



TREATY NEGOTIATION FRAMEWORK
FIRST PEOPLES' ASSEMBLY OF VICTORIA AND
THE STATE OF VICTORIA



FIRST PEOPLES'
ASSEMBLY OF
VICTORIA



TABLE OF CONTENTS

Treaty Negotiation Framework	4
Preamble	4
Part A Framework	5
1 Outline	6
2 Introduction	6
2.1 Elements required by the Treaty Act	6
2.2 Purpose	7
2.3 Treaty Process	7
2.4 Guiding principles	7
2.5 Central principle for Treaty	8
2.6 Funding for Treaty Negotiations	8
2.7 Aboriginal Lore, Law and Cultural Authority	8
2.8 Aboriginal Lore, Law and Cultural Authority in the Treaty Process	9
3 First Peoples' Sources of Authority and Treaty	9
3.1 Inherent rights	9
3.2 Right to self-determination	9
3.3 Statewide Treaty	10
3.4 Traditional Owner	10
3.5 Traditional Owner Treaty	10
4 Role of Treaty Authority	10
4.1 Sources of the Treaty Authority's functions	10
4.2 Performance of functions	11
4.3 Timeframes	11
4.4 Treaty Authority and Aboriginal Lore, Law and Cultural Authority	11
4.5 Treaty Authority to oversee Negotiations Database	12
5 Commencement	12
6 Compliance with Framework	12
Part B Entry into Traditional Owner Treaty negotiations	13
7 Primary Negotiating Parties	14
7.1 Primary Negotiating Parties	14
7.2 Requirements to enter into Traditional Owner Treaty negotiations	14
8 Minimum standards – Traditional Owner Groups	15
8.1 All Traditional Owner Groups must meet the Minimum Standards	15
8.2 Traditional Owner Group with Existing Status	15
8.3 Minimum Standards	15
8.4 Satisfaction of Minimum Standards	16

9	Entry of a Traditional Owner Group onto the Negotiations Database	16
9.1	Notification of satisfaction of Minimum Standards	16
9.2	Entry onto the Negotiations Database	17
9.3	When entry onto the Negotiations Database can be refused, removed, or amended	17
9.4	Notification of entry onto the Negotiations Database	18
10	Formation of a First Peoples' Treaty Delegation	18
10.1	Overall – formation of a First Peoples' Treaty Delegation	18
10.2	Notification of formation of a Delegation	19
10.3	Collective agreement to form a Delegation	19
10.4	Delegation's satisfaction of the collective agreement requirements	20
10.5	Reconstituting a Delegation	21
10.6	Minor amendments to the collective agreement for a Delegation	21
11	Entry of a Delegation onto the Negotiations Database	21
11.1	A Delegation's notification of formation or reconstitution	21
11.2	A Delegation's entry onto the Negotiations Database	22
11.3	When entry onto the Negotiations Database can be refused, removed or amended	22
11.4	When entry onto the Negotiations Database can be accepted, without collective agreement of all Relevant Groups	22
11.5	Notification of entry onto the Negotiations Database	22
12	Inviting the State to begin Treaty Negotiations	23
12.1	Delegation requests State invitation	23
12.2	Treaty Authority issues invitation to State to begin negotiations	23
12.3	State accepts invitation to a Treaty negotiation	23
13	The State's Minimum Standards for a Traditional Owner Treaty	24
13.1	Preparing to meet Minimum Standards	24
13.2	Minimum Standards for the State	24
13.3	Additional Preparations for the State	24
14	Entry of the State onto the Negotiations Database	25
14.1	The State's compliance with Minimum Standards	25
14.2	State notification of compliance with Minimum Standards	25
14.3	Treaty Authority assesses State's compliance with Minimum Standards	26
14.4	Treaty Authority enters State onto Negotiations Database	26
	Part C Entry into Statewide Treaty negotiations	27
15	Primary Negotiating Parties	28
15.1	Primary Negotiating Parties	28
15.2	Requirements to enter into Statewide Treaty negotiations	28
16	Minimum Standards for the Body to enter into negotiations	29
16.1	The Body must meet the Minimum Standards	29
16.2	Minimum Standards for the Body	29
16.3	Additional Requirement for the Aboriginal Representative Body	30

17 Treaty Authority notifies commencement of process	30
18 Entry of the Aboriginal Representative Body onto the Negotiations Database	30
18.1 Notification of satisfaction of Minimum Standards and Additional Requirement	30
18.2 Entry onto the Negotiations Database	30
18.3 Notification of entry onto the Negotiations Database	31
18.4 Comment and Dispute Period	31
18.5 When entry onto the Negotiations Database can be removed or amended	31
18.6 Contingency Process	32
19 Inviting the State to begin Treaty Negotiations	32
19.1 The Body requests State invitation	32
19.2 Treaty Authority issues invitation to the State	32
19.3 State accepts invitation to Treaty negotiation	32
20 State’s Minimum Standards for Statewide Treaty	33
20.1 Preparing to meet Minimum Standards	33
20.2 Minimum Standards for the State	33
20.3 Additional Preparations for the State	33
21 Entry of the State onto the Negotiations Database	34
21.1 The State’s compliance with Minimum Standards	34
21.2 State notification of compliance with Minimum Standards	34
21.3 Treaty Authority assesses the State’s compliance with Minimum Standards	34
21.4 Treaty Authority enters the State onto Negotiations Database	35
Part D Additional Negotiating Parties	36
22 Invitation to Additional Negotiating Parties	37
23 Entry of Additional Negotiating Parties onto the Negotiations Database	37
Part E Conduct of Treaty negotiations	38
24 Negotiation Standards	39
24.1 Negotiation Standards for all parties	39
24.2 Additional Negotiation Standards applicable to the State	40
25 Subject matters for negotiation	40
25.1 No excluded matters	40
25.2 Subject matters for negotiation – general	40
25.3 Subject matters for negotiation – Statewide Treaty	41
25.4 Subject matters for negotiation – Traditional Owner Treaties	41
26 Process for engaging in negotiations	42
26.1 Agreeing the Negotiation Protocols	42
26.2 Modifying the Negotiation Protocols	42
26.3 Record of the Negotiation Protocols	42
26.4 Role of the First Peoples’ Representative Body	42
26.5 Interim Offers	43
26.6 Suspension or termination of negotiations	43
26.7 Disputes arising in the course of negotiations	43

Part F	Process for formalising agreement to Treaty or Treaties	44
27	Process for formalising agreement	45
28	Collective support	45
29	Disputes arising during the process for formalising agreement	45
Part G	Enforcing a Treaty or Treaties	46
30	Mechanisms for enforcing a Treaty or Treaties	47
31	Other enforcement mechanisms	47
32	Supreme Court	47
33	Other Legal Rights	47
Part H	Reporting requirements in relation to a Treaty or Treaties	48
34	Reporting requirements	49
34.1	Annual Reporting	49
34.2	Reporting on Treaties	49
34.3	Public register	49
Part I	Process for the resolution of disputes	50
35	Dispute resolution process	51
35.1	Scope of process	51
35.2	Treaty Authority guidance	51
35.3	Confidentiality	51
36	Stages in dispute resolution process	52
36.1	Dispute resolution process	52
36.2	Legal proceedings	53
Part J	Definitions, Interpretation & General Provisions	54
37	Dictionary	55
38	Interpretation	57
39	General provisions	58
Schedule 1: Contingency Process for confirmation of First Peoples' Representative Body		60
1	Treaty Authority notifies of commencement of Contingency Process	60
2	Entry of other entities onto Negotiations Database	60
2.1	Notification of Minimum Standards	60
2.2	Preliminary entry onto the Negotiations Database	60
2.3	Agreement-making and Consultation and Dispute Periods	61
2.4	Confirmation of the Body	61
2.5	Notification of final entry onto the Negotiations Database	62
Artwork Story: Drivers of our own destiny		65

TREATY NEGOTIATION FRAMEWORK

Date 20 October 2022

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The State of Victoria of Level 14, 35 Collins Street, Melbourne, Victoria 3000 (**State**)

