



Victorian Treaty
Advancement
Commission



Treaty Statewide Gathering

Tuesday 25 September 2018 (9:00am – 4:00pm)
Members Dining Room, MCG

Agenda

The Victorian Treaty Advancement Commission (Commission) is establishing the Aboriginal Representative Body (Representative Body). This booklet sets out the Commission's proposed model for the Representative Body.

This proposed model has been developed from what has been heard from the Victorian Aboriginal community since the Treaty process began in 2016. It builds on the reports of the Aboriginal Treaty Working Group (Working Group) and Community Assembly, and reflects what the Commission has heard as it travelled across the state, meeting with over 30 communities.

At the Statewide Gathering to be held on 25 September 2018, the Commission will present this proposal and community will be asked for feedback on the design. Community members, including those who were not able to attend the gathering, will be able to provide feedback to the Commission in the month following the gathering.

Tuesday 25 September 2018 (9:00am – 4:00pm)
Members Dining Room, MCG

Time	Description	Presenter
8:30am	Registrations open	
9:00am	Moderators' opening	Richard Frankland & Jodie Sizer
9:10am	Reflection	Vicki Clark, Deputy Chair, Aboriginal Treaty Working Group
9:15am	Dance performance collaboration	Traditional dance groups
9:50am	Commissioner's address	Jill Gallagher AO, Victorian Treaty Advancement Commissioner
10:10am	Minister's address	Hon Natalie Hutchins MP, Minister for Aboriginal Affairs
10:30am	Morning tea	
11:00am	Treaty journey so far	Vicki Clark, Janine Coombs and Geraldine Atkinson, Aboriginal Treaty Working Group
11:20am	Proposed model for the Aboriginal Representative Body: Structure and composition	Greg Kennedy, Victorian Treaty Advancement Commission
12:30pm	Lunch and entertainment	
1:15pm	Proposed model for the Aboriginal Representative Body: Voting and representation	Greg Kennedy, Victorian Treaty Advancement Commission
2:45pm	Afternoon tea	
3:00pm	Proposed model for the Aboriginal Representative Body: Ensuring diversity	Greg Kennedy, Victorian Treaty Advancement Commission
3:45pm	Our next steps	Jill Gallagher AO, Victorian Treaty Advancement Commissioner
4:00pm	Event concludes	

Our journey

Sovereignty was never ceded. We all know this. And we have long called for Treaty. The time that our sovereignty is recognised has now come.

We resisted colonisation. Our resilience sustained us through settlement and continues to do so today. Now is time for our renewal. Treaty will be a source of our renewal.

In February 2016 a statewide forum of Aboriginal Victorians was asked what self-determination might look like for our community. We once again renewed our call for Treaty. For the first time in our history, the state agreed. Since then our community has been asked to develop a statewide representative structure. This will be our voice in the next stage of the Treaty process.

Before colonisation, we had traditional ways of doing business. There was no need for a statewide Representative Body. Colonisation has changed this. We now need a way to talk Treaty with the state. We must organise in our struggle for self-determination – our struggle for Treaty. A collective voice is the only way that we can achieve Treaty.

