


# FINAL REPORT

ON THE DESIGN  
OF THE ABORIGINAL  
REPRESENTATIVE BODY

2018



ABORIGINAL TREATY  
WORKING GROUP



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# INTRODUCTION

## 1.1 ACKNOWLEDGEMENT OF COUNTRY

The Aboriginal Treaty Working Group (the Working Group) acknowledges the sovereign traditional owners of Victoria's

lands and waters, and pays tribute to their Elders, past, present, and future.

## 1.2 CO-CHAIRS FOREWORD

This report represents the culmination of two years of work towards treaty. To date, our efforts have focused on reaching a final recommended design for the Aboriginal Representative Body, which will work in partnership with government to lay the groundwork for treaty. This report outlines that design. It is the product of many hands whose contribution should be acknowledged.

Firstly, we would like to thank the members of the Aboriginal Community Assembly for committing their time, knowledge and experience to producing the recommendations responded to in this report.

We would like to thank our fellow Aboriginal Treaty Working Group members, both current and former, for the enormous amount of work they have put into consultations and reaching a final design for the Aboriginal Representative Body.

We would like to thank the Government and the Minister for Aboriginal Affairs,

the Hon Natalie Hutchins MP, for their support, encouragement, and commitment to self-determination.

Finally, we would like to thank the Aboriginal Victorian community for making their voices heard at forums, gatherings and treaty circles across Victoria. We would like to thank all Elders of our community, for leading us with their wisdom. And we would like to thank and acknowledge our ancestors, who fought and struggled since the earliest days of colonisation to make this possible.

Treaty belongs to all of us; it is part of the legacy we will leave for our children. There is a long way yet to go, but with the release of this report, at last we know the journey is well and truly underway.

**Mick Harding**  
*Co-Chair*

**Jill Gallagher AO**  
*Co-Chair*

## 1.3 THE ABORIGINAL TREATY WORKING GROUP

The Aboriginal Treaty Working Group was established in July 2016 to consult with Aboriginal communities on the development of a representative body and to provide advice to community and Government on the next steps in a treaty making process.

The Working Group has collaborated with Government to drive the treaty process, engaging with Victorian Aboriginal communities on the design of the Aboriginal Representative Body. The Working Group has led 16 community consultations across Victoria. Community members have also held treaty circles across Melbourne and the regions to seek the community's guidance on how the Aboriginal Representative Body should operate and how it should represent community. The Aboriginal Representative Body will work in partnership with the State to lay a foundation for treaty negotiations.

The Working Group has also worked in sub-groups focusing on particular issues in the treaty process, including legislation, the design of a Bridging Entity (now the Victorian Treaty Advancement Commission), and the Community Assembly. These sub-groups have volunteered their expertise to Government through regular additional meetings.

The Working Group currently includes:

- Eleanor Bourke and Mick Harding, nominated by the Victorian Aboriginal Heritage Council

- Janine Coombs and Jeremy Clark, nominated by the Federation of Victorian Traditional Owner Corporations
- Indi Clarke and Nikayla Bamblett, nominated by the Koorie Youth Council
- Muriel Bamblett and Wayne Muir, nominated by the Aboriginal Controlled Community Organisations representatives.

They are joined by four people appointed by the Minister based on their personal experience and expertise, following an open Expression of Interest process:

- Paul Briggs
- Vicki Clark
- Aunty Di Kerr
- Geraldine Atkinson.

The Working Group will continue to guide the treaty process in 2018 by acting in an advisory role to the Victorian Treaty Advancement Commission (VTAC) as it works to establish the Aboriginal Representative Body. Jill Gallagher AO was Co-Chair of the Working Group prior to her appointment as the Victorian Treaty Advancement Commissioner.

*See section 3.2 for further discussion of VTAC.*

# EXECUTIVE SUMMARY & RECOMMENDATIONS

## 2.1 EXECUTIVE SUMMARY

This report outlines the Aboriginal Treaty Working Group's final recommendations to the Minister for Aboriginal Affairs on the design of the Aboriginal Representative Body. These recommendations have been informed by community consultations and the Aboriginal Community Assembly to ensure they reflect the desires and priorities of the Victorian Aboriginal community.

### **Consultation and the Community Assembly**

Community consultations were held in November 2016 and March 2017. The November 2016 community consultations asked participants at 10 locations around Victoria how they think the Aboriginal Representative Body should be designed and what its purpose, roles and functions should be. The March 2017 community consultations asked participants about the Aboriginal Representative Body's entity structure and how it will represent the community.

The Community Assembly was convened in November and December 2017 to resolve outstanding questions relating to the representation, governance and structure of the Aboriginal Representative Body. The Community Assembly was comprised of 31 Aboriginal Victorians, and was accessible

to the broader community through various interactive channels. The Community Assembly deliberated over six days before presenting its final recommendations to the Working Group for consideration.