PREAMBLE

- A. The First Peoples' Assembly of Victoria is the voice for Aboriginal and Torres Strait Islander peoples to advance Treaty in Victoria, recognised under the *Advancing the Treaty Process with Aboriginal Victorians Act 2018* (Vic) as the Aboriginal Representative Body that works with the State of Victoria to establish by agreement the elements necessary to support future Treaty negotiations. In doing so, the First Peoples' Assembly of Victoria represents the diversity of First Peoples, being Traditional Owners of Country in Victoria and Aboriginal and Torres Strait Islander peoples living on the lands and waters now known as Victoria.
- B. The State of Victoria is a state of the Commonwealth of Australia under the Commonwealth Constitution and the Victorian Constitution. It is the successor to the colony of Victoria, which was established as a self-governing colony with responsible government by the *Constitution Act 1855* (Imp). The colony of Victoria's establishment occurred without approval from or consultation with the First Peoples who were then (and remain) the Traditional Owners of the land and waters now known as Victoria.
- C. The Parliament of Victoria, by section 1A of the *Constitution Act 1975* (Vic), recognises that Aboriginal people of Victoria, as the original custodians of the land on which the colony of Victoria was established, have a unique status as the descendants of Australia's first people; have a spiritual, social, cultural and economic relationship with their traditional lands and waters within Victoria; and have made a unique and irreplaceable contribution to the identity and wellbeing of Victoria.
- D. The State of Victoria, by the Preamble to the Treaty Act, acknowledges that Traditional Owners of Country in Victoria maintain their sovereignty was never ceded and states that the time has come to take the next step towards reconciliation and to advance self-determination for First Peoples.
- E. Since colonisation, Traditional Owners of Country in Victoria have fought for and won back some of the rights and status they hold under Aboriginal Lore and Law as recognised by the *United Nations Declaration on the Rights of Indigenous Peoples*. These rights and this status are obtained and enjoyed under existing legislative recognition processes. The fight for rights and status has been shaped by First Peoples' Ancestors and is a key pillar that supports the journey to self-determination. The honouring of First Peoples' Ancestors and activation of inherent rights and benefits as sovereign peoples is now continued through Treaty-making.
- F. The injustices of the past cannot be undone. The State is pursuing Treaty-making because it is the right thing to do. The State of Victoria needs a Treaty or Treaties that are reciprocal and that through truth and justice provide far-reaching benefits for First Peoples. For Traditional Owners, Aboriginal children, Elders, and stolen people; for a society that all Victorians can be proud of; Treaty-making will be for all First Peoples. In the spirit of reconciliation, Treaty-making will be for all Victorians. A future Treaty or Treaties should acknowledge truth and healing, as guided by the recommendations of the Yoorrook Justice Commission, enhance the existing laws of this State, bring pride to all Victorians and have positive impacts for all of Victorian society.
- G. By the agreement set out in this document, the Aboriginal Representative Body and the State establish the Framework required by section 30(1) of the Treaty Act.

PART A **FRAMEWORK**



1 Outline

This Framework is structured as follows.

- (a) Part A explains the Treaty-making landscape, the purpose and principles of the Framework, and other foundational matters. It also provides for the commencement of the Framework and states that the Framework is binding on the Parties and all Negotiating Parties.
- (b) Parts B to E and Schedule 1 set out the process for negotiating Treaties.
 - (i) Part B provides the process for Traditional Owner Groups and the State to enter into Traditional Owner Treaty negotiations. This includes the Minimum Standards they must meet to negotiate Treaties and the requirement for Traditional Owner Groups to form a First Peoples' Treaty Delegation to represent all Traditional Owners of Country for each Treaty.
 - (ii) Part C and Schedule 1 provide the process for the First Peoples' Representative Body and the State to enter into Statewide Treaty negotiations, including the Minimum Standards they must meet to negotiate a Statewide Treaty.
 - (iii) Part D provides the process for Additional Negotiating Parties to participate in Treaty negotiations.
 - (iv) Part E provides the process for conducting Treaty negotiations. This includes setting Negotiation Standards, providing that there are no matters that cannot or must not be agreed to in the course of Treaty negotiations, and outlining the subject matters that may be negotiated, how Interim Agreements are made and other process-related matters.
- (c) Part F provides the process for formalising agreement to Treaties and Interim Agreements, including how parties to a Treaty or Interim Agreement will signify their assent.
- (d) Part G sets out the mechanisms for enforcing Treaties.
- (e) Part H sets out the reporting requirements in relation to Treaty negotiations and Treaties.
- (f) Part I provides the process for the resolution of disputes arising in the course of Treaty negotiations or incidental to or in connection with Treaty negotiations.
- (g) Part J contains definitions of the terms used in the Framework, interpretation rules and general provisions about how the Framework operates as an agreement.

2 Introduction

Treaty-making aims to build a new relationship between the State and First Peoples based upon realising rights defined by the UNDRIP.

The Parties to this Framework intend the Framework to operate differently from past frameworks in Victoria and Australia and reflect a new approach where the principle of self-determination and empowerment is central and informs its every element.

To give effect to this intention, in parts of the Framework, the Parties have outlined the rationale for certain provisions to explain how this Framework supports First Peoples to decide First Peoples' issues.

2.1 Elements required by the Treaty Act

The Treaty Act requires the Parties to work together to establish elements necessary to support future Treaty negotiations. These elements include:

- (a) Treaty Authority:
 - (i) The Treaty Authority's functions are set out in section 28 of the Treaty Act, section 8 of the Treaty Authority Act, the Treaty Authority Agreement and this Framework.

- (ii) The Parties recognise the Treaty Authority as a necessary element to the Treaty Process and as the sole entity performing the functions of the Treaty Authority.
 - (iii) In accordance with its statutory functions, and to observe and uphold self-determination and empowerment, the Treaty Authority will administer this Framework consistently with the Treaty Authority Agreement.
- (b) Treaty Negotiation Framework:
- (i) This Framework is made under section 30 of the Treaty Act and for the purpose set out in clause 2.2.
- (c) Self-Determination Fund:
- (i) The Self-Determination Fund has the following purposes under section 36 of the Treaty Act:
 - (A) supporting Traditional Owners and Aboriginal Victorians to have equal standing with the State in Treaty negotiations; and
 - (B) providing a financial resource, independent from the State, that empowers Traditional Owners and Aboriginal Victorians to build capacity, wealth and prosperity.
 - (ii) The Aboriginal Representative Body will administer the Self-Determination Fund in a manner consistent with the statutory purposes.
- (d) Dispute resolution process:
- (i) The Parties have established a dispute resolution process by agreement under section 38 of the Treaty Act. That process will apply by its terms to the Parties.

2.2 Purpose

This Framework has been agreed by the Aboriginal Representative Body and the State as required under the Treaty Act for the purpose of providing for the negotiation of Treaties that, in accordance with section 30(3) of the Treaty Act:

- (a) recognise historic wrongs;
- (b) address ongoing injustices;
- (c) help heal wounds of the past;
- (d) support reconciliation;
- (e) bring pride to Victorians;
- (f) have positive impacts for Victoria;
- (g) promote the fundamental human rights of Aboriginal peoples, including the right to self-determination;
- (h) acknowledge the importance of culture to Aboriginal identity; and
- (i) enhance the laws of Victoria.

2.3 Treaty Process

The Parties intend that the Framework will facilitate a Treaty Process that:

- (a) restores the rightful place of the Cultural Authority of First Peoples;
- (b) provides a recognition space for Aboriginal Lore and Law and First Peoples' rights and responsibilities;
- (c) acknowledges truth and healing, as guided by the recommendations of the Yoorrook Justice Commission; and
- (d) delivers better self-determined outcomes for all First Peoples.

2.4 Guiding principles

- (a) The parties to the Treaty Process at all times must act in accordance with the guiding principles set out in Part 3 of the Treaty Act, which are:
 - (i) self-determination and empowerment;

- (ii) fairness and equality;
 - (iii) partnership and good faith;
 - (iv) mutual benefit and sustainability; and
 - (v) transparency and accountability.
- (b) The “parties to the Treaty Process” means the following:
- (i) the Aboriginal Representative Body;
 - (ii) the State;
 - (iii) the Treaty Authority; and
 - (iv) any person, group or body participating in future Treaty negotiations, which includes all Negotiating Parties.

2.5 Central principle for Treaty

Without limiting clause 2.4, self-determination and empowerment is the central principle for Treaty-making and informs every element of the Framework.

Self-determination and empowerment means different things for different groups and will be practised in a variety of ways, but typically includes that First Peoples decide First Peoples’ issues. Treaty-making provides an opportunity for First Peoples to practise self-determination in the manner they choose.

Treaty-making in Victoria will include the negotiation of both a Statewide Treaty and Traditional Owner Treaties to reflect that the principle of self-determination and empowerment can be exercised by all First Peoples in Victoria collectively, and by Traditional Owner Groups in a manner directed to their particular circumstances.

2.6 Funding for Treaty Negotiations

- (a) The Parties agree that funding to support Traditional Owners and Aboriginal Victorians to have equal standing with the State in Treaty negotiations will be addressed in the Self-Determination Fund agreement.
- (b) The State acknowledges the importance of ensuring funding to facilitate its own good faith participation in Treaty negotiations.

2.7 Aboriginal Lore, Law and Cultural Authority

- (a) Aboriginal Lore and Law are embedded within the dreaming, art, song, ceremony, dance and stories of First Peoples and exist as a body of authority that informs First Peoples’ relationships, ways of doing business and governance structures.
- (b) Since time immemorial, Traditional Owners have practised Aboriginal Lore and Law, customs and languages, and nurtured Country through their spiritual, material and economic connections to the land. Aboriginal Lore and Law have not been extinguished or frozen in time and continue to evolve and adapt.
- (c) Cultural Authority derives from Aboriginal Lore and Law and culture. It includes rules about Eldership and who has authority to speak for Country. Cultural Authority is held with humility and respect and carries a responsibility to Country and community. It is relational, intergenerational, matriarchal and patriarchal.
- (d) Traditional Owner communities and other First Peoples’ communities have differing governance systems, kinship structures, cultural protocols and obligations, and differing rules about who has Cultural Authority. For this reason, the meaning of Aboriginal Lore, Law and Cultural Authority varies between communities, and its application within each community is a matter for each community to self-determine.
- (e) Acknowledging the diversity of communities, for many First Peoples, Aboriginal Lore, Law and Cultural Authority are expressed by:
 - (i) respecting the authority of Country and the law of that Country;
 - (ii) understanding the role of Ancestors in creating and looking after law;
 - (iii) acknowledging that Aboriginal Lore and Law are demonstrated in good practice and proper behaviours;

- (iv) respecting the different types of responsibility that First Peoples have to Country, to care for it, to look after one another as First Peoples, and to look after everyone while they are on Country;
 - (v) understanding that people and peoples have different kinds of authority that come from their different responsibilities to Country;
 - (vi) acknowledging that Traditional Owners are Country and speak as Country;
 - (vii) understanding that Aboriginal Lore, Law and Cultural Authority are inherent and embedded in First Peoples' communities and have the meanings given to them by those communities;
 - (viii) recognising that the foundational principles of Aboriginal Lore, Law and Cultural Authority do not change over time, but that their expressions adapt and respond to different places and circumstances;
 - (ix) acknowledging that kinship and relationships are at the core of Aboriginal Lore, Law and Cultural Authority; and
 - (x) knowledge and practices that are for Traditional Owners and are not to be shared.
- (f) The matters set out in clause 2.7(e) are illustrations of Aboriginal Lore, Law and Cultural Authority and do not limit the meaning of those terms.

