36.1(d) of the Framework.

### 2.2 Dilly bag tools and protocols

The Treaty Authority may use a dilly bag of culturally strong tools and protocols to encourage listening and respect and to support you to find common ground.

#### Dilly bag tools and protocols

- Setting out clear roles and responsibilities of participants
- Identifying shared strengths and interests
- Using cultural practice and protocols
- Practising deep listening
- Using the wisdom of Elders
- Bring on Country where possible
- Visioning with Traditional Owners
- Practising inclusion
- Using flexible processes as guided by the parties
- Healing old grievances
- Dreaming about cultural abundance
- Focusing on relationships

### 2.3 Taking a different approach

In some cases, the Treaty Authority may think it is more helpful or necessary for the parties to use a different approach to try to reach agreement (see step 3).



### Step 3 Finding a way forward

If you were unable to reach agreement through a yarning circle or facilitated discussion, or if the Treaty Authority thinks it may be necessary or helpful to use a different approach, the Treaty Authority can take a broad range of approaches to help you find common ground.

When the Treaty Authority is considering which approach to take, we will take into account the nature of your dispute, what is culturally appropriate and what you would like to do. We may also use dilly bag protocols and tools as part of the process (see step 2).

The following approaches may be used to help you to find common ground (or any other approach we think may be necessary or helpful for you to reach agreement).

Approach	Explanation
Requesting further information	The Treaty Authority may ask a party to share further information with another party to promote equal footing and show the party is genuine.
Facilitating more discussions or yarning circles	The Treaty Authority may facilitate more discussions or yarning circles, particularly if you are close to finding common ground and need more time and space to reach agreement. This might include giving you time to reflect before coming together again.
Engaging an expert	The Treaty Authority may engage experts, with cultural or other expertise, to provide advice or an opinion about your dispute. The Treaty Authority will not be bound by an expert's advice or opinion but may take it into account when considering the way forward.
Organising a mediation	<p>The Treaty Authority may organise a voluntary and confidential mediation with a qualified mediator. This is a more structured way of coming together, where an independent person can help you reach agreement with a focus on ongoing, just and respectful relationships.</p> <p>Aboriginal mediators can also use their knowledge of Aboriginal Lore, Law and Cultural Authority to help you find common ground.</p>
Referring the dispute to an expert panel	With your agreement, the Treaty Authority may refer your dispute to an expert panel to make recommendations about parts of your dispute or the best way forward to help you reach agreement.
Making a recommendation	The Treaty Authority may make a recommendation about how to resolve your dispute and encourage the parties to take certain actions. Under the Framework, parties are required to use their best efforts to follow the Treaty Authority's recommendations.
Making a determination	As a last resort, and in limited circumstances, the Treaty Authority may make a determination (or final decision) about your dispute (see step 4).

**Get to know the Treaty rules:** See clause 36.1(e)-(g) of the Framework.

## Step 4 Making a final decision

As a last resort, the Treaty Authority may make a determination about how to resolve your dispute. This is a final decision by the Treaty Authority about your dispute.

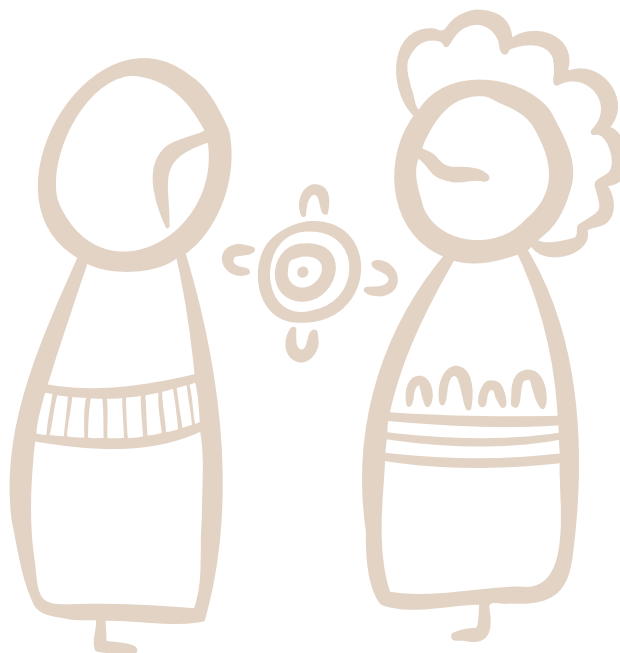
The Treaty Authority takes seriously the decision to make a determination. A determination will only be made if you were unable to reach agreement in other ways or if it is clear that your dispute will not otherwise be resolved.

### What can the Treaty Authority make a determination about?

The Treaty Authority can make a final determination about limited matters, including:

- Amending an entry on the Negotiations Database (including an entry for the Assembly, a Traditional Owner Group or a Treaty Delegation)
- Removing an entry from the database
- Deciding that the collective agreement of all relevant Traditional Owner Groups on the database is not needed to start negotiations for a Traditional Owner Treaty.

**Get to know the Treaty rules:** See clause 36.1(e)(ix) and 36.1(h) of the Framework.



# Attachment 1

## Key terms

The following key terms are used in this guide.

References to 'clauses' are references to sections of the Treaty Negotiation Framework.

Key Term	Explanation
First Peoples (clause 37)	The term 'First Peoples' is defined in the Treaty Negotiation Framework and this guide to mean: <ul style="list-style-type: none"> <li>— Traditional Owners of Country in Victoria; and</li> <li>— Aboriginal and/or Torres Strait Islander peoples living in Victoria.</li> </ul>
First Peoples' Assembly of Victoria or 'the Assembly'	The Assembly is the independent, democratically elected body that represents First Peoples in Victoria. The Assembly will negotiate Statewide Treaty as the representative body under the Treaty Negotiation Framework.
Minimum Standards or 'the standards' (clauses 8.3, 13.2, 16.2 and 20.2)	The Treaty Negotiation Framework sets out the criteria, known as 'Minimum Standards', that parties must meet to negotiate a Treaty. The standards are grouped into four categories: <ul style="list-style-type: none"> <li>— Land and waters</li> <li>— Community</li> <li>— Leadership</li> <li>— Inclusivity.</li> </ul>
Negotiations Database or 'the Database' (clause 4.5)	This is the electronic database managed by the Treaty Authority which holds public and private information about Treaty negotiations. This includes public information about who is negotiating a Treaty, the Country it will cover and the status of negotiations.
Statewide Treaty (Part C)	Statewide Treaty will be negotiated with the State of Victoria over the lands and waters now known as Victoria. It will benefit all Victorians, including Traditional Owners of Country in Victoria and Aboriginal and/or Torres Strait Islander peoples living in Victoria.
Traditional Owner Treaties (Part B)	Local Traditional Owner Treaties can be negotiated by Traditional Owners about their aspirations and priorities for their communities and Country, including their traditional lands and waters.