Part 3 of this report contains a detailed overview of consultations. See Appendix 1 for the full Community Assembly Report, including recommendations to the Working Group.

From its deliberations, the Community Assembly produced detailed recommendations on the design of the Aboriginal Representative Body for the Working Group. Of the Community Assembly's twelve recommendations, the Working Group has accepted seven, including both overarching recommendations, accepted in principle four, and marked one as requiring further consideration by VTAC. VTAC, which began operations in January 2018, will be responsible for establishing the Aboriginal Representative Body. Once established, the Aboriginal Representative Body will work with the State to develop the treaty negotiation framework, which will guide subsequent treaty negotiations.

*Overleaf is a timeline showing the treaty process up to this point.*

# THE PATHWAY TO TREATY

Since **February 2016**, the **Victorian Aboriginal Community** has been on the journey towards treaty by working to design a **Representative Body**.

## APRIL 2016

**Self Determination Forum**  
held across the state

## JULY 2016

Creation of the **Aboriginal Treaty Working Group**

## DECEMBER 2016

**Aboriginal Victoria Forum 2**  
Report back to Community  
on Phase 1 Consults

## APRIL 2017

**Aboriginal Victoria Forum 3**  
Report back to Community  
on Phase 2 Consults

## NOVEMBER 2017

**Community Assembly held**

## 2018/2019

**Representative Body**  
to be formed

## FEBRUARY 2016

**Self Determination Forum** held.  
Victorian Government commits to  
discussing treaty.

## MAY 2016

**Aboriginal Victoria Forum 1**

## NOVEMBER 2016

**Phase 1 Community  
Consultations begin**

## MARCH 2017

**Phase 2 Community  
Consultations** begin and **Treaty  
Circle Facilitator Training** held

## SEPTEMBER 2017

**Applications to be on the  
Community Assembly open**

## EARLY 2018

**Report back to Community**  
from Community Assembly  
**Victorian Treaty Advancement  
Commission established**

# TREATY

## 2.2 ESTABLISHING THE ABORIGINAL REPRESENTATIVE BODY

Since it was established in July 2016, the Working Group has guided community consultation and engagement to ensure the Aboriginal Representative Body is designed through a process of collaboration with the Aboriginal Victorian community. The consultation and engagement process, as well as the role of the Community Assembly, are discussed in further detail at section 3.1.

### What will the Aboriginal Representative Body do?

The Aboriginal Representative Body will function as a democratic body representing all Aboriginal people in Victoria. The Working Group's final recommendations on the design of the Aboriginal Representative Body are contained in section 2.3.

The primary responsibility of the Aboriginal Representative Body will be to establish, in partnership with the State, the elements to support future negotiations.

This includes determining a treaty negotiation framework to guide negotiations.

The Aboriginal Representative Body **will not negotiate treaty or treaties for Country**. Negotiations may be carried out by those Aboriginal parties designated as eligible under the treaty negotiation framework. Once the treaty negotiation framework has been developed, the Aboriginal Representative Body's ongoing functions will be determined by the Aboriginal Representative Body itself.

Treaty negotiations cannot begin until the treaty negotiation framework has been developed. Giving the Aboriginal Representative Body partnership status with the State in developing the treaty negotiation framework and other elements supporting future negotiations will ensure that Aboriginal self-determination underpins all aspects of the negotiation process. The Framework is discussed in more detail at section 3.3.

## 2.3 THE WORKING GROUP'S FINAL RECOMMENDATIONS ON THE DESIGN OF THE ABORIGINAL REPRESENTATIVE BODY

### **The Aboriginal Representative Body should support self-determination for all Aboriginal people in Victoria.**

The Aboriginal Representative Body should provide a democratic, representative voice from Aboriginal Victorians to the State and the non-Aboriginal community at large. This representative voice has been a long time coming.

### **The Aboriginal Representative Body should embody design principles chosen by the community.**

These principles include unity, inclusivity, practicality, independence, transparency and accountability.

The Aboriginal Representative Body should be based in Aboriginal skills and culture.

### **The Aboriginal Representative Body should develop a framework to underpin treaty negotiations.**

The Aboriginal Representative Body's primary responsibility should be to develop, in partnership with the State, a treaty negotiation framework and other elements to support treaty negotiations. This framework will outline fundamental matters such as who can negotiate, what can be negotiated for, and how negotiations will be carried out.



**The Aboriginal Representative Body should represent all Aboriginal people in Victoria.**

The Aboriginal Representative Body should not speak for a specific family, nation, or Country, but for the Aboriginal Victorian community as a whole. It should complement existing Aboriginal organisations and vehicles for self-determination, and represent the diversity of Aboriginal Victorians.