2.8 Aboriginal Lore, Law and Cultural Authority in the Treaty Process

The Treaty Process is intended to provide a recognition space for Aboriginal Lore, Law and Cultural Authority, for all parties including the State and parties who are not First Peoples.

The Treaty Authority will play a significant role in upholding and observing Aboriginal Lore, Law and Cultural Authority in the Treaty Process.

- (a) Aboriginal Lore, Law and Cultural Authority are matters for First Peoples to identify.
- (b) All parties will engage with Aboriginal Lore, Law and Cultural Authority respectfully and in good faith.
- (c) The Treaty Authority will use its best endeavours to uphold and observe relevant Aboriginal Lore, Law and Cultural Authority in the Treaty Process, in the manner provided in clause 4.4.

3 First Peoples' Sources of Authority and Treaty

First Peoples' sources of authority inform Treaty-making. The following section aims to provide a greater understanding of the nature and content of the rights that give authority to First Peoples to negotiate and enter into Treaties. It explains but does not limit First Peoples' rights, nor does it limit the subject matters for Treaties that may be negotiated.

For Traditional Owners, the authority to negotiate Treaties derives from their inherent rights in relation to Country. Inherent rights cannot be taken away and are always there.

3.1 Inherent rights

The UNDRIP recognises that the inherent rights of Indigenous peoples derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies. Rights are inherent because they are not granted or delegated by the State. The source is Indigenous peoples and Country.

3.2 Right to self-determination

- (a) The UNDRIP recognises that self-determination encompasses the collective right of Indigenous peoples to decide their political status and freely pursue their economic, social and cultural development.

- (b) The UNDRIP recognises that Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs. The right derives from Indigenous peoples' connection to particular Country.

3.3 Statewide Treaty

- (a) Traditional Owners lived on the land that makes up the territory of what is now known as the State of Victoria when it was established and visited and traded with other Traditional Owners across the arbitrary colonial borders that divided Country. Traditional Owners survived and continue to live and practise Aboriginal Lore and Law on this land. Their authority comes from being part of and speaking for Country. From the time of the establishment of what is now known as the State of Victoria, other Aboriginal and Torres Strait Islander persons have come to live on the territory as First Peoples.
- (b) The Statewide Treaty finds authority in First Peoples on account of being First Peoples. The premise of Statewide Treaty is recognition of the unique position of First Peoples in Victoria. The first guiding principle of the Treaty Act is that First Peoples “have the right to self-determination” and the central principle for Treaty-making is self-determination and empowerment (see clauses 2.4 and 2.5 of this Framework). Consistent with those statements of principle, a Statewide Treaty will support First Peoples as a collective to exercise self-determination, including, if agreed, by structural reform to government in Victoria.

3.4 Traditional Owner

- (a) “Traditional Owner” has the meaning given by section 3 of the Treaty Act, as applied by the relevant First Peoples having regard to self-determination.
- (b) Traditional Owners lived on the land that makes up the territory of what is now known as the State of Victoria when it was established. Traditional Owners survived and continue to live and practise Aboriginal Lore and Law on this land. Their authority comes from being part of and speaking for Country.

3.5 Traditional Owner Treaty

Traditional Owner Treaties will affirm, claim and allow for the exercise of the rights of Traditional Owners. Traditional Owner Treaties will support Traditional Owners to exercise self-determination and take control of their own affairs in matters directly affecting their Country and community. The premise of Traditional Owner Treaties is recognition of the inherent rights enjoyed by Traditional Owners of Country.

4 Role of Treaty Authority

4.1 Sources of the Treaty Authority's functions

The Treaty Authority's functions are set out in:

- (a) Section 28 of the Treaty Act, being:
 - (i) facilitating and overseeing Treaty negotiations;
 - (ii) administering the Framework;
 - (iii) providing for resolution of disputes in Treaty negotiations in accordance with the Framework; and
 - (iv) carrying out research to support Treaty negotiations and the administration of the Framework.
- (b) Section 8 of the Treaty Authority Act, being any other function agreed to by the parties under the Treaty Authority Agreement before, on or after the commencement of section 8 of the Treaty Authority Act.
- (c) The Treaty Authority Agreement, being:
 - (i) providing for the resolution of disputes incidental to or in connection with Treaty negotiations in accordance with the Framework; and

- (ii) such additional functions hereafter agreed by the Parties and recorded in the Framework consistent with the Treaty Act.
- (d) This Framework, in accordance with section 8 of the Treaty Authority Act and clause 12.2 of the Treaty Authority Agreement.

4.2 Performance of functions

- (a) In performing its functions, the Treaty Authority must act in accordance with this Framework and the Treaty Authority Agreement.
- (b) In performing its functions, the Treaty Authority may:
 - (i) encourage the Negotiating Parties to continue talking by way of effective communication and shared understandings;
 - (ii) develop and follow processes that are culturally strong and respectful;
 - (iii) identify the need for additional support for First Peoples' Negotiating Parties;
 - (iv) monitor and advise on the progress of Treaty negotiations; and
 - (v) listen and learn about First Peoples' issues, Aboriginal Lore and Law and Cultural Authority, and build relationships with First Peoples.
- (c) Nothing in this clause limits the functions of the Treaty Authority under this Framework, the Treaty Act, the Treaty Authority Act or the Treaty Authority Agreement.

4.3 Timeframes

In administering this Framework, the Treaty Authority may vary a prescribed timeframe, taking into account:

- (a) the views of parties who may be affected by varying, or by not varying, the timeframe; and
- (b) whether variation would prejudice entry into Treaty negotiations, the conduct of Treaty negotiations or the resolution of a dispute.

4.4 Treaty Authority and Aboriginal Lore, Law and Cultural Authority

- (a) In using its best endeavours to observe and uphold Aboriginal Lore, Law and Cultural Authority, the Treaty Authority will apply the following principles:
 - (i) Aboriginal Lore, Law and Cultural Authority are defined by First Peoples and will vary between communities;
 - (ii) Aboriginal Lore, Law and Cultural Authority have not been, and should not be, defined through the lens of the Western legal system; and
 - (iii) recognising that the process will be dynamic and flexible, all parties must have been given sufficient information to understand how the Treaty Authority will observe and uphold Aboriginal Lore, Law and Cultural Authority in the Treaty Process, before the Treaty Authority takes an action to do so.
- (b) In using its best endeavours to observe and uphold Aboriginal Lore, Law and Cultural Authority, the Treaty Authority will:
 - (i) engage with First Peoples' communities to determine the particular Aboriginal Lore, Law and Cultural Authority or aspects thereof they seek to have the Treaty Authority observe and uphold;
 - (ii) if the Aboriginal Lore, Law and Cultural Authority of one First Peoples' party conflicts with the Aboriginal Lore, Law and Cultural Authority of another First Peoples' party, facilitate agreement between the parties to a set of cultural protocols, obligations and rules for both parties to uphold and observe based on shared cultural values. As a matter of last resort, dispute resolution in accordance with Part I is available;
 - (iii) consider the legal and cultural contexts of the State and other parties who are not First Peoples;

- (iv) oversee a process of cultural dialogue and synthesis between the relevant parties, to support a culturally strong Treaty Process; and
 - (v) inform relevant parties of the aspects of Aboriginal Lore, Law and Cultural Authority to be applied in relation to a particular Treaty negotiation or dispute, before the Treaty Authority takes an action to do so.
- (c) For avoidance of doubt, nothing in this clause should be understood to enable the Treaty Authority to require the State to contravene the laws of Victoria or the Commonwealth.