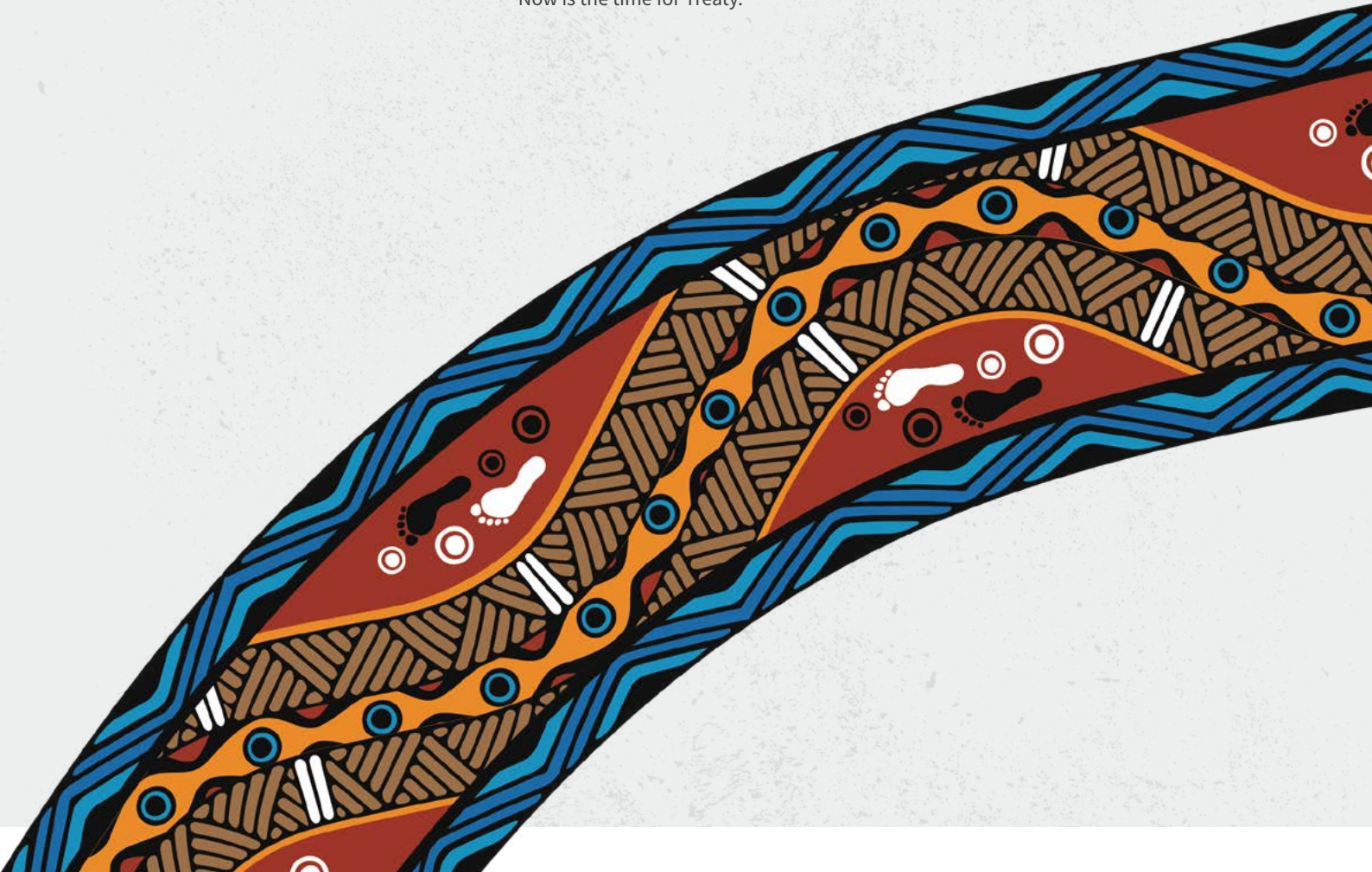
Our unique situation needs a unique response. We have to make a Body that fits our unique culture, history and traditions. But it must also represent us in the modern world.

We must come together for this purpose. The only way we can confront the impacts of colonisation is by sticking together – as one mob.

Now is the time to unite.

Now is the time for change.

Now is the time for Treaty.



What has been happening?

Recommended design principles for the Representative Body:



Unity



Inclusive Representation



Culturally Based



Practical



Transparent & Accountable



Skills Based



Independent



Clan Based

In July 2016 the Working Group was formed. The Working Group is made up of Traditional Owners from across Victoria. In 2016-17, on a voluntary basis, the Working Group worked with government to engage with community, develop the Treaty legislation and the Community Assembly.

Thousands of people attended consultations held across the state and even more online, including three statewide forums. From these consultations, eight design principles for the Representative Body were recommended:

- Unity
- Inclusive Representation
- Culturally Based
- Practical
- Transparent & Accountable
- Skills Based
- Independent
- Clan Based.

In November and December 2017 a Community Assembly was held. It brought together a cross-section of the Victorian Aboriginal community from across the state, chosen independently from Government, to consider in detail the design elements of the Representative Body.

The Working Group made recommendations on the design of the Representative Body for the Commission to implement based on the outcomes of the two years of community consultations including the Community Assembly. The Working Group's report has more detail on these consultations and can be downloaded at victreatyadvancement.org.au/publications.