**The legal structure of the Aboriginal Representative Body should provide independence and accountability.**

The Aboriginal Representative Body should take the form of a Company Limited by Guarantee. This will maximise its flexibility, its independence from Government, and its accountability to the Aboriginal Victorian community.

**The Aboriginal Representative Body should be a democratic institution.**

The Aboriginal Representative Body should comprise thirty representatives elected from six voting areas—five in regional Victoria, and one in metropolitan Melbourne. Each voting area should be designed, wherever possible:

- to not cut across Traditional Owner boundaries
- to ensure equal representation.

Voting areas and the number of representatives should be updated over time to reflect the growing Aboriginal Victorian community.

**Any Aboriginal person living in Victoria should be eligible to vote in elections for the Aboriginal Representative Body.**

**Victorian Aboriginal Traditional Owners should be eligible to stand for election.**

To stand, a candidate should require endorsement from two of the following:

- a Traditional Owner Corporation
- an Aboriginal Community-Controlled Organisation
- 20 eligible voters.

A person should be able to stand without Traditional Owner Corporation or Aboriginal Community-Controlled Organisation endorsement, so long as they have tried to obtain such endorsement and have received endorsement from 20 eligible voters. This will help to ensure candidates stand for election on the basis of community support.

**The membership of the Aboriginal Representative Body should be regularly refreshed.**

Representatives should be able to serve a maximum of two consecutive three-year terms. Representatives should then need to sit out for one term before they can stand for election again. All positions in the Aboriginal Representative Body should be open for election at the end of each three-year cycle.

**Special mechanisms should hold the Aboriginal Representative Body directly accountable to the Aboriginal Victorian community.**

An accountability body or “Ethics Council” should exist, but it should focus on cultural accountability, rather than legal or corporate governance, which should be managed by other regulators. The role, composition, and procedures of an accountability body should be determined by the Victorian Treaty Advancement Commission in establishing the Aboriginal Representative Body.

## 2.4 OVERVIEW OF THE COMMUNITY ASSEMBLY

The Community Assembly's task was to answer five overarching questions relating to the representation, governance and entity structure of the Aboriginal Representative Body. Figure 1 overleaf is a diagram breaking out the questions put to the Community Assembly.

### How was the Community Assembly formed?

Strategic guidance on the purpose and structure of the Community Assembly was provided by the Working Group's Community Assembly sub-group, as well as by the full Working Group. Members of the Community Assembly were chosen through an Expression of Interest process that was open to all Aboriginal Victorians. The Expression of Interest process was endorsed by the Working Group and managed by EY, with guidance from Karen Milward, Uncle Kevin Coombs and Uncle Richard Frankland. This was to ensure that the selection process was independent of the Working Group and Government.

The Community Assembly was representative of the broad diversity of the Aboriginal Victorian community. The selection criteria were inclusive and ensured successful candidates had appropriate skills, knowledge and experience.

The Community Assembly was able to receive input from the broader Aboriginal Victorian community, including through a dedicated online portal and email address, social media channels, a telephone hotline, and community pulse surveys.

More information on the composition and processes of the Community Assembly is contained in the Community Assembly Report (Appendix 1, Part 4).

The Community Assembly made recommendations on all the questions it was asked. These recommendations, and the Working Group's responses, are contained in section 2.5 of this report.

**FIGURE 1:**  
QUESTIONS PUT  
TO THE COMMUNITY  
ASSEMBLY



On 8 December 2017, the Community Assembly provided its recommendations to the Working Group. The Community Assembly's full report is at Appendix 1.

These recommendations and the Working Group's responses are below.

## 2.5 COMMUNITY ASSEMBLY'S RECOMMENDATIONS

This section sets out:

- the Community Assembly's recommendations
- the Working Group's response and comments.

For the Community Assembly's discussion of each recommendation, see the Community

Assembly Report (Appendix 1, Part 5).

The Community Assembly's recommendations are set out word-for-word below.

The Working Group notes that all of VTAC's work in establishing the Aboriginal Representative Body will be carried out in partnership with the Working Group.

### OVERARCHING RECOMMENDATIONS

- Our overarching recommendation is that there be continuing engagement with the Aboriginal Community similar to the Community Assembly process to maintain momentum on this journey.
- We recommend that common or contested words and phrases are defined to reflect their meaning and intent in the context of establishing the Aboriginal Representative Body. These should be defined by the Victorian Treaty Advancement Commissioner.

#### **Working Group's response: Accept**

The Working Group accepts the Community Assembly's overarching recommendations. The Working Group notes that the Community Assembly's overarching recommendations

will be implemented by VTAC with the strategic guidance and support of the Working Group.

