Public Guide

Information for
Local Government
in Victoria

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 Lore, Law, customs and traditions.

What is the role of the Treaty Authority?

The Treaty Authority is the body that oversees Treaty-making in Victoria.

The establishment of the Treaty Authority began with the passage of the *Advancing the Treaty Process with Aboriginal Victorians Act 2018* (Vic) (**Treaty Act**). That Act sets out the elements required to support fair and effective Treaty negotiations in Victoria and required the State to work with the First Peoples' Assembly of Victoria (known as the 'Aboriginal Representative Body' in the Treaty Act) to establish the Treaty Authority by agreement.

Pursuant to Part 4 of the Treaty Act, the State and Assembly signed the Treaty Authority Agreement in 2022. That Agreement governs how the Treaty Authority works, including by setting out rules relating to the Treaty Authority's powers, proceedings and accountabilities. That Agreement was later supplemented by the *Treaty Authority and other Treaty Elements Act 2022* (Vic), which gives the Treaty Authority legal capacity and sets out its functions and powers.

The Treaty Authority's functions are:

- Facilitating and overseeing Treaty negotiations
- Administering the Treaty Negotiation Framework (**Framework**)
- Providing for resolution of disputes in Treaty negotiations, or which are incidental or connected to Treaty negotiations, in accordance with the Framework; and
- Carrying out research to support Treaty negotiations and the administration of the Framework.

The Treaty Authority is led by five Aboriginal Members with strong expertise, community standing and cultural authority. The Treaty Authority's vision is for a fair Treaty process that delivers justice, prosperity and mutual respect for all Victorians. The Treaty Authority is independent of the State of Victoria, the First Peoples' Assembly of Victoria, the Self-Determination Fund, Traditional Owners and other First Peoples' groups.

For generations, First Peoples have called for Treaty to acknowledge their unique status and to support their communities to thrive. The establishment of the Treaty Authority means that there is an impartial and independent body to ensure fairness and integrity is brought to the Treaty process.

Other bodies involved in the Treaty process

First Peoples' Assembly of Victoria (**Assembly**) is the independent and democratically elected body that represents all Victorian Traditional Owners and First Peoples living in Victoria. The Assembly is negotiating Statewide Treaty with the State of Victoria and may provide support to Traditional Owners participating in Traditional Owner Treaty negotiations.

Self-Determination Fund is led by First Peoples and provides funding to Traditional Owners to prepare for and participate in Traditional Owner Treaty negotiations. The Fund will also establish opportunities to generate economic prosperity for future generations of First Peoples.

Department of Premier and Cabinet leads Treaty negotiations on behalf of the State of Victoria and drives whole-of government engagement with the Treaty process.

Yoorrook Justice Commission was the first formal truth-telling inquiry into historical and ongoing injustices experienced by First Peoples in Victoria. The outcomes of Yoorrook will inform the Treaty process.

About Treaty-making in Victoria

The Treaty Negotiation Framework

The Treaty Negotiation Framework is the 'rulebook' under which Treaty negotiations are conducted. The Framework was agreed by the State of Victoria and the Assembly and sets out the guiding principles for Treaty negotiations, including the central principle of self-determination and empowerment.

The Treaty Negotiation Framework sets out the steps that must be followed before Treaty negotiations can begin, how negotiations will be conducted, and the process for formalising Treaties. The Framework also contains a dispute resolution process.

The Treaty Authority is responsible for ensuring all participants in the Treaty process follow the rules in the Treaty Negotiation Framework.

What kinds of Treaties can be negotiated?

In Victoria, two types of Treaties can be negotiated:

Statewide Treaty is negotiated between the Assembly and the State of Victoria over all land and waters currently known as Victoria. Statewide Treaty will benefit all Victorians, including Victorian Traditional Owners and First Peoples living in Victoria.

Traditional Owner Treaties will address local matters and can be negotiated by Traditional Owners and the State of Victoria. The content of these Treaties will differ according to the aspirations and priorities of different Traditional Owner groups, covering their traditional lands and waters.

While Statewide Treaty will cover statewide matters (such as justice, health and education), Traditional Owner Treaties relate to matters that are important to Traditional Owners on their Country.

How does the process start for a Traditional Owner Treaty?

Any Victorian Traditional Owner Group can notify the Treaty Authority that it wants to negotiate a Traditional Owner Treaty with the State. Once the group confirms it meets the Minimum Standards to enter negotiations, the Treaty Authority will enter the group on the Negotiations Register (called the Negotiations Database in the Treaty Negotiation Framework). The Negotiations Register is where information is held about Treaty negotiations.

Who can negotiate a Traditional Owner Treaty?

A Traditional Owner Treaty is negotiated by the State of Victoria and a 'Treaty Delegation' which is made up of one or more Traditional Owner Groups on the Negotiations Register in relation to the relevant Country. Individuals cannot negotiate Treaty, they must be part of a group.