At the start of 2018 the Commission was established. Led by Commissioner Jill Gallagher AO, its role is to maintain the momentum of the Treaty process and establish the Representative Body, building on the foundations of the past two years and the Commission's ongoing community conversations.

Feb

Aboriginal Community Forum renews call for Treaty

May 16 – Apr 17

Community consultations on Treaty including three statewide forums

Jan

Victorian Treaty Advancement Commission established

Mar

Report on the design of the Aboriginal Representative Body (incorporating the recommendations of the Community Assembly)

2016

2017

2018

July

Aboriginal Treaty Working Group is formed

Nov – Dec

Community Assembly held

Apr – Sep

Commission holds Treaty roadshow across the state

Jul

Advancing the Treaty process with Aboriginal Victorians Bill 2018 passes parliament

In June 2018, the Victorian Parliament passed the *Advancing the Treaty Process with Aboriginal Victorians Bill 2018*. This established the first Treaty laws in the country, committing the state to a Treaty process with our communities. The legislation was developed in partnership with the Working Group. It enshrines the Treaty process into law, including binding government to acting fairly in the process and only working with the recognised Representative Body. More information about the Act can be found at vic.gov.au/aboriginalvictoria/treaty/treaty-legislation.

What will the Representative Body do?

The Representative Body will be a democratic, unifying 'voice' for all Aboriginal people in Victoria in the next phase of the Treaty process. It will be independent of government. It will be made up of Victorian Traditional Owners, elected by Aboriginal people in Victoria.

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It will not be established to negotiate Treaty.

The Representative Body will work with government to establish the architecture for the Treaty process. This includes:

- a Treaty negotiation framework - this will set out 'ground rules'. For example, what is on and off the negotiating table, and who can negotiate
- a Treaty authority - an 'independent umpire' in the negotiation process
- a self-determination fund - this will support Aboriginal communities to be on an 'even playing field' with the state when Treaties are being negotiated.

It may also develop and adopt other roles over time, reflecting the collective needs and desires of the community.

How the proposed model has been developed

The Commission has been guided by five key pillars in the development of the proposed model.

- The **eight design principles** coming from two years of community consultations and engagement

- The **recommendations and reports of the Community Assembly and the Working Group**. The Commission continues to be guided by the Working Group
- The Commission's **engagement work**, speaking with over 1,000 people in more than 30 communities across the state
- Extensive **research to learn from international experiences and peoples with similar histories** to ourselves
- The principles in the **United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)** and the principles of self-determination and empowerment in the **Advancing the Treaty Process with Aboriginal Victorians Act 2018**.

Based on all of this, the Commission has designed a proposed model which it believes will ensure we have the strongest Representative Body possible. The Representative Body will unify us in our journey towards Treaty.

Sep

Statewide Gathering and Elders Forum

we are here

Early

Elections for Representative Body held

2019

Treaty negotiations commence

Oct

Feedback on design closes

Mid

Representative Body established

2019 onwards

Representative Body establishes Treaty negotiation framework, Treaty authority and self-determination fund in partnership with government

What will the Representative Body look like?

The Representative Body will initially consist of 28 representatives selected by a combination of statewide elections and seats reserved for formally recognised Traditional Owner groups.

The number of representatives will adapt as more Traditional Owner groups are formally recognised. These representatives will form the main decision making forum of the Representative Body. To implement their decisions and manage the finer detail, the representatives will elect an executive and chair.

It is proposed that the Representative Body will be a company limited by guarantee. This is important as it means the Representative Body, including who is on it, will be completely independent from government and not governed by the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.