The Working Group is strongly committed to ongoing engagement with the Victorian Aboriginal Community.



## QUESTION 1: HOW WOULD YOU LIKE TO BE REPRESENTED?

### Recommendation 1: How should representatives be elected?

- You vote where you live and you stand in a region that you nominate—either where you live, or where you have ancestral connections.
- You can only vote once and only stand in one voting region. This voting structure means a proportional voting system to elect representatives is the most appropriate voting method.
- You must be 16 years old to vote.
- You must be 18 years old to stand for election.
- An independent Aboriginal Electoral Roll should be created for the Aboriginal Representative Body. Those on the electoral roll will be the electors of the representatives.

### Working Group's response: Accept in principle

The Working Group accepts recommendation 1 in principle. However, the following issues require further consideration by VTAC.

- VTAC should consider the suitability and implications of allowing young Aboriginal Victorians who are 16 or 17 years of age to vote in elections for the Aboriginal Representative Body.
- VTAC should consider the implications of allowing candidates to stand in either the region where they live or the region where they have ancestral connections, including the possibility of particular nations achieving disproportionate representation.
- VTAC should consider how an independent Aboriginal Electoral Roll will be implemented taking into account cultural and privacy concerns. The independent Aboriginal Electoral Roll should be held by the Aboriginal Representative Body as a Company Limited by Guarantee once established, rather than VTAC (subject to legislation). The Working Group notes that VTAC will cease to operate once the Aboriginal Representative Body is established.



## QUESTION 1: HOW WOULD YOU LIKE TO BE REPRESENTED?

### Recommendation 2: How should voting regions be designed?

- There will be six voting regions— five regional and one metro
- There will be multiple representatives per voting region
- The number of representatives per voting region will be based on the total Aboriginal population in that voting region and balance of representation across regions where possible
- Using 2011 ABS Census and the 2014-16 National Aboriginal and Torres Strait Islander Social Survey data, the number of representatives was modelled on a proportional basis of one representative per 1,700 people resulting in 30 representatives in total\*
- You vote where you live and stand where you nominate
- Wherever possible voting regions should be designed so they do not divide existing traditional boundaries.

### Recommendation 3: How many elected representatives should there be?

There will be multiple representatives per voting region. Using 2011 ABS Census and the 2014-15 National Aboriginal and Torres Strait Islander Social Survey data, the number of representatives will be modelled on a proportional basis of one representative per 1,700 people. Based on the data used, this results in 30 elected representatives.

*\*The Community Assembly used the following data to determine representative numbers: the 2011 Census data, and the 2014-15 National Aboriginal and Torres Strait Islander Social Survey (NATSISS). These were the only data sets available at the time the Community Assembly discussed representation. The Community Assembly used the 2011 Census data to show population concentrations across Victoria (this was mapped across municipal areas based on population density) and then cross referenced with the total number of Aboriginal people*

*living in Victoria (approximately 50,000) as indicated by the 2014-15 NATSISS. This meant that the population concentrations from the 2011 Census data were used as a guide when looking at where the total population outlined in the 2014-15 NATSISS were spread across the State. More up to date data is now available based on the 2016 Census. Current data will need to be used to ensure that the final number of representatives reflects the current number of Aboriginal people in Victoria.*

**NOTE:** The number of representatives will be reviewed periodically to reflect the growing Aboriginal population.

The gender composition of the Aboriginal Representative Body must promote gender equality and reflect the gender diversity in the Victorian Aboriginal Community. VTAC must explore this matter further prior to establishing the Aboriginal Representative Body to understand how Community wishes to create the most inclusive Aboriginal Representative Body possible.





### **Working Group's response: Accept**

The Working Group accepts recommendations 2 and 3.

The Working Group agrees that VTAC should ensure that the final voting regions reflect the distribution of eligible Aboriginal Victorian voters, as ascertained through the latest available population data, and that regions should align with Traditional Owner boundaries wherever possible. The Working Group notes that VTAC's ultimate decision on voting age will significantly affect the design of the voting regions.

The Working Group reiterates that the Aboriginal Representative Body will represent *all* Aboriginal Victorians in the development of the treaty negotiation framework. The Aboriginal Representative Body will not negotiate treaty or treaties for Country. Therefore, the voting regions recommended by the Community Assembly are simply for the purpose of electing the Aboriginal Representative Body. They are not treaty regions.

The Working Group notes that VTAC and the Aboriginal Representative Body should promote nominations which reflect the diversity of the Aboriginal Victorian community. This should be achieved through outreach and engagement programs. This will ensure the members of the Aboriginal Representative Body are self-determined by the votes of Aboriginal Victorian electors.