There can only be one Traditional Owner Treaty that covers any particular part of Victoria. This means if more than one Traditional Owner Group on the Negotiations Register wants to negotiate a Treaty for the same area, they need to come together as a single Delegation to negotiate with the State.

What are the Minimum Standards?

The Minimum Standards to enter Treaty negotiations are grouped into four categories and broadly cover the following matters:

Land and Waters: A Traditional Owner Group must identify the Country over which it intends to negotiate a Traditional Owner Treaty.

Community: A Traditional Owner Group must state how it identifies collectively as a group, how the group are Traditional Owners in connection to Country and identify its governance structure.

Leadership: A Traditional Owner Group must identify the process by which it will choose its negotiating team and identify the group's decision-making processes.

Inclusivity: A Traditional Owner Group must identify its processes to ensure the group is inclusive of all its members, uphold cultural authority, educate and consult its members about Treaty negotiations, and seek the Collective Support of its members about any Treaty negotiation outcomes.

Forming a Delegation and inviting the State

Once a Traditional Owner Group is on the Negotiations Register, it can then progress to form a Delegation (see 'Who can negotiate a Traditional Owner Treaty?' page 4). The State of Victoria would then be invited to negotiate a Treaty. Before negotiations commence, the State must also meet certain Minimum Standards and make certain Additional Preparations required by the Treaty Negotiation Framework. Once the State meets the Minimum Standards, it will be entered onto the Negotiations Register for that particular Treaty negotiation and negotiations can begin.

Treaty-making in Victoria

The Treaty process welcomes all Victorian Traditional Owners to get involved. Any Traditional Owner Group can seek to be a part of a Delegation representing the group's traditional Country, regardless of whether that group has existing rights under the *Aboriginal Heritage Act 2006* (Vic), the *Traditional Owner Settlement Act 2010* (Vic) or the *Native Title Act* 1993 (Cth).

While a Delegation and the State are the Primary Negotiating Parties, other parties can also be invited to participate in Treaty negotiations (see 'Can a local council be a party to negotiations?' page 6).

What can be negotiated?

The Treaty Negotiation Framework recognises that Victoria is home to many different First Peoples' nations, each with their own traditions, languages, stories and Treaty aspirations. A Delegation can negotiate a Treaty that reflects the specific aspirations and priorities of its communities and their traditional land and waters.

This might include things like:

— Traditional relationships with land and waters, including, entitlements and management

— Strengthening culture and language

— Economic underpinnings for caring for Country and

— Business development opportunities.

The Framework sets out required subject matters for Traditional Owner Treaties. These include (among other things):

— Traditional relationships with land and waters

— Protecting land and waters and cultural heritage

— Culture and language

— Economic sustainability and empowerment.

How long will negotiations take?

This is a historic moment for First Peoples and all Victorians. It is the first time Treaties will be negotiated in Australia, and it is expected to take time. There is no time limit for negotiating a Traditional Owner Treaty and interim agreements can be made to bring benefits to Traditional Owners along the way.

How does Treaty intersect with existing traditional rights legislation?

The Treaty process exists alongside existing traditional rights recognition schemes at the State and Federal level, including:

— *Native Title Act 1993* (Cth)

— *Aboriginal Heritage Act 2006* (Vic)

— *Traditional Owner Settlement Act 2010* (Vic).

Consistent with the principle of self-determination that underpins the Treaty process, Traditional Owners are not required to have engaged with these existing processes or have obtained recognition under this legislation before they can participate in Treaty.

Traditional Owner groups participating in Treaty may be at varying stages under these other processes. For example, some may have obtained a native title determination under the *Native Title Act 1993* (Cth) or status as a Registered Aboriginal Party (**RAP**) under the *Aboriginal Heritage Act 2006* (Vic); some may be in the process of seeking a native title determination or have a RAP application before the Aboriginal Heritage Council; and some may not have been able, or wanted, to engage in those processes. Alternatively, Traditional Owners could commence or progress through these other processes at the same time as engaging in Treaty negotiations. It is entirely up to Traditional Owners to decide whether or when to pursue Treaty and / or other legislative recognition.

The Treaty process is designed to protect any existing rights held by Traditional Owners. Delegations and parties to Treaty negotiations cannot seek to limit existing rights or otherwise propose matters for negotiation that would adversely affect existing rights held by a Traditional Owner, unless the relevant Traditional Owner is participating in the process.

However, whereas these existing processes recognise limited rights, Treaty may cover any subject matter the Primary Negotiating Parties agree to discuss.

The role of local government in Treaty

Can a local council be a party to negotiations?

The Primary Negotiating Parties to a Treaty can agree to invite other people or groups to participate in all or part of Treaty Negotiations as 'Additional Negotiating Parties'. The Primary Negotiating Parties for a Traditional Owner Treaty are a Delegation and the State of Victoria. A Statewide Treaty is being negotiated by the Assembly and the State.

Importantly, it is up to the Primary Negotiating Parties to decide whether to invite an Additional Negotiating Party to participate: there is no obligation to invite Additional Negotiating Parties to Treaty negotiations.