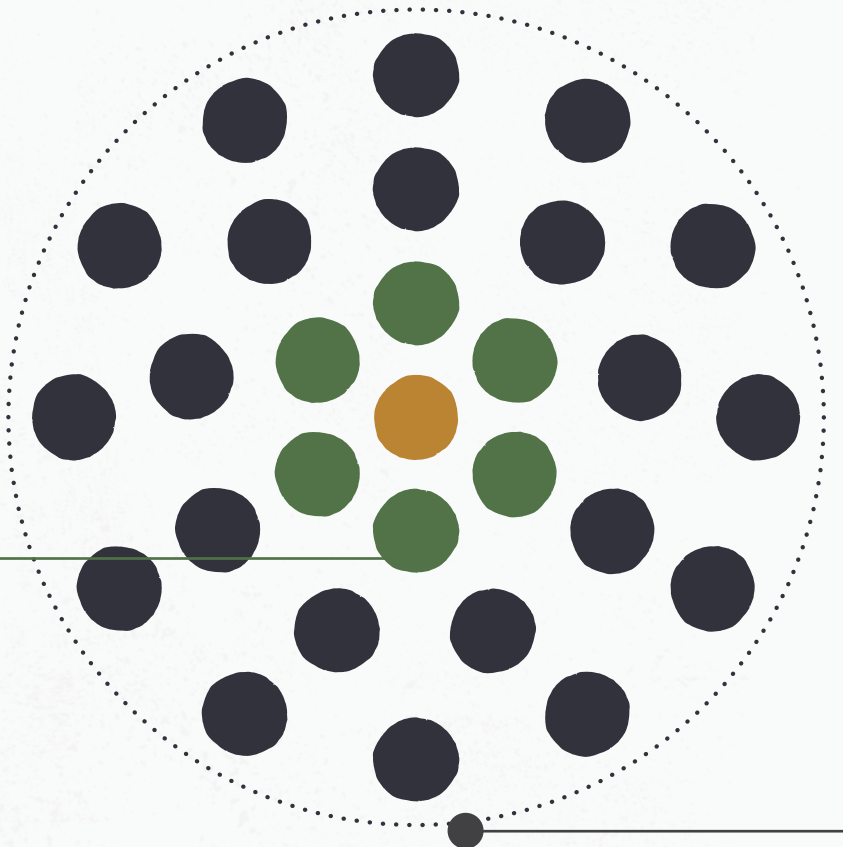
Aboriginal Representative Body

Elders' Voice

- Form is to be determined
- Provides cultural strength and integrity to the Body

Executive

- 7-9 elected by all representatives
- Led by a Chair elected by all representatives
- Implements decisions of the Body and sets the agenda



Elders' voice

Guiding the work of the Body will be a voice for Elders, ensuring the cultural integrity of the Representative Body and that business is done our way.

At the Elders' Gathering to be held on 24 September 2018, Elders will be asked to shape what the voice will look like. This gathering will be used to develop design principles for the Body including participation, responsibilities and powers. The Commission will use these principles to build the Elders' voice.

Elected Representatives

- 28 representatives from across the state
- Vote on all major decisions of the Body
- Elect the executive and Chair of the Body
- Decisions made by consensus where possible
- Accountable to the electorate

General Seats

(17 seats)

All Aboriginal people living in Victoria have the opportunity to vote. See page 10.

Reserved Seats

(11 seats at Sept 2018)

A seat will be reserved for a representative appointed by each formally recognised Traditional Owner group. See page 8.

Who can be a representative?

A candidate can be elected to the Representative Body if they are:

- a Traditional Owner of country in Victoria
- live in Victoria
- are able to serve as a Director of a not-for-profit corporation
- are able to fully participate in activities of the Representative Body (this includes not currently being in prison or otherwise unable to attend meetings).

Candidates standing for election can choose whether to run in the voting region they currently live in or the voting region which covers their traditional country. They can only stand in one region.

It is proposed that representatives should be elected for a three year term. A representative can be elected for two consecutive terms and should then have to sit out a term before nominating again.



How should representatives be selected?

The Representative Body's role is not to negotiate Treaty.

It is critical that the Representative Body inclusively represents our community so that the views and aspirations of Traditional Owners and all Aboriginal people living in Victoria are respected in this stage of the process. This is the only way that we can form one, unified voice.

The Representative Body, in partnership with the state, will develop the Treaty negotiation framework and be a collective voice for all Aboriginal people in Victoria. Therefore it is important that it be representative but distinct from groups that are likely to negotiate treaties in the next stage of the process.

Based on outcomes of the Community Assembly, the Working Group recommended that all representatives to the Representative Body be elected by statewide vote. Through the Commission's engagement, community has made it clear that the Representative Body must be democratic in a way that is respectful of Aboriginal ways of doing business.

