

**INSTRUMENT TO CREATE THE OFFICE OF THE VICTORIAN TREATY
ADVANCEMENT COMMISSIONER**

I, Linda Dessau AC, Governor of Victoria, pursuant to the power of the Crown to create public offices, and acting with the advice of the Premier, create the office of the Victorian Treaty Advancement Commissioner to have the duties and responsibilities as set out in the attached Schedule.

Appointments to this public office will be made in accordance with section 88 of the **Constitution Act 1975**.

Given under my hand and the seal of Victoria at Melbourne on: *12 December 2017*.



A handwritten signature in dark ink, appearing to read "Linda Dessau".

LINDA DESSAU
The Honourable Linda Dessau AC
Governor
By Her Excellency's Command

A handwritten signature in blue ink, appearing to read "Daniel Andrews".

The Hon Daniel Andrews MP
Premier of Victoria

SCHEDULE

1. The Victorian Treaty Advancement Commissioner (Commissioner) will be responsible for the following objectives:
 - a) establishing the Aboriginal Representative Body based on recommendations from the Aboriginal Treaty Working Group (Working Group), informed by the report and recommendations of the Community Assembly to be held in 2017;
 - b) maintaining momentum of the treaty process;
 - c) providing advice and research to government and Aboriginal communities on the treaty process; and
 - d) providing secretariat support to the Working Group.
2. The Commissioner will have the following functions:
 - a) ensuring the objectives of the Commissioner set out in paragraph 1 are achieved;
 - b) undertaking consultation with members of Aboriginal communities and Aboriginal organisations across Victoria on the establishment of the Aboriginal Representative Body and the treaty process;
 - c) ensuring effective communications and updating the public on the work of the Commissioner;
 - d) undertaking research related to treaty and providing advice to government and Aboriginal communities on best practice, which can be applied in the development of elements to support future treaty negotiations in Victoria;
 - e) preparing a strategic plan and quarterly reports to be developed with the Working Group;
 - f) establishing internal protocols and procedures, including reporting systems to meet the information needs of the Minister for Aboriginal Affairs (Minister), Department of Premier and Cabinet (Department), and the Working Group;
 - g) managing an annual budget for the operation of the office of the Commissioner in accordance with its budget allocation and strategic plan, and performing their functions within this allocation;
 - h) adopting and implementing procedures and policies, provided by the Department, to support the Commissioner to meet corporate and public sector responsibilities; and
 - i) in relation to providing secretariat support to the Working Group:
 - i. facilitating and providing support for meetings of the Working Group;
 - ii. providing information necessary for the Working Group to fulfil its terms of reference;
 - iii. attending meetings of the Working Group at the invitation of the Chair(s); and
 - iv. supporting the Working Group's compliance with the Directors' Code of Conduct issued by the Victorian Public Sector Commission.
3. The Commissioner will be responsible to the Minister for their performance.
4. The Minister may issue statements of expectation to the Commissioner on matters such as communication and information sharing. This statement may address format and frequency, but not the content of communication and reports. The Commissioner is not otherwise subject to direction from the Minister.
5. Strategic plan and quarterly reports
 - a) The Commissioner will prepare a strategic plan that will set out how they will achieve their objectives set out in paragraph 1. The strategic plan will be approved by the Minister.
 - b) Once approved by the Minister, the Commissioner will perform the objectives and functions as set out in paragraph 1 and 2 in line with this strategic plan.
 - c) The Commissioner will review the strategic plan every six months and update the strategic plan if required. The updates will be approved by the Minister and once approved will take the place of the original strategic plan.

- d) The Commissioner will work in partnership with the Working Group in preparing the strategic plan. In working in partnership with the Working Group, the Commissioner must have regard to the views of the Working Group on the content of the Strategic Plan. In the event the Working Group and Commissioner cannot reach agreement on an element of the strategic plan, the Commissioner may submit the plan to the Minister for approval noting any elements of the plan the Working Group has not agreed to.
- e) The Commissioner will provide a report to the Minister on their performance against the strategic plan every three months (quarterly report) in a format agreed between the Commissioner and Minister.
- f) The quarterly report will be published on the Commissioner's website once provided to the Minister.
- g) In preparing the quarterly reports, the Commissioner will consult with the Working Group.

6. Staff

- a) The Commissioner will be supported by staff employed by the Department. These staff may include staff seconded to the Department from Aboriginal Community Organisations.
- b) The Commissioner and the Department will agree to a memorandum of understanding that sets out how responsibility for the management of the staff will be allocated between the Commissioner and the Department.
- c) The Commissioner will be responsible for overseeing the effective and efficient day-to-day operations of the office in accordance with the memorandum of understanding and the strategic plan.
- d) This will include:
 - i. fostering a culture and set of values for the staff consistent with the duties and values detailed in the *Public Administration Act 2004*;
 - ii. overseeing the management of staff employed by the Department consistent with a framework agreed between the Department and the Commissioner; and
 - iii. directing and managing staff to ensure legal obligations and corporate objectives are met in an efficient and effective manner.

7. Aboriginal Treaty Working Group

- a) The Working Group will be responsible for:
 - i. providing guidance on the broad strategic direction and overarching priorities of the Commissioner, consistent with the Commissioner's objectives and functions as set out in paragraph 1 and 2;
 - ii. providing advice on the content of strategic plan, subsequent updates, and quarterly report prepared by the Commissioner;
 - iii. advising the Minister on any performance issues relating to the Commissioner, in particular whether the Commissioner is appropriately implementing its strategic plan, and any other known risks to the effective operation of the Commissioner as soon as they come to the Working Group's attention; and
 - iv. providing expert advice to the Commissioner on the performance of its functions.
- b) The Working Group will be governed by a terms of reference agreed between the Working Group and the Minister.

8. Appointment of the office holder

- a) The Premier, in agreement with the Minister, will be responsible for recommending to the Governor in Council the appointment of the office holder under s88 of the *Constitution Act 1975*.
- b) The position is designated specifically for Aboriginal or Torres Strait Islander persons pursuant to s12 of the *Equal Opportunity Act 2010*.

- c) Subject to any appointment guidelines issued by the Department, the Premier, in agreement with the Minister, may recommend any suitably qualified Aboriginal or Torres Strait Islander person for appointment to the role.

9. Removal of the office holder

- a) The office holder will be appointed for the period of time specified in their instrument of appointment.
- b) The Premier, in agreement with the Minister, may recommend the removal of the office holder before the expiry of their term of appointment:
 - i. if the Working Group has provided advice to the Minister that the office holder is failing to satisfactorily perform against their strategic plan; or
 - ii. on any of the following grounds:
 - 1. misconduct;
 - 2. neglect of duty;
 - 3. inability to perform the duties of his or her office; or
 - 4. engagement (whether direct or indirect) in any paid employment outside the duties of his or her office without prior permission from the Minister..

10. General

- a) The Commissioner has the power to do everything necessary or convenient to be done for, or in conjunction with, the performance of the Commissioner's functions, including the power (on delegation by the Minister) to spend money and enter contracts.
- b) The Commissioner does not have the power to employ staff.
- c) The Premier will recommend to the Governor that this instrument is revoked following the establishment of the Aboriginal Representative Body.