4.5 Treaty Authority to oversee Negotiations Database

- (a) The Negotiations Database is an administrative tool maintained by the Treaty Authority that contains information about the Treaty Process, including who is negotiating a Treaty and the areas over which Treaties are being negotiated.
- (b) The Aboriginal Representative Body and the State intend for the Negotiations Database to be a critical central repository so that information about Treaty negotiations is publicly available and accessible in the one place. This will support parties to the Treaty Process to act in accordance with the guiding principles of transparency and accountability.
- (c) Once the Treaty Authority has established the Negotiations Database, it will declare in writing that it is established.
- (d) The Treaty Authority will determine the manner in which it administers the Negotiations Database, including:
 - (i) the form in which Negotiating Parties must provide the details it requires to maintain the Negotiations Database; and
 - (ii) the manner in which information on the Negotiations Database will be made publicly available.
- (e) The Treaty Authority may request that Negotiating Parties provide any other information it considers appropriate for inclusion on the Negotiations Database.
- (f) The Treaty Authority will make information on the Negotiations Database publicly available, unless:
 - (i) in the case of a formalised Treaty or Interim Agreement, the Treaty or Interim Agreement requires that the relevant information not be publicly available; or
 - (ii) the Treaty Authority considers that information should not be publicly available having regard to:
 - (A) Aboriginal Lore, Law and Cultural Authority, including protocols about sharing cultural knowledge;
 - (B) Indigenous Data Sovereignty and Indigenous Data Governance; or
 - (C) other requirements of law.
- (g) The Treaty Authority may consult with relevant First Peoples when having regard to the matters in clause 4.5(f)(ii)(A) and (B).

5 Commencement

- (a) Part A and Part J of this Framework will commence operation on the date that the Framework is signed.
- (b) The remainder of this Framework will commence operation on the date that the Negotiations Database is declared to be established by the Treaty Authority.

6 Compliance with Framework

Section 34 of the Treaty Act provides that Treaty negotiations must be conducted in accordance with this Framework.

PART B
**ENTRY INTO
TRADITIONAL
OWNER TREATY
NEGOTIATIONS**



This Framework provides an opportunity for all First Peoples to realise rights so that no one is left behind.

The Aboriginal Representative Body, representing First Peoples, has proposed and negotiated the processes required to enter into Traditional Owner Treaty negotiations, in an effort to restore the rightful place of the Cultural Authority of Traditional Owners.

Traditional Owner Groups with Existing Status will have their current rights respected and so will automatically be able to participate in the formation of a First Peoples' Treaty Delegation to negotiate a Treaty in relation to the Country over which they have Existing Status. The door is also open for Traditional Owner Groups without Existing Status to meet the Minimum Standards and participate in the formation of a First Peoples' Treaty Delegation to negotiate a Treaty.

This approach supports the right to self-determination of Traditional Owners to decide how to come together politically and make collective decisions. It also ensures the hard-won rights secured by Traditional Owners are not diminished, while acknowledging that not all Traditional Owners have been able, or wanted, to engage with existing processes under the *Traditional Owner Settlement Act 2010* (Vic), the *Aboriginal Heritage Act 2006* (Vic) and the *Native Title Act 1993* (Cth).

Traditional Owners will work together to form a First Peoples' Treaty Delegation, as guided by the principle of inclusivity, to conduct Treaty negotiations as a collective. The State will step back so that Traditional Owners self-determine their participation in Treaty negotiations in accordance with this Framework.

In this Part, all references to Treaty or Treaties are to Traditional Owner Treaties.

7 Primary Negotiating Parties

7.1 Primary Negotiating Parties

- (a) The Primary Negotiating Parties in relation to a Treaty will be:
 - (i) the State, as entered onto the Negotiations Database in accordance with clause 14.4; and
 - (ii) a First Peoples' Treaty Delegation (**Delegation**), as entered onto the Negotiations Database in accordance with clause 11.
- (b) There will be a single Delegation to represent all Traditional Owners of Country for a single Treaty (being the Traditional Owners of the area of land and waters identified at clause 10.3(d)(i)).

7.2 Requirements to enter into Traditional Owner Treaty negotiations

- (a) To enter into negotiations for a Treaty, a Delegation must be formed.
- (b) The steps for forming a Delegation are:
 - (i) a Traditional Owner Group(s) satisfies the Minimum Standards, in accordance with clause 8;
 - (ii) a Traditional Owner Group(s) is entered onto the Negotiations Database, in accordance with clause 9;
 - (iii) a Traditional Owner Group(s) forms a First Peoples' Treaty Delegation in accordance with clause 10; and
 - (iv) a First Peoples' Treaty Delegation is entered onto the Negotiations Database in accordance with clause 11.
- (c) Once a Delegation is entered onto the Negotiations Database, the following must occur before negotiations for a Treaty can begin:
 - (i) the Treaty Authority invites the State to begin negotiations for a Treaty, in accordance with clause 12;
 - (ii) the State accepts the invitation to begin negotiations, in accordance with clause 12;

- (iii) the State complies with the Minimum Standards, in accordance with clause 13; and
 - (iv) the Treaty Authority enters the State onto the Negotiations Database, in accordance with clause 14.
- (d) Once the State is entered onto the Negotiations Database, negotiations for a Treaty are considered to have begun.

8 Minimum standards – Traditional Owner Groups

8.1 All Traditional Owner Groups must meet the Minimum Standards

All Traditional Owner Groups (**Group**) seeking to enter into Treaty negotiations must:

- (a) satisfy the Minimum Standards at clause 8.3; and
- (b) record a decision of the Group to enter into Treaty negotiations.

8.2 Traditional Owner Group with Existing Status

The following entities are Traditional Owner Groups with Existing Status for an area of land and waters:

- (a) in relation to land and waters within the boundaries of an area in which there has been a determination that native title exists, a registered native title body corporate within the meaning of the *Native Title Act 1993* (Cth);
- (b) in relation to land and waters within the boundaries of the area the subject of a recognition and settlement agreement within the meaning of the *Traditional Owner Settlement Act 2010* (Vic), a traditional owner group entity within the meaning of that Act that has entered into a recognition and settlement agreement; and
- (c) for the area for which it is registered under that *Aboriginal Heritage Act 2006* (Vic), a registered Aboriginal party, within the meaning of that Act.

8.3 Minimum Standards

- (a) In relation to **Land and Waters**, the Group must identify its Country, by description and map, being the area of land and waters over which the Group intends to negotiate a Treaty.
- (b) In relation to **Community**, the Group must identify:
 - (i) the name of the Group, including how it identifies collectively, and a list of members (if any);
 - (ii) how the Group's members are Traditional Owners in connection to the Country identified at clause 8.3(a); and
 - (iii) the governance structure by which the Group is constituted, whether by incorporation, co-operative, partnership or other self-determined method.
- (c) In relation to **Leadership**, the Group must:
 - (i) identify the process by which representatives will be chosen to participate in the Treaty negotiations, noting those persons may change during the Treaty negotiations;
 - (ii) ensure those persons have the appropriate authority to negotiate a Treaty; and
 - (iii) identify the decision-making processes by which the Group makes decisions in respect of Treaty negotiations (or such decisions as the Group considers require Group decision-making).
- (d) In relation to **Inclusivity**, the Group must identify its processes in place to:
 - (i) ensure the Group is inclusive of all members of the Group;
 - (ii) uphold Cultural Authority;
 - (iii) educate its members regarding Treaty negotiations;
 - (iv) consult with its members regarding Treaty negotiations;

- (v) make reasonable efforts to seek the views, during Treaty negotiations, of First Peoples who are not Group members, but who have a contemporary, historical, social, or spiritual attachment to the land and waters identified at clause 8.3(a); and
- (vi) seek the Collective Support of its members to the outcomes of Treaty negotiations, including Interim Agreements.

8.4 Satisfaction of Minimum Standards

- (a) A Traditional Owner Group with Existing Status for an area of land and waters will automatically satisfy the Minimum Standards in clause 8.3 to enter into Treaty negotiations in relation to the Country over which they have Existing Status, upon notification to the Treaty Authority of the matters in clause 9.1(c).
- (b) A Traditional Owner Group without Existing Status for an area of land and waters in relation to which it seeks to enter into Treaty negotiations must satisfy the Minimum Standards in clause 8.3.
- (c) In accordance with the principle of self-determination and empowerment underpinning the Minimum Standards, whether a Traditional Owner Group without Existing Status for an area of land and waters satisfies the Minimum Standards in respect of that area is a matter for the satisfaction of that Group, subject to clause 9.3.
- (d) The Treaty Authority may provide general guidance on how a Traditional Owner Group without Existing Status for an area of land and waters satisfies the Minimum Standards.
- (e) If requested by a Traditional Owner Group without Existing Status for an area of land and waters, the Treaty Authority can provide specific guidance to the Group on satisfying the Minimum Standards, including any support or steps that might be needed in order to ensure satisfaction of the Minimum Standards.
- (f) A Traditional Owner Group may satisfy the Minimum Standards for an area, even if negotiations for a Treaty over some or all of that land and waters have already commenced.
- (g) Once negotiations commence for a Traditional Owner Treaty with respect to a particular area of land and waters, any Traditional Owner Group that is subsequently entered onto the Negotiations Database under clause 9.2 with respect to that area or any part of it, may only enter into Treaty negotiations for that area if they become part of a reconstituted First Peoples' Treaty Delegation for that Traditional Owner Treaty.