In particular the Commission heard the need to ensure that formally recognised Traditional Owner groups were represented. Community also wanted to ensure that as many different voices as possible are heard in the Body. We have therefore looked at our history, our traditions and our existing structures, as well as global experiences, in proposing an alteration to the Community Assembly's design

of the Body. This proposal will further ensure the Representative Body's reflects the UNDRIP.

The proposed structure of the Body blends general seats elected by statewide vote with reserved seats nominated by formally recognised Traditional Owners groups.

Reserved Seats

We have looked at countries and peoples with a similar history to ours in designing the Body. These include First Peoples' representative institutions, non-Western countries, and peoples affected by colonisation. This has ranged from First Peoples' institutions in Canada, and representative institutions in New Zealand, Samoa, Fiji, Ethiopia, India, Pakistan and Mauritius.

These places guarantee representation for certain groups within their representative institutions.

Many of these countries do this by reserving seats for different communities in their democratically elected institutions. Using reserved seats in the Representative Body will mean that the design principles are best met:

- the Body uses a blended, culturally-based form of democracy



- our collective rights, as well as our individual rights, are protected, unifying us in our diversity



- the blend of general and reserved seats ensures different groups are represented



- it will help promote cooperation



- it recognises existing organisational structures, including where clans have sought to organise into formal structures.



LEGEND






- Unity
- Inclusive Representation
- Culturally Based
- Practical
- Transparent and Accountable
- Skills Based
- Independent
- Clan Based

Who should be guaranteed representation?

When deciding which groups should have reserved seats on the Representative Body the Commission looked at options including existing Traditional Owner structures, clans and language groups. We have looked at which of these options best support the design principles of the Representative Body, including that it must be strong, stable and able to be implemented.

Formally recognised Traditional Owner groups

We considered formally recognised Traditional Owner groups with Native Title, Traditional Owner Settlement Act or Registered Aboriginal Party status as a basis for guaranteed representation. These groups are most suitable for guaranteed representation as:

1. There is a clearly defined list of formally recognised Traditional Owner groups

2. The list can adapt as groups emerge and achieve formal recognition

3. These groups have clear organisational and membership structures, and decision making processes

4. It is inclusive of both clans and language groups, and ensures that clan groups will have a say in the selection of a representative

5. It builds upon established Traditional Owner structures and institutions

6. Ensures that some members will have key skills related to negotiations, governance, land, cultural and organisational

management. It is essential these skills are reflected in the make-up of the Body



7. It is respectful of formally recognised Traditional Owner boundaries






8. It ensures a diversity of views are in the Representative Body.



Clan groups

Clan groups were considered as a possible basis to guarantee representation. This was not considered the most suitable option at this time because:

1. There is no clear definition or agreed list of the clans of Victoria

2. The large number of clans could make decision making for the Representative Body unworkable

3. There is no recognised structure for how clans would make decisions or select their representatives


We recommend that formally recognised Traditional Owner groups are allocated reserved seats on the Representative Body. Clans and language groups continue to play an essential role in Aboriginal society and how we organise. Clan and language revival must be a central part of the Treaty process. However at this stage clans and language groups are not suitable as a way of allocating seats on the Representative Body if it is to be established as a strong, effective organisation.





This proposal is only for the purposes of reserving certain seats on the Body. The

4. Not all Aboriginal Victorians are aware of their clan and a lot of work needs to happen to get community to this point.



Language Groups

Language groups were considered as a possible basis to guarantee representation. However they were also not considered suitable at this time because:

1. There is no clear definition or agreed list of language groups in Victoria

2. Not all Aboriginal people are aware of their language group, and some are members of several language groups

3. Not all Aboriginal people choose to organise by language group, and so it's unclear how language groups would reflect common views of their members

4. There is no recognised structure for how language groups would make decisions and establishing one would take significant time.


majority of seats are still proposed to be elected by statewide vote.

This does not limit, in any way, other Traditional Owners in Victoria from participating in the Treaty process or prevent them from running for the Representative Body or engaging in Treaty negotiation. This also does not stop the Representative Body working to support clans or language groups-based treaties.