As part of its preparations for Treaty negotiations, the State should have processes in place to enable potential Additional Negotiation Parties to be invited to join Treaty negotiations (where appropriate and agreed to by the Primary Negotiating Parties). Local governments are identified as one such group that might be invited to join negotiations.

An invitation can be extended at any time before a Treaty is formalised. The scope of an Additional Negotiating Party's participation in Treaty negotiations must be agreed by the Primary Negotiating Parties (for example, whether that Additional Negotiating Party will be a party to the formalised Treaty or only present at negotiations to provide advice or information).

For example, a local council located on Country over which a Traditional Owner Treaty is being negotiated may be invited to participate in a specific part of the Treaty negotiations relating to local matters of relevance. Depending on the final terms of the Treaty, that local council may be invited to be a party to the Treaty itself.

What happens if a local council is invited to participate in negotiations?

If a local council is invited to participate in negotiations for a Traditional Owner Treaty, the council may decide whether or not to accept the invitation to become an Additional Negotiating Party. There is no obligation on any person or body to participate as an Additional Negotiating Party.

If the council chooses to accept the invitation, the Treaty Authority will enter the council on the Negotiations Register with information including:

— Who will represent the council in Treaty negotiations (the negotiators)

— Whether the council may be a party to interim agreements or formalised Treaties

— Whether the council will participate in all or only part of the Treaty negotiations.

Unlike the Primary Negotiating Parties, Additional Negotiating Parties are not required to meet any Minimum Standards before being entered on the Negotiations Register.

What happens if a local council is not invited to participate in negotiations?

Because the decision to invite an Additional Negotiating Party is at the discretion of the Primary Negotiating Parties, local councils cannot insist on participating in Treaty negotiations as an Additional Negotiating Party.

Even if they are not at the negotiating table, Local councils can still expect to receive information about the progress of Treaty negotiations. As part of its preparations for Treaty negotiations, the State should have processes to educate the people of the State about the progress of Treaty negotiations and processes to allow engagement of key stakeholders in relation to the land and waters over which the Treaty will be negotiated. The Treaty Authority will also publish information about the status of Treaty negotiations on its Negotiations Register.

How are Treaty negotiations conducted?

Treaty negotiations are conducted in accordance with Negotiation Protocols that are developed by the Primary Negotiating Parties. Negotiation Protocols include matters such as where negotiations will take place, how negotiations will be conducted, and the roles and responsibilities of participants.

All Negotiating Parties, including Additional Negotiating Parties, must commit to the Negotiation Standards set out in the Treaty Negotiation Framework to ensure negotiations are fair, inclusive, safe and culturally appropriate. For example, parties must commit to recognising Aboriginal Lore, Law and Cultural Authority in Treaty negotiations, and to promoting frank discussion and collective problem-solving.

How are Treaty negotiations formalised?

Parties must signify their assent to an interim agreement or Treaty, including Additional Negotiating Parties that are to be a party to the relevant agreement. The unique process for signifying assent to an interim agreement or Treaty is determined by each party, and could include holding a formal event or ceremony.

How can local Councils identify if a Traditional Owner Group intends to negotiate over an area?

Once a Traditional Owner Group is entered onto the Negotiations Register, a public notification stage begins to ensure that the people of Victoria and Traditional Owners are kept informed about the Treaty process. The Treaty Authority intends to share ongoing updates with local councils as relevant throughout the Treaty process, including through direct notifications to local councils when Traditional Owners in their area are entered onto the Negotiations Register. The Traditional Owner Group will also be published on the public Treaty Authority Negotiations Register Map.

What information about Treaty negotiations is publicly available?

To uphold transparency and accountability, the Treaty Authority makes some information about Treaty negotiations public on the Negotiations Register (such as who is negotiating a Treaty and the area where a Treaty is being negotiated). However, to protect the information and knowledge of Traditional Owners and other parties involved in Treaty negotiations, the Treaty Authority may choose to keep some information private, taking into consideration:

— Aboriginal Lore, Law and Cultural Authority

— Indigenous Data Sovereignty and Governance and

— Other requirements of law.

What else can local councils do to support Treaty?

All local councils can support the Treaty process in Victoria regardless of whether or not a local council is invited to participate in Treaty negotiations. For example, a local council can talk with local Traditional Owners to learn about their aspirations and priorities over their Country or promote community awareness and understanding of the Treaty process through local events and communications.

Local councils can find out more about the Treaty process by getting in touch with the:

Treaty Authority: **treatyauthority.au**

First Peoples' Assembly of Victoria: **firstpeoplesvic.org**

First Peoples-State Relations (Department of Premier and Cabinet): **firstpeoplesrelations.vic.gov.au/treaty**.

If your local council has a point of contact who would like to remain informed about all Treaty-related matters, including public notifications, please contact us via **info@treatyauthority.au** or 1300 133 033. We will ensure any correspondence is sent to your nominated officer.

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