9 Entry of a Traditional Owner Group onto the Negotiations Database

9.1 Notification of satisfaction of Minimum Standards

- (a) To be entered onto the Negotiations Database, a Traditional Owner Group must provide a notification to the Treaty Authority.
- (b) The Treaty Authority will determine the manner and form of this notification, subject to clause 9.1(c) and (d).
- (c) For a Traditional Owner Group with Existing Status, the notification must include:
 - (i) how the Group automatically satisfies the Minimum Standards under clause 8.4(a);
 - (ii) identification of the land and waters over which the Group has Existing Status and in respect of which it intends to negotiate a Treaty;
 - (iii) a description of how the Group identifies collectively (for example, describing the family, clan or language group/s which the Group comprises);
 - (iv) evidence of the Group's decision-making processes (such as a rule book);
 - (v) confirmation that the Group has recorded its decision to enter into Treaty negotiations in accordance with its decision-making processes under clause 9.1(c)(iv);

- (vi) the contact details for its representatives who have been authorised in accordance with its decision-making processes under clause 9.1(c)(iv); and
 - (vii) where requested by the Treaty Authority, additional existing materials utilised in obtaining its Existing Status.
- (d) For a Traditional Owner Group without Existing Status, the notification must include:
- (i) how the Group satisfies the Minimum Standards at clause 8.3;
 - (ii) a description of how the Group identifies collectively (for example, describing the family, clan or language group/s which the Group comprises);
 - (iii) confirmation that the Group has recorded its decision to enter into Treaty negotiations in accordance with its decision-making processes under clause 8.3(c)(iii);
 - (iv) the contact details for its representatives, who have been authorised in accordance with its decision-making processes under clause 8.3(c)(iii); and
 - (v) where requested by the Treaty Authority, additional existing materials which support the Group's identity and interest in land and waters identified in clause 8.3(a).
- (e) The Treaty Authority may provide general guidance to a Traditional Owner Group in relation to providing a notification under this clause.
- (f) If requested by a Traditional Owner Group, the Treaty Authority can provide specific guidance to the Group on providing a notification under this clause, including providing support in relation to steps that might be needed in order to ensure the notification satisfies the requirements under this clause.

9.2 Entry onto the Negotiations Database

- (a) Subject to clause 9.3, on receipt of a notification under clause 9.1, the Treaty Authority must enter the Traditional Owner Group on the Negotiations Database, without independently assessing the Group's satisfaction of the Minimum Standards.
- (b) The Treaty Authority will determine the manner and form of the Negotiations Database entry for Traditional Owner Groups, subject to clause 4.5(f).

9.3 When entry onto the Negotiations Database can be refused, removed, or amended

- (a) If the Treaty Authority considers a notification by a Traditional Owner Group under clause 9.1 is incomplete or spurious, the Treaty Authority:
 - (i) must first request further information from the Group or provide an opportunity for clarification or correction of the notification, within a specified period; and
 - (ii) may, after receipt of further information in response to a request, or after the expiry of the specified period, refuse to enter a Group onto the Negotiations Database.
- (b) The Treaty Authority can only remove a Traditional Owner Group from the Negotiations Database if:
 - (i) the Group requests its removal; or
 - (ii) as a matter of last resort, the Treaty Authority determines the Group should be removed from the Negotiations Database as part of resolution of a dispute in accordance with Part I.
- (c) The Treaty Authority can only amend an entry regarding a Traditional Owner Group on the Negotiations Database if:
 - (i) that Group requests the amendment; or
 - (ii) as a matter of last resort, the Treaty Authority determines the entry should be amended as part of resolution of a dispute in accordance with Part I.

9.4 Notification of entry onto the Negotiations Database

- (a) The Treaty Authority will determine how a Traditional Owner Group's entry onto the Negotiations Database is notified publicly, taking into account the need for First Peoples to be made aware of the entry.
- (b) Notwithstanding the above, the Treaty Authority must notify the State to enable the State to begin preparations towards complying with the Minimum Standards that apply to it, as set out in clause 13.

10 Formation of a First Peoples' Treaty Delegation

A First Peoples' Treaty Delegation is intended to be a flexible, inclusive and unified mechanism to enable Traditional Owners to collectively negotiate in respect of an area of land and waters. Accordingly, the Traditional Owner Groups that constitute a Delegation (if more than one) may change, through a process of reconstitution.

The formation or reconstitution of a Delegation will be supported by the Treaty Authority, which is culturally accountable to First Peoples. The State has no role to play in the formation or reconstitution of a Delegation (except in limited circumstances, where the State's early dialogue is requested by a Traditional Owner Group). The State acknowledges that Traditional Owners have viewed the State's involvement in previous negotiation and recognition processes negatively, and the importance of ensuring the formation and reconstitution of a Delegation is free from State interference.

The Delegation approach requires flexibility to accommodate the different ways Traditional Owner Groups organise themselves and wish to be represented. It provides the space for First Peoples to restore Cultural Authority to its rightful place and reclaim dispute resolution and agreement-making, which otherwise has been subject to the involvement of the State and non-Aboriginal entities and, in the view of Traditional Owners, often disregarded Aboriginal Lore, Law and Cultural Authority.

For some Traditional Owner Groups, forming their Delegation may take time as they work through the ongoing impacts of colonisation and dispossession. However, the Delegation approach of inclusion, unity and facilitating culturally authorised agreement-making is preferred to support the cultural healing required and lead to enduring and self-determined Treaty processes and agreements.

10.1 Overall – formation of a First Peoples' Treaty Delegation

- (a) As outlined at clause 7.1(b), there will be a single Delegation to represent all Traditional Owners of Country for a single Treaty (being the Traditional Owners of the land and waters identified at clause 10.3(d)(i)).
- (b) Where there is only one Traditional Owner Group entered onto the Negotiations Database in respect of a particular area of land and waters, that Traditional Owner Group must still form a Delegation to begin Treaty negotiations over that area of land and waters.
- (c) Nothing in this Framework limits a Traditional Owner Group from entering more than one Delegation for different parts of the land and waters identified as its Country in accordance with clauses 8.3(a) or 9.1(c)(ii).
- (d) A Delegation may be reconstituted in accordance with clause 10.5 from time to time.
- (e) The Treaty Authority will facilitate and oversee the formation and reconstitution of a Delegation, including:
 - (i) supporting Traditional Owners with information and guidance on the formation or reconstitution process;
 - (ii) advising on reasonable timeframes for the formation or reconstitution process;

- (iii) where requested by a Traditional Owner Group:
 - (A) facilitating discussions and agreement-making;
 - (B) advising on effective governance structures; and
 - (C) engaging the State to seek early dialogue regarding the matters under consideration during a Delegation's formation or reconstitution; and
- (iv) as a matter of last resort, resolving disputes in accordance with Part I.
- (f) For the avoidance of doubt, other than receiving a notification under clause 10.2(d)(i)(A) or engaging in early dialogue facilitated by the Treaty Authority in response to a request under clause 10.1(e)(iii)(C), the State will play no part in and have no input in the formation or reconstitution of a Delegation.

10.2 Notification of formation of a Delegation

- (a) To begin formation of a Delegation, a Traditional Owner Group must notify the Treaty Authority of its intention to form a Delegation for a Treaty in respect of land and waters described in the notice.
- (b) A notification under this clause may be made simultaneously with a Traditional Owner Group's notification under clause 9.1.
- (c) The Treaty Authority will determine the manner and form of the notification under this clause.
- (d) On receipt of the notification under this clause the Treaty Authority, in the manner determined by it, must:
 - (i) give notice to:
 - (A) the State; and
 - (B) any Traditional Owner Group entered onto the Negotiations Database for any of the same Country identified in the notification; and
 - (ii) issue a public notice, taking into account the need for First Peoples to be made aware of the entry; of the Traditional Owner Group's notification and that the process of self-determined collective agreement-making to form a Delegation as outlined in clause 10.3 will begin after a one-month period.

10.3 Collective agreement to form a Delegation

- (a) Following the one-month period under clause 10.2(d), the Traditional Owner Group that notified the Treaty Authority under clause 10.2(a) must confirm the land and waters over which the Delegation will negotiate a Treaty. The land and waters confirmed under this clause must only include land and waters that were included in the notification in clause 10.2(a), but for the avoidance of doubt need not include all of the land and waters included in that notification.
- (b) The Traditional Owner Groups on the Negotiations Database for any of the land and waters confirmed under this clause (**Relevant Groups**) must reach collective agreement on the Delegation, unless the Treaty Authority considers that such collective agreement is not necessary in accordance with the dispute resolution process under Part I.
- (c) The Treaty Authority must advise the Relevant Groups of a reasonable timeframe in which collective agreement can be reached by the Delegation. The timeframe:
 - (i) should be flexible and facilitate collective agreement among the Relevant Groups; and
 - (ii) without limiting clause 11.4, should allow sufficient time for:
 - (A) other Traditional Owner Groups to be entered onto the Negotiations Database for any of the land and waters identified in the notification at clause 10.2(a) or to raise a dispute in accordance with Part I in relation to the formation of the Delegation; and
 - (B) First Peoples that the Delegation is representing to raise a dispute in accordance with the dispute resolution process under Part I in relation to the formation of the Delegation.