All Victorian Traditional Owners, particularly those who do not participate in formally recognised Traditional Owner groups will be encouraged to stand in general seats.

How are the reserved seats selected?

It is proposed that 11 seats should be reserved for formally recognised Traditional Owner groups (under the *Native Title Act 1993*, *Traditional Owner Settlement Act 2010* or the *Aboriginal Heritage Act 2006*). **More seats will be created as groups are recognised over time.**

It is proposed that these Traditional Owner groups self-determine how their representative will be appointed. This ensures that the different aspirations, cultures and membership structures of each Traditional Owner group is respected, while respecting the culturally based democratic design of the Representative Body. This ensures that the Representative Body supports the principles of UNDRIP and the principles of self-determination and empowerment in the *Advancing the Treaty Process with Aboriginal Victorians Act 2018*.



Should all seats be allocated to Traditional Owner groups?

We do not believe that all seats should be allocated to Traditional Owner groups as such a model does not reflect what has been heard throughout community consultations and engagement, the design principles of the Body, or the Community Assembly and the Working Group's work. The blended model best meets the design principles as:

- Election based democracy enables people who do not engage with their Traditional Owner group to stand for election and have their voice heard in the make-up of the Representative Body
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- It runs counter to over two years of community consultation that recommended generally elected seats must form the foundation of the Body
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- There is no clear place for Aboriginal Victorians who are not Traditional Owners
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- There is an uncertain place for members of the Stolen Generations
U Inc
- The diversity of the Aboriginal community in Victoria would not be reflected without general elections amongst all members of the community.
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General seats

Currently, 17 seats on the Representative Body should be elected by a statewide vote. As proposed by community consultations, all Aboriginal and Torres Strait Islander people living in Victoria should be eligible to vote.

You should be able to vote in-person, via post or online, whichever is easiest for you. Voting should be open for multiple weeks to allow for different schedules. Where possible, in-person voting should be located with other services used by community, for example in a co-op.

Absentee voters (those who ordinarily live in Victoria but are away for the election) should be able to vote via the internet or post. The Commission will also ensure that eligible voters currently in prison, experiencing homelessness, who are illiterate, or have a disability are able to vote.



Voting regions

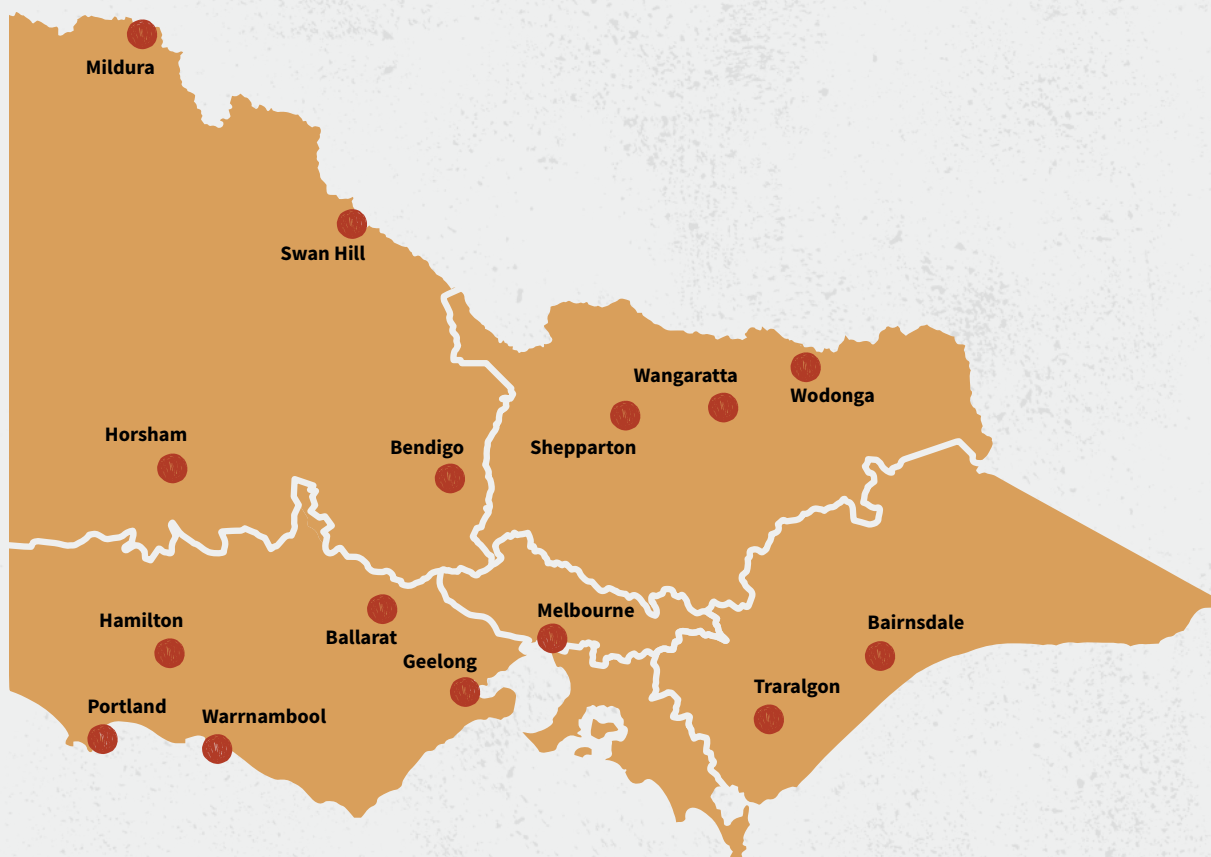
The state should be divided into six voting regions as proposed by the Community Assembly. You vote in the region in which you live, even if you choose to be a candidate in another region (where you have traditional country). You only vote once and your vote will be secret.