## QUESTION 2: HOW SHOULD THE CANDIDATE ELIGIBILITY AND NOMINATION CRITERIA BE FINALISED?

### Recommendation 4: Confirm the existing candidate eligibility and nomination criteria.

The following eligibility and nomination criteria is recommended, in addition to the criteria already confirmed. Please see section 5.2 for a proposed candidate nomination form.

- Candidates have the opportunity to add a statement discussing why they wish to nominate and/or outline their relevant skills [Note: this is optional].
- Two points of support for nomination must be presented by a candidate. If no support is received from an Aboriginal Community Controlled Organisation (ACCO) or a Traditional Owner (TO) Group then this does not disqualify a candidate, if they have tried to seek this support and have also gathered 20 signatures from eligible voters.
- Candidates must list their nominated voting region to stand in.
- Candidates must declare that they are:
  - 18 years or older in age

- A Sovereign Aboriginal person of Victoria
- Accepted in their relevant Victorian Aboriginal Community.

The information should be held confidentially and in compliance with all data and privacy laws and no information will be shared without the express permission of the individual filling out the form. All candidate data held by VTAC will be transferred to the Aboriginal Representative Body in its entirety once it is established, and will be destroyed by VTAC once it has been transferred. None of this data should be shared with or held by the Victorian or Australia Governments at any time.

All of the candidate eligibility and nomination forms will have a supporting document that will provide explanation of the terms or requirements on the form.

VTAC will need to work with Community to define how to determine Aboriginality for the purposes of establishing an Aboriginal electoral roll. This can be re-visited by the Aboriginal Representative Body once it is established.

### Working Group's response: Accept in principle

The Working Group accepts recommendation 4 in principle.

The Working Group notes that clear guidelines must be developed and communicated to the Aboriginal community about nomination and eligibility requirements and the nomination process.

The Working Group recommends that the proposed candidate statement should be mandatory, not optional, to ensure the integrity of the nomination process.

The Working Group recommends that VTAC publicly announce both remuneration and expected time

commitments for representatives prior to elections being held. This will ensure candidates stand for election with full awareness of the nature and requirements of the role.

The Working Group recommends that VTAC consider how the nomination process can accommodate members of the community who are known under multiple names.

The Working Group notes that VTAC will need to comply with relevant data and privacy laws in relation to the way it collects, uses, stores and transfers data. Ultimately, the Aboriginal Representative Body, which the Working Group recommends take the form of a Company Limited by Guarantee, should hold relevant data rather than VTAC.



## QUESTION 2: HOW SHOULD THE CANDIDATE ELIGIBILITY AND NOMINATION CRITERIA BE FINALISED?

### Recommendation 5: How many terms can representatives serve?

We ask that the Working Group and VTAC take our vote on how many renewable terms a representative can serve and make a decision, which was as follow:

- Unlimited terms—36% of votes

- Two renewable terms (e.g. six years maximum)—41% of votes
- Three renewable terms (e.g. nine years maximum)—23% of votes.

We do however, recommend that if a limit is placed on the number of renewable terms, then candidates can sit out for one term and then stand again for candidacy.

### Working Group's response: Accept

The Working Group accepts the option set out in recommendation 5 that representatives should be eligible to serve two consecutive renewable terms (subject to re-election).

After serving two terms, representatives should be required to sit out for one term before standing for election again. This will maximise opportunities for participation and ensure new skills and perspectives are regularly introduced into the Aboriginal Representative Body.

## QUESTION 2: HOW SHOULD THE CANDIDATE ELIGIBILITY AND NOMINATION CRITERIA BE FINALISED?

### Recommendation 6: Will each cycle of elections open all positions for election or only a portion?

We recommend an election of all positions at the end of each term (e.g. every three years).

### Working Group's response: Accept

The Working Group accepts recommendation 6.

## QUESTION 2: HOW SHOULD THE CANDIDATE ELIGIBILITY AND NOMINATION CRITERIA BE FINALISED?

### Recommendation 7: Should there be an Ethics Council to monitor applicants? What could this look like?

Yes, an Ethics Council should be established to provide oversight of the Aboriginal Representative Body to keep it accountable to Community. The Ethics council has the responsibility to ensure the Representative Body operates to the highest standards, and adheres to the required standards of cultural accountability.

An Ethics Council should be comprised of both Elders and young people, in order to support our youth to learn and build leadership skills in preparation for being on

the Aboriginal Representative Body, if they choose to stand for election.

The Ethics Council can support the Representative Body in reviewing applications of candidates for election. Only Elders in the Ethics Council will audit applications, the young people will be there to learn from the Elders only.

The Ethics Council could also take on a dispute resolution role within the Aboriginal Representative Body.