- (d) The Delegation must, subject to clause 11.4, demonstrate collective agreement of all Relevant Groups to:
 - (i) the Country, being the area of land and waters over which the Delegation will negotiate a Treaty;
 - (ii) any subject matters which may not be discussed in the Treaty negotiations, or may only be discussed in a particular manner or subject to particular restrictions;
 - (iii) leadership arrangements for the Delegation for Treaty negotiations, including:
 - (A) processes in place to choose representatives who have the appropriate authority to negotiate a Traditional Owner Treaty on behalf of the Delegation (**Negotiators**);
 - (B) the Negotiators chosen in accordance with those processes;
 - (C) decision-making processes in place by which the Delegation makes decisions in respect of Treaty negotiations (and which decisions, if any, the Delegation considers require collective decision-making); and
 - (D) the Delegation's decision to enter into Treaty negotiations, in accordance with those processes;
 - (iv) inclusivity arrangements for the Delegation for Treaty negotiations, including processes in place to:
 - (A) be inclusive of all Traditional Owners of the land and waters identified at clause 10.3(d)(i);
 - (B) uphold Cultural Authority;
 - (C) educate its constituent Traditional Owner Group's members regarding Treaty negotiations;
 - (D) consult with its constituent Traditional Owner Group's members regarding Treaty negotiations;
 - (E) make reasonable efforts to seek the views, during the Treaty negotiations, of First Peoples who are not constituent Traditional Owner Group members, but who have a contemporary, historical, social, or spiritual attachment to the Country identified at clause 10.3(d)(i); and
 - (F) seek the Collective Support of constituent Traditional Owner Group members to the outcomes of Treaty negotiations, including Interim Agreements.
- (e) The Traditional Owner Groups seeking to form a Delegation must ensure the collective agreement reached under clause 10.3(d):
 - (i) does not overlap with land and waters over which another Delegation entered onto the Negotiations Database in accordance with clause 11.2 intends to negotiate a Treaty;
 - (ii) does not include limitations on existing rights held by a Traditional Owner Group with Existing Status as subject matter unless the relevant Traditional Owner Group with Existing Status forms part of the Delegation; and
 - (iii) reflects that Treaties are nation-to-nation agreements.
- (f) Before providing a notification under clause 11.1(a) of collective agreement being reached, the Traditional Owner Groups seeking to form a Delegation must ensure that:
 - (i) all disputes raised in accordance with Part I in relation to the formation of the Delegation are resolved; and
 - (ii) the timeframe advised by the Treaty Authority under this clause has passed.

10.4 Delegation's satisfaction of the collective agreement requirements

In accordance with the principle of self-determination and empowerment underpinning the formation and reconstitution of a Delegation, whether a Delegation satisfies the requirements for collective agreement under clause 10.3 is a matter for that Delegation to determine, subject to clause 11.3 and 11.4.

10.5 Reconstituting a Delegation

A central feature of a Delegation is that it is living and dynamic and may change even after Treaty negotiations have commenced. The process in this clause supports a living Delegation to secure its foundation in self-determination and collective agreement.

- (a) If a Traditional Owner Group is entered onto the Negotiations Database in accordance with clause 9 for any part of the area of land and waters over which a Delegation has already been entered onto the Negotiations Database under clause 11 then:
 - (i) in addition to the notification required under clause 9.4, the Treaty Authority must notify the relevant Delegation; and
 - (ii) the relevant Delegation must either:
 - (A) elect to reconstitute in accordance with this clause; or
 - (B) raise a dispute in accordance with Part I in relation to the reconstitution of the Delegation.
- (b) The process for the formation of a Delegation outlined in clause 10 will apply to the reconstitution of a Delegation, as if that clause refers to reconstitution rather than formation of a Delegation.
- (c) During reconstitution of a Delegation, the Primary Negotiating Parties for the Treaty and the Treaty Authority should continue negotiations in accordance with Part E.
- (d) For the avoidance of doubt, after reaching collective agreement to reconstitute in accordance with clauses 10.3, 10.4 and 10.5(b), the Delegation must give notice of its reconstitution under clause 11.1, whether or not it has previously given notification under clause 11.1, and the Treaty Authority must perform its duties under clause 11 again in respect of that notice.

10.6 Minor amendments to the collective agreement for a Delegation

- (a) During negotiations for a Treaty, a Delegation may make minor amendments to its collective agreement reached at clause 10.3.
- (b) The Delegation will first determine whether an amendment is of a minor character and falls within this clause. An example of a minor amendment is a change of Negotiator.
- (c) A dispute as to whether an amendment is of a minor character can be raised with the Treaty Authority under Part I. The Treaty Authority may determine whether the amendment is of a minor character.
- (d) Any amendments made under this clause must be notified to the Treaty Authority and recorded on the Negotiations Database in accordance with clause 11.

11 Entry of a Delegation onto the Negotiations Database

11.1 A Delegation's notification of formation or reconstitution

- (a) To be entered onto the Negotiations Database, a Delegation must provide a notification to the Treaty Authority of its formation or reconstitution.
- (b) The Treaty Authority will determine the manner and form of a notification under this clause, subject to clause 11.1(c).
- (c) The notification provided by the Delegation must include:
 - (i) a description of how the Group or Groups in the Delegation identify collectively (for example, describing the family, clan or language group/s which the Group comprises);
 - (ii) details as to its collective agreement on the matters provided in clause 10.3; and
 - (iii) the contact details for its Negotiators to negotiate a Treaty.

11.2 A Delegation's entry onto the Negotiations Database

- (a) On receipt of a notification under clause 11.1(a) the Treaty Authority must, subject to clause 11.3(a) and 11.4, enter that Delegation onto the Negotiations Database without independently assessing whether the Delegation has met the requirements for collective agreement provided for in clause 10.3.
- (b) The Treaty Authority will determine the manner and form of the Negotiations Database entry for Delegations, subject to clause 4.5(f).

11.3 When entry onto the Negotiations Database can be refused, removed or amended

- (a) The Treaty Authority can refuse to enter a Delegation onto the Negotiations Database where:
 - (i) a Traditional Owner Group with a pending entry on the Negotiations Database, of which the Treaty Authority is aware, over any of the same area of Country in respect of which the Delegation intends to negotiate a Treaty, has not been afforded an opportunity to be entered onto the Negotiations Database; or
 - (ii) disputes raised in accordance with Part I in relation to the formation or reconstitution of the Delegation have not been resolved.
- (b) If the Treaty Authority considers a notification by a Delegation under clause 11.1 to be incomplete or spurious, it:
 - (i) must request further information from the Delegation or provide an opportunity for clarification or correction of the notification, within a specified period; and
 - (ii) may, either after receipt of further information in response to a request, or after the expiry of the specified period, refuse to enter a Delegation onto the Negotiations Database.
- (c) The Treaty Authority can only remove a Delegation from the Negotiations Database if:
 - (i) that Delegation requests its removal; or
 - (ii) as a matter of last resort, the Treaty Authority determines a Delegation should be removed from the Negotiations Database as part of resolution of a dispute in accordance with Part I.
- (d) The Treaty Authority can only amend an entry regarding a Delegation on the Negotiations Database if:
 - (i) that Delegation requests the amendment; or
 - (ii) as a matter of last resort, the Treaty Authority determines the entry should be amended as part of resolution of a dispute in accordance with Part I.

11.4 When entry onto the Negotiations Database can be accepted, without collective agreement of all Relevant Groups

The Treaty Authority can enter a Delegation onto the Negotiations Database under clause 11.2 without the collective agreement of all Relevant Groups as required under clause 10.3, if:

- (a) the dispute resolution process under Part I was commenced with respect to the formation or reconstitution of a Delegation; and
- (b) as a matter of last resort, the Treaty Authority determines that the collective agreement of one or more Traditional Owner Groups is sufficient to meet the threshold of collective agreement under clause 10.3.

11.5 Notification of entry onto the Negotiations Database

- (a) The Treaty Authority will determine how a Delegation's entry onto the Negotiations Database is notified publicly, taking into account the need for First Peoples to be made aware of the entry.
- (b) Notwithstanding the above, the Treaty Authority must notify the State to enable the State to continue preparations towards complying with its Minimum Standards in clause 13.

12 Inviting the State to begin Treaty Negotiations

12.1 Delegation requests State invitation

- (a) To begin negotiations for a Treaty, a Delegation must notify the Treaty Authority that it wishes to invite the State to begin a Treaty negotiation in accordance with its collective agreement identified at clause 11.1(c).
- (b) Nothing prevents a notification under this clause being made simultaneously with a Delegation's notification of its formation under clause 11.1.
- (c) The Treaty Authority will determine the manner and form of the notification under this clause.

12.2 Treaty Authority issues invitation to State to begin negotiations

- (a) On receipt of the notification in clause 12.1, the Treaty Authority, in the manner determined by it, must invite the State to begin a Treaty negotiation with the Delegation.
- (b) The invitation by the Treaty Authority, except as provided for by this clause, must include the Treaty Authority's express confirmation that:
 - (i) the Treaty Authority has informed parties and issued a public notice in accordance with clause 10.2(d) regarding the formation or reconstitution of a Delegation; and
 - (ii) the collective agreement to form or reconstitute the Delegation took place in accordance with clause 10.3, including that it:
 - (A) occurred within the reasonable timeframe as advised by the Treaty Authority in clause 10.3(c); and
 - (B) all outstanding disputes or pending entries to the Negotiations Database were handled under the dispute resolution process under Part I, in accordance with clause 10.3(c) prior to formation of the Delegation.
- (c) For the avoidance of doubt, the confirmation required to be provided by this clause:
 - (i) does not prevent or limit the institution of new disputes or new entries on the Negotiations Database; and
 - (ii) is subject to any future reconstitution or amendments to the Delegation and its collective agreements in accordance with clause 10.5 or 10.6.
- (d) If the Treaty Authority cannot provide confirmation to the State as required by this clause, it must advise the State the reasons why confirmation cannot be given.
- (e) Where the Treaty Authority acts in accordance with clause 12.2(d), it may nonetheless still invite the State to begin a Treaty negotiation.
- (f) The invitation to the State is not invalidated because of any irregularity (whether procedural or substantive) or any accidental omission in the formation or reconstitution of a Delegation or the Treaty Authority's confirmation provided under this clause.