These regions are not Traditional Owner boundaries and are not regions where Treaty or Treaties will be negotiated. Their only purpose is to ensure that representatives are drawn from across the state and are reflective of their local community.

The regions have been drawn to avoid intersecting with known Traditional Owner boundaries and otherwise follow local government area boundaries. Representatives are allocated on the basis of the number of eligible voters estimated to be in each region, with each region provided a minimum of two representatives.



Proposed voting regions for the Aboriginal Representative Body:



Electoral Roll

The Commission proposes to create a unique and independent Aboriginal Electoral Roll. The purpose of this roll is only for elections to the Representative Body. There should be no link with the Commonwealth Electoral Roll or the Victorian Electoral Roll and be independent of government. Voting will not be compulsory for those on the Aboriginal Electoral Roll.



Voting Age

The Community Assembly proposed that the voting age for the elections to the Body is 16 years old for Aboriginal Victorians. The Commission supports this. It is the right thing to do because our young people take on adult responsibilities at younger age, including traditional and cultural responsibilities. Young people also make up a large percentage of our population, this will increase the

number of people voting and ensure our young people are given a voice in the process. Research has also shown that 16 year olds generally have the same cognitive capabilities as 18 year olds.



Gender balance and diversity

In the year of 'Because of Her We Can,' we are particularly aware of the need to ensure gender balance in the Representative Body. Aboriginal women in Victoria are some of the strongest leaders in our community.

Community consultation and engagement has emphasised that gender balance is critical for the Representative Body. Other elected representative bodies, like the Aboriginal and Torres Strait Islander Commission (ATSIC), had low female representation.

It is proposed that the Representative Body adopts a gender quota to ensure a minimum of 40-50 per cent of seats go to female or non-male identifying candidates. The Commission proposes a 'bump up' system whereby if the quota is not met after counting of the votes, the unsuccessful female candidate with the highest number of votes is elected in place of the successful male candidate with the lowest number of votes and this repeats until the quota is reached.

The Commission will also undertake outreach programs to support participation by other specific groups. These include members of the Stolen Generations, our LGBTIQ community, our youth, and people with disabilities. Once established the Representative Body will also undertake this outreach.



Questions for feedback

- How can the proposed model be strengthened?
Does anything need to change?
 - What should the Representative Body be named?
 - What do you want from the Treaty process?
-

You can provide your feedback until 28 October 2018

- **In person** at the Statewide Forum
- **Online** at VicTreatyAdvancement.org.au
- **By phone** 1800 Treaty (1800 873 289)
- **By post** 116 Cardigan Street, Carlton VIC 3053



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