*Note: The Community Assembly had limited time to discuss an Ethics Council, so these recommendations provide a starting point for further development.*

### Working Group's response: Requires further consideration

The Working Group supports the establishment of a body (such as an Ethics Council) to ensure cultural accountability in the Aboriginal Representative Body.

The Working Group notes that, if the Aboriginal Representative Body takes the form of a Company Limited by Guarantee as recommended, its corporate governance will be regulated through the Australian Securities and Investment Commission and the Australian Charities and Not-For-Profits Commission. As a result, any accountability mechanism in the Aboriginal Representative Body should focus on cultural rather than corporate or legal accountability. The Working Group will be able to provide guidance to VTAC on how cultural accountability can be

implemented in practice by the Aboriginal Representative Body.

The Working Group notes that further in-depth consideration by VTAC is required to determine:

- how an accountability body would be established
- how people would be appointed to the body
- the roles and functions of the body
- how the body would work procedurally and practically.

The Working Group notes that it may not be appropriate for an accountability body to have a dispute resolution function.

### QUESTION 3: HOW WILL THE ABORIGINAL REPRESENTATIVE BODY BE ACCOUNTABLE TO COMMUNITY?

#### Recommendation 8: What mechanisms and process will be needed to ensure the Aboriginal Representative Body is accountable to Community?

We recommend that:

- There is an annual general meeting (AGM) which provides transparency and financial accountability
- An annual report should be readily available online to Community, and on request
- Representatives meet four times a year as a group
- The Representative Body establish a vision and strategic plan
- There must be regular feedback, consultations, meetings and forums with the Community across all of the voting regions, including quarterly (four) State-wide open meetings
- Consultation should occur at a state-wide level and also through place-based meetings where longer periods of time can be spent with Community
- Individual representatives are able to be approached about issues, and have a platform on which to raise these to the Representative Body level. These discussions must be able to be recorded and reported publically. This may be in the form of a local office for each voting region where Community can feel safe to have a chat
- A formal education program be established for young people between the ages of 16 to 20 focused on leadership development and education, for the purpose of being involved with the Representative Body and Treaty
- The Representative Body should utilise existing programs and processes to support communication and reach the grassroots of Community, for example utilising the Koorie Youth Council as an advisory group to the Representative Council
- The Representative Body should have a code of conduct and a dispute resolution process to manage breaches of the code of conduct
- There should be an ethics council, which is comprised of both Elders (for cultural accountability) and youth (for exposure and hearing the voice of young people)
- The Representative Body uses surveys as a form of communication, quality evaluation and feedback
- There is a regular newsletter and a dedicated online Treaty portal for information sharing and advertising
- Cultural integrity will be maintained through a strong code of conduct and robust governance practices
- Communication, education and awareness of Community is critical and there must be the resources to support this properly.

#### Working Group's response: Accept in principle

The Working Group accepts recommendation 8 in principle.

The Working Group notes that it will be critical for VTAC to clearly define the role and responsibilities of representatives and the functions of the Aboriginal

Representative Body to properly inform the design of effective accountability mechanisms.

The Working Group notes that the Aboriginal Representative Body will require adequate and secure funding to perform its role properly and engage with the Aboriginal Victorian community.

## QUESTION 4: WHAT TYPES OF MATTERS SHOULD THE REPRESENTATIVE BODY NOT BE INVOLVED IN?

### Recommendation 9: What is the Aboriginal Representative Body not accountable for?

The following list reflects the areas for which the Representative Body should not be accountable:

- As the Representative Body represents all Aboriginal people in Victoria, it does not negotiate for Country
- The Representative Body's primary focus will be on Treaty Negotiation Framework development
- It is not involved in family or community business and politics
- It does not determine *Native Title Act*, *Aboriginal Heritage Act* or *Traditional Owner Settlement Act* matters
- It does not undermine current existing organisations or provide service delivery, but it does promote communication between, and is supported by, existing organisations
- It will not get involved in any current or future disputes between service providers
- It will not be involved in boundary disputes.

### Working Group's response: Accept in principle

The Working Group accepts recommendation 9 in principle.

The Working Group agrees that the Aboriginal Representative Body's initial focus will be on developing a treaty

negotiation framework and other elements to support treaty negotiations. However, the Working Group also notes that the Aboriginal Representative Body will have a unique capacity to work towards furthering Aboriginal self-determination more generally, and this should form part of its ongoing role.