12.3 State accepts invitation to a Treaty negotiation

- (a) To enter into the Treaty negotiation, the State must accept the invitation issued by the Treaty Authority in clause 12.2.
- (b) Except where:
 - (i) the State considers public authorities cannot comply with their obligations under the *Charter of Human Rights and Responsibilities Act 2006* (Vic); or
 - (ii) the land and waters in respect of which a Delegation intends to negotiate a Treaty is outside Victorian jurisdiction, and the State has been unsuccessful in securing the relevant jurisdiction's involvement as an Additional Negotiating Party; or

- (iii) the Treaty Authority is unable to confirm those matters set out in clause 12.2(b);
the State must otherwise respect that the formation of a Delegation has been self-determined by Traditional Owners and accept the invitation to the Treaty Negotiation.
- (c) Nothing in this clause prevents the State from raising a dispute under Part I in relation to the invitation.
- (d) The Treaty Authority can cause the invitation to be publicly available and keep a public record of the length of time between the State's receipt of that invitation and the commencement of the Treaty negotiation.
- (e) Following its acceptance of the invitation to begin a Treaty negotiation, the State must comply with the Minimum Standards in accordance with clause 13 and be entered onto the Negotiations Database in accordance with clause 14 before negotiation begins.

13 The State's Minimum Standards for a Traditional Owner Treaty

The Parties to the Framework have not assumed the State is ready to negotiate a Treaty, and therefore the State also must meet Minimum Standards to enter into Treaty negotiations. This approach ensures that a commitment from the State is made public and provides certainty to Delegations that the State is ready and willing to commence Treaty negotiations.

13.1 Preparing to meet Minimum Standards

- (a) To avoid delays in commencing Treaty negotiations, the State should begin preparations to meet the Minimum Standards when the Treaty Authority notifies the State under clause 9.4(b) that a Traditional Owner Group has been entered onto the Negotiations Database.
- (b) Notwithstanding this early preparation, the State's compliance with the Minimum Standards is required in relation to the particular Traditional Owner Treaty for which it has accepted an invitation in accordance with clause 12.

13.2 Minimum Standards for the State

The State must comply with the following Minimum Standards to enter into a Treaty negotiation:

- (a) in relation to **Land and Waters**, demonstrate its preparedness to negotiate over the entirety of the land and waters identified by the Delegation and referred to in the invitation to the State to join the Traditional Owner Treaty negotiation;
- (b) in relation to **Community**, identify that it represents the people of the State in relation to the land and waters identified;
- (c) in relation to **Leadership**:
 - (i) identify the persons and/or agencies that have been authorised to undertake the Treaty negotiation (**Negotiators**); and
 - (ii) identify the decision-making processes in place to authorise decisions for the Treaty negotiation; and
- (d) in relation to **Inclusivity**, identify the processes in place to:
 - (i) educate and inform departments and State entities about the Treaty negotiation; and
 - (ii) educate the people of the State about the progress of the Treaty negotiation.

13.3 Additional Preparations for the State

- (a) While not Minimum Standards, the State should also make the following Additional Preparations to assist it to enter into negotiations for a Treaty:

- (i) in relation to **Land and Waters**, demonstrate good faith preparations to provide a Delegation with meaningful access to information on the relevant land and waters in the State's possession, custody or control, consistent with the State's other legal obligations with respect to that information;
 - (ii) in relation to **Community**, as appropriate and achievable in light of the importance of avoiding delays in beginning Treaty negotiations, identify processes in place to allow engagement of key stakeholders in relation to the land and waters over which the Treaty will be negotiated;
 - (iii) in relation to **Leadership**, demonstrate its Negotiators have the appropriate expertise and cultural competency to negotiate Treaties compatibly with this Framework's requirements; and
 - (iv) in relation to **Inclusivity**, identify processes in place to enable potential Additional Negotiating Parties, such as the Commonwealth, other State and Territory Governments, or Local Governments, to be invited to join negotiations, where appropriate and agreed to by other Primary Negotiating Parties in accordance with clause 22.
- (b) The State must take all reasonable steps to complete the Additional Preparations and avoid any undue delay to the commencement of negotiations by reason of the Additional Preparations being incomplete.
 - (c) The Delegation can agree that negotiations can commence prior to the Additional Preparations being completed. This agreement will be sought by the Treaty Authority in writing and, if received, recorded on the Negotiations Database.
 - (d) Even if the Delegation agrees to commence negotiations prior to the Additional Preparations being completed, the State must continue to complete the Additional Preparations.

14 Entry of the State onto the Negotiations Database

14.1 The State's compliance with Minimum Standards

- (a) Noting the historic power imbalance between the State and First Peoples, and the guiding principle of fairness and equality in clause 2.4, the Treaty Authority will assess the State's compliance with the Minimum Standards at clause 13.2 and fulfillment of the Additional Preparations at clause 13.3.
- (b) The Treaty Authority may provide guidance to the State on the Minimum Standards and Additional Preparations, including a reasonable timeframe and any support or steps needed for compliance with the Minimum Standards and fulfillment of the Additional Preparations.

14.2 State notification of compliance with Minimum Standards

- (a) To be entered onto the Negotiations Database, the State must provide a notification to the Treaty Authority of its compliance with the Minimum Standards and fulfillment of the Additional Preparations under clause 13.3.
- (b) The Treaty Authority will determine the manner and form of this notification, subject to clause 14.2(c).
- (c) The notification provided by the State must include:
 - (i) how it satisfies the Minimum Standards in accordance with clause 13.2;
 - (ii) how it has fulfilled the Additional Preparations in clause 13.3, unless the relevant Delegation has consented to negotiations commencing prior to the Additional Preparations being completed, in which case the notification must address the extent of the State's progress in fulfilling the Additional Preparations and its timeline for completion of the Additional Preparations; and
 - (iii) the contact details for the Negotiators authorised to negotiate the Traditional Owner Treaty.

14.3 Treaty Authority assesses State's compliance with Minimum Standards

- (a) Based upon the notification at clause 14.2, the Treaty Authority will assess the State's compliance with the Minimum Standards, and fulfillment of the Additional Preparations.
- (b) If the Treaty Authority finds that the State has not complied with the Minimum Standards or sufficiently fulfilled or progressed towards fulfillment of the Additional Preparations:
 - (i) the Treaty Authority will in the first instance engage with the State and the Delegation with the aim of supporting the State's compliance with the Minimum Standards and/or fulfillment of the Additional Preparations;
 - (ii) the State should promptly address any issues identified by the Treaty Authority in respect of its compliance with the Minimum Standards and/or fulfillment of the Additional Preparations;
 - (iii) the Delegation may agree to proceed to negotiations in accordance with clause 13.3(c); and
 - (iv) a dispute as to the State's compliance with the Minimum Standards and/or fulfillment of the Additional Preparations may begin in accordance with Part I.

14.4 Treaty Authority enters State onto Negotiations Database

- (a) When the Treaty Authority is satisfied that the State has complied with the Minimum Standards and sufficiently progressed its fulfillment of the Additional Preparations to commence negotiations, or the Delegation has agreed to proceed without sufficient fulfillment of the Additional Preparations in accordance with clause 13.3(c), it must enter the State onto the Negotiations Database for the Treaty negotiation.
- (b) The Treaty Authority will determine how a State's entry onto the Negotiations Database is notified publicly in accordance with clause 4.5(f).
- (c) Once the State is entered onto the Negotiations Database for a Traditional Owner Treaty, negotiations for that Traditional Owner Treaty have begun.
- (d) If the State has not fulfilled all of the Additional Preparations at the time of its entry onto the Negotiations Database and the commencement of Treaty negotiations, the Treaty Authority must update the Negotiations Database once the State has fulfilled the Additional Preparations.

PART C

ENTRY INTO STATEWIDE TREATY NEGOTIATIONS



Consistent with the process for entry into Traditional Owner Treaty negotiations in Part B, the Parties to the Framework have agreed to a process for entry into Statewide Treaty negotiations set out in Part C that supports the right to self-determination of First Peoples across Victoria to decide how to come together politically and make collective decisions.

Statewide Treaty will be negotiated by the Aboriginal Representative Body, as the First Peoples' Representative Body, if confirmed under this Part.

The First Peoples' Representative Body will be the sole representative of First Peoples for the purpose of negotiating Statewide Treaty.

To enter into negotiations for the Treaty, the Aboriginal Representative Body must satisfy the Minimum Standards. It must also have held an election at which it was announced that the Aboriginal Representative Body intends to satisfy the Minimum Standards and become the Primary Negotiating Party in relation to a Statewide Treaty.

If the Aboriginal Representative Body does not seek to be the First Peoples' Representative Body, another entity that satisfies the Minimum Standards and is confirmed as the First Peoples' Representative Body in accordance with the Contingency Process set out in Schedule 1 will negotiate Statewide Treaty.

In this Part, all references to Treaty or Treaties are to Statewide Treaty, unless otherwise specified.

15 Primary Negotiating Parties

15.1 Primary Negotiating Parties

- (a) The Primary Negotiating Parties in relation to a Statewide Treaty will be:
 - (i) the State, as entered onto the Negotiations Database in accordance with clause 21; and
 - (ii) the entity entered onto the Negotiations Database as the First Peoples' Representative Body (**Body**) in accordance with clause 18 and/or Schedule 1.
- (b) The Body will be the sole representative of Traditional Owners and other First Peoples for the negotiation of a Statewide Treaty.

15.2 Requirements to enter into Statewide Treaty negotiations

- (a) The process to enter an entity onto the Negotiations Database as the Body is as follows:
 - (i) The process commences on a date notified by the Treaty Authority under clause 17.
 - (ii) The Aboriginal Representative Body has three months to notify the Treaty Authority that it seeks to be entered onto the Negotiations Database as the Body in accordance with clause 18.1.
 - (iii) The Aboriginal Representative Body must demonstrate its satisfaction of the Minimum Standards at clause 16.2 and the Additional Requirement at clause 16.3.
 - (iv) The Treaty Authority must enter the Aboriginal Representative Body as the Body onto the Negotiations Database in accordance with clause 18.2.
 - (v) If the Aboriginal Representative Body is not entered as the Body onto the Negotiations Database, the Treaty Authority must commence the Contingency Process for confirming another entity as the Body in accordance with clause 18.6 and Schedule 1.
- (b) Before negotiations for a Statewide Treaty can begin:
 - (i) the Treaty Authority must invite the State to begin Treaty negotiations with the Body, in accordance with clause 19.2;

- (ii) the State must accept the invitation issued by the Treaty Authority, in accordance with clause 19.3;
 - (iii) the State must comply with the Minimum Standards and fulfill the Additional Preparations, in accordance with clause 20 (unless the Body consents to negotiations commencing prior to the Additional Preparations being completed); and
 - (iv) the Treaty Authority must assess the State's compliance and enter the State onto the Negotiations Database, in accordance with clause 21.
- (c) Once the State is entered onto the Negotiations Database, negotiations for a Treaty have begun.

16 Minimum Standards for the Body to enter into negotiations

16.1 The Body must meet the Minimum Standards

To enter into Statewide Treaty negotiations as the Body, an entity must:

- (a) satisfy the Minimum Standards in clause 16.2;
- (b) if it is the Aboriginal Representative Body, satisfy the Additional Requirement in clause 16.3; and
- (c) record its decision to enter into Treaty negotiations.

16.2 Minimum Standards for the Body

- (a) In accordance with the principle of self-determination and empowerment underpinning the Minimum Standards, whether the Body satisfies the Minimum Standards is a matter for the satisfaction of the Body, subject to clause 18.
- (b) The Minimum Standards for the Body are:
 - (i) In relation to **Land and Waters**, the Body must identify the land and waters that constitute what is now known as the State of Victoria and all other land and waters vested in the State, as the area over which it intends to negotiate a Statewide Treaty.
 - (ii) In relation to **Community**, the Body must identify how it:
 - (A) represents the diversity of First Peoples in Victoria;
 - (B) is incorporated;
 - (C) has a governance structure that is comprised of a membership of Traditional Owners:
 - (1) elected by First Peoples through periodic state-wide elections; and
 - (2) appointed by Traditional Owner Groups; and
 - (D) has processes in place to engage Aboriginal Community Controlled Organisations, Aboriginal Trusts and First Peoples who are not Traditional Owners.
 - (iii) In relation to **Leadership**, the Body must identify:
 - (A) processes in place to choose representatives which have the appropriate authority to negotiate a Treaty on behalf of the Body (**Negotiators**);
 - (B) the Negotiators chosen in accordance with those processes;
 - (C) decision-making processes in place by which the Body makes decisions in respect of Treaty negotiations; and
 - (D) its capacity to attend and offer advice and support to First Peoples' Treaty Delegations in Traditional Owner Treaty negotiations, if the relevant Delegation so requests or otherwise agrees.
 - (iv) In relation to **Inclusivity**, the Body must identify its processes in place to:
 - (A) uphold Cultural Authority;
 - (B) educate and consult First Peoples, including Traditional Owner Groups, Aboriginal Community

- Controlled Organisations, and Aboriginal Trusts regarding Treaty negotiations; and
- (C) seek the Collective Support of First Peoples to the outcomes of Treaty negotiations, including Interim Agreements.

16.3 Additional Requirement for the Aboriginal Representative Body

- (a) Before seeking to be entered onto the Negotiations Database as the Body, the Aboriginal Representative Body must also have held a state-wide election and corresponding appointment process for its membership, prior to which it must have announced:
- (i) its intention to be the Primary Negotiating Party in relation to a Statewide Treaty; and
 - (ii) how it intends to meet the Minimum Standards in clause 16.2(b)(ii) and (iv).
- (b) The Aboriginal Representative Body must notify the Treaty Authority of the state-wide election period and the likely date of the publication of the election results.

17 Treaty Authority notifies commencement of process

- (a) The process for identifying the entity that is to be entered onto the Negotiations Database as the Body will commence on a date nominated by the Treaty Authority.
- (b) The Treaty Authority must give advance notice of that date to the Parties, any Traditional Owner Group entered onto the Negotiations Database and First Peoples (by issue of a public notice).
- (c) The Treaty Authority must not nominate a date under this clause that is before the likely date of the publication of the results of the state-wide election notified by the Aboriginal Representative Body under clause 16.3(b).

18 Entry of the Aboriginal Representative Body onto the Negotiations Database

18.1 Notification of satisfaction of Minimum Standards and Additional Requirement

- (a) The Aboriginal Representative Body has three months from the commencement of the process referred to in clause 17(a) to notify the Treaty Authority that it seeks to be entered onto the Negotiations Database as the Body.
- (b) The notification provided by the Aboriginal Representative Body must include:
- (i) its satisfaction of the Minimum Standards in accordance with clause 16.2;
 - (ii) how it has fulfilled the Additional Requirement in accordance with clause 16.3.
- (c) The Treaty Authority will determine the manner and form of a notification under this clause.

18.2 Entry onto the Negotiations Database

- (a) Subject to clause 18.2(c), on receipt of a notification under clause 18.1(a), the Treaty Authority must enter the Aboriginal Representative Body onto the Negotiations Database as the Body, without independently assessing its satisfaction of the Minimum Standards.
- (b) The Treaty Authority will determine the manner and form of the Negotiations Database entry for the Body, subject to clause 4.5(f).
- (c) If the Treaty Authority considers that a notification by the Aboriginal Representative Body under this clause is incomplete, the Treaty Authority:
- (i) must first:

- (A) request further information from the Aboriginal Representative Body or provide an opportunity for clarification or correction of the notification, within a specified period; and
 - (B) provide support and advice to the Aboriginal Representative Body on the steps to be taken to complete the notification; and
- (ii) may, after receipt of further information in response to a request, or after the expiry of the specified period, refuse to enter the Aboriginal Representative Body onto the Negotiations Database.

18.3 Notification of entry onto the Negotiations Database

- (a) The Treaty Authority will determine how the Aboriginal Representative Body's entry onto the Negotiations Database, as the Body, is notified publicly, in accordance with clause 4.5(f).
- (b) Notwithstanding the above, the Treaty Authority must notify the State to enable the State to continue preparations towards complying with its Minimum Standards detailed at clause 20.

18.4 Comment and Dispute Period

- (a) As soon as reasonably practicable after the Treaty Authority makes an entry of the Aboriginal Representative Body as the Body onto the Negotiations Database under clause 18.2, the Treaty Authority will issue public notice of a two-month period (**Comment and Dispute Period**) to allow First Peoples to comment on, and raise disputes about, the Aboriginal Representative Body's satisfaction of the Minimum Standards in clause 16.2.
- (b) The Comment and Dispute Period will be facilitated by the Treaty Authority and allow for:
 - (i) First Peoples' commentary and input about the Aboriginal Representative Body's satisfaction of the Minimum Standards; and
 - (ii) the Treaty Authority to resolve any dispute raised by First Peoples about the Aboriginal Representative Body's satisfaction of the Minimum Standards in accordance with the dispute resolution process under Part I.
- (c) If requested by the Aboriginal Representative Body, the Treaty Authority can provide specific guidance on addressing commentary and input about the Body's satisfaction of the Minimum Standards, including any support or steps that might be needed in order to ensure satisfaction of the Minimum Standards.

18.5 When entry onto the Negotiations Database can be removed or amended

- (a) If the Treaty Authority has entered the Aboriginal Representative Body onto the Negotiations Database as the Body:
 - (i) that entry cannot be removed, except:
 - (A) at the Aboriginal Representative Body's request; or
 - (B) if the Minister revokes the Aboriginal Representative Body declaration under section 14 of the Treaty Act, in accordance with clause 18.5(b); or
 - (C) if, as a matter of last resort, the Treaty Authority determines the Aboriginal Representative Body should be removed from the Negotiations Database as part of resolution of a dispute raised under clause 18.4, in accordance with Part I;
 - (ii) otherwise, no further dispute about whether the Aboriginal