## QUESTION 5: WHAT IS THE BEST ENTITY STRUCTURE FOR THE REPRESENTATIVE BODY?

### Recommendation 10: What is the best entity structure for the Representative Body?

We recommend:

- The Representative Body be a Company Limited by Guarantee
- Our own Aboriginal framework to govern the Representative Body and mobilise our cultural authority and Sovereignty
- The Representative Body must be inclusive and accessible to Community
- It must be established to allow for its longevity and sustainable function in perpetuity outside of influence and protection from Government
- It must be fluid and flexible so it can evolve with the needs of Community
- Allow for funding from multiple sources and not be totally dependent on Government for funding
- It must be independent of Government and controlled by Community
- The Representative body must have transparent accountability through the oversight of an Ethics Council as well its policies and procedures
- A mechanism must be established to review relevancy, practicality, functionality and cultural appropriateness of the Representative Body.

### Working Group's response: Accept

The Working Group accepts recommendation 10.

The Working Group notes that, subject to further consideration by VTAC, the Ethics Council may also form a key part of the Aboriginal Representative Body's entity structure.

# DESIGNING THE ABORIGINAL REPRESENTATIVE BODY

Part 3.1 of this section sets out where we have been in the treaty process, part 3.2 sets out where we are now, and part 3.3 sets out where we are going.

In accordance with Aboriginal self-determination, the design of the Aboriginal Representative Body must reflect the needs, aspirations and priorities of the Victorian Aboriginal community. To this end, the Working Group guided community consultations and an Aboriginal Community Assembly. The results of these consultations have informed the Working Group's final recommendations to the Minister for Aboriginal Affairs.

To date, community consultation, including the Community Assembly, has focused on five key aspects of the Aboriginal Representative Body's design:

- purpose
- entity structure

- representation
- governance
- roles and functions.

A sixth model element, funding, was not subject to consultation. Community consultation also established seven design principles for the Aboriginal Representative Body:

- inclusive representation
- transparent/accountable
- practical
- unity
- clan based
- skills based
- culturally based.

Figure 2 overleaf outlines the model elements. Further discussion of the model elements can be found in Appendix 1: Aboriginal Community Assembly Report and Recommendations.

**FIGURE 2:**  
MODEL ELEMENTS



## 3.1 WHERE WE HAVE COME FROM – COMMUNITY LEADERSHIP

### a) The call for treaty and a representative body

For generations, Aboriginal people in Victoria have fought, organised, and protested for the right to self-determination. In the 2015 Closing the Gap address the Premier of Victoria, The Honourable Daniel Andrews, recognised the community’s struggle by committing to an approach to Aboriginal Affairs founded on self-determination.

In February 2016, the Aboriginal Victorian community called on Government to negotiate a treaty. Government agreed to participate in treaty negotiations, but there is no state-wide Aboriginal Representative Body with which Government can engage to establish a treaty negotiation framework or enable negotiations. As a result, community consultation began on the design of such a body.

### b) Community consultations

**Phase 1:** Phase 1 of the community consultations focused on design principles and the roles and functions of the Aboriginal Representative Body. Ten consultations were held in November 2016 in both regional and metropolitan locations.

A state wide forum was then held on 13 December 2016 in Melbourne, where the outcomes of the consultations were reported back to the community. The consultations identified a consistent set of design principles and roles and functions for the Aboriginal Representative Body.

Further discussion of the design principles and roles and functions of the Aboriginal Representative Body can be found in the Community Assembly Report (Appendix 1, Part 6) .

**Phase 2:** Phase 2 of the community consultations focused on the Representation Model Element. At the 13 December 2016 forum, the attendees provided clear direction on how to structure the next round of consultations. Attendees wanted the Aboriginal Victorian community to lead their own consultations with an easily accessible online consultation platform and further face to face consultations. This led to six consultations held in March 2017 in regional and metropolitan locations, Treaty Circles, and an online message stick. Treaty Circles were small, community-run consultation sessions, and the online message stick was an internet portal where community members could post their views. In total, 16 Treaty Circles were held, and the online message stick received 240 responses. Below is a table showing each of the Aboriginal Representative Body’s model elements, and the method by which it was determined.

### c) The Community Assembly

The Community Assembly was the third and final phase of the Working Group’s consultation on the design of the Aboriginal Representative Body. See section 2.4 for a detailed explanation of the Community Assembly.

Element	Method of determination
Purpose	Considered by the Working Group and then finalised through Phase 2 of community consultations.
Entity Structure	Considered by the Working Group and then finalised by the Community Assembly.
Representation	Considered during Phase 2 community consultations and then final recommendations made by the Community Assembly.
Governance	Considered by the Working Group and then final recommendations made by the Community Assembly.
Funding	Not consulted on.
Roles & Function	Considered during Phase 1 of community consultations and then finalised during Phase 2.

## 3.2 WHERE WE ARE NOW – STRENGTHENING INDEPENDENCE

### a) The Victorian Treaty Advancement Commission (VTAC)

VTAC commenced operations in January 2018 with the appointment of Jill Gallagher AO as Victorian Treaty Advancement Commissioner. VTAC will strengthen independence for the Aboriginal Victorian community on the path to treaty and ensure the community remains at the heart of the process.

#### What will VTAC do?

VTAC’s primary role is to operationalise the outcomes of the Community Assembly and establish the Aboriginal Representative Body. This includes maintaining the momentum of the treaty process, consulting Aboriginal

Victorians, providing research and advice on the treaty process, and communicating progress on treaty to Aboriginal and non-Aboriginal Victorians.

VTAC will build on the work of the Community Assembly and other community consultations led by the Working Group.

VTAC will operate until the Aboriginal Representative Body has been established. At present, it is anticipated this will occur by July 2019. Establishing the Aboriginal Representative Body will ensure greater independence for Aboriginal Victorians on the path to treaty.

## ROLE OF THE VICTORIAN TREATY ADVANCEMENT COMMISSIONER





### 3.3 WHERE WE ARE GOING – PRIORITIES FOR THE NEXT 18 MONTHS

Part 2.3 outlines the Working Group's final recommendations on the design of the Aboriginal Representative Body, as informed by community consultations and the Aboriginal Community Assembly. The task of putting the agreed design into effect and establishing the Aboriginal Representative Body will rest with VTAC. The next steps required to establish the Aboriginal Representative Body are outlined at (b)

#### a) Ongoing community engagement

The Working Group recognises that engagement needs to be an ongoing process. The voice of the Aboriginal Victorian community must be heard at every step of the treaty process. As a result, VTAC will carry out further community engagement in 2018. The scope of these consultations and the particular form they take is currently being considered by the Working Group and VTAC. However, possible topics include:

- how elections will be held for the Aboriginal Representative Body, including the period for which polls will be open and how votes will be cast and collected
- how the community wishes to be engaged going forward, and how communications between the Victorian Government, the community and VTAC can be improved
- matters which were not fully resolved by the Aboriginal Community Assembly, such as the role and functions of the Ethics Council.

Once the Aboriginal Representative Body is established, it will take on VTAC's consultation

and engagement role. The Aboriginal Representative Body will fundamentally alter the relationship between the Aboriginal Victorian community and Government, transitioning to genuine partnership and community leadership.

#### b) Treaty legislation

The Victorian Government has publicly committed to introduce legislation into Parliament in early 2018 to progress its commitment to treaty. Members of the Working Group have worked in partnership with Government to develop this legislation. The legislation will embed self-determination and partnership in the treaty process by requiring the State to work with the Aboriginal Representative Body to establish elements necessary to support future treaty negotiations. While the legislation will not itself establish the Aboriginal Representative Body or the elements necessary to support future treaty negotiations, it will provide the foundation for a modern treaty process in Victoria.

The Working Group and VTAC will be able to provide its expertise and cultural knowledge to support the Parliament of Victoria as it considers upcoming treaty legislation.

#### c) Establishing the Aboriginal Representative Body

It is anticipated that the Aboriginal Representative Body will be established by July 2019. VTAC will be responsible for establishing the Aboriginal Representative Body, and for engaging with Aboriginal Victorian communities throughout this process.

#### **d) Developing the treaty negotiation framework**

The treaty negotiation framework will set out the rules for treaty negotiations. The Aboriginal Representative Body will be responsible for developing a treaty negotiation framework in partnership with the State. The treaty negotiation framework will outline important matters such as:

- the processes for negotiating, formalising and enforcing a treaty
- what can be negotiated for as part of a treaty, acknowledging the limits of Victoria's jurisdiction
- who is eligible to enter into negotiations.

A similar framework has been developed in Canada as part of the British Columbia Treaty Process. As part of this process, parties agree to what can be negotiated, procedural requirements, the goals of the negotiation process, and a time frame for negotiations. The parties also engage in public consultations at both regional and local levels to develop this framework.

The Aboriginal Representative Body will be best placed to carry out consultation

with Aboriginal Victorians about the development of the treaty negotiation framework.

#### **e) Treaty Authority**

The Treaty Authority (distinct from VTAC) will be established following the election of the Aboriginal Representative Body to act as an independent umpire in the treaty negotiation process. International best practice examples, including Canada and New Zealand, show the need for an independent body such as a Treaty Authority.

It will facilitate and oversee treaty negotiations to ensure parties negotiate in good faith and abide by the agreed treaty negotiation framework. The Treaty Authority is one of the elements required to support future treaty negotiations that the Aboriginal Representative Body and the State will be required to establish under upcoming treaty legislation. It will also provide impartial support to parties where necessary.

The exact role and functions of the Treaty Authority will be determined and agreed by the Aboriginal Representative Body in partnership with Government.

## **APPENDICES**

- <https://www.vic.gov.au/aboriginalvictoria/treaty/treaty-appendices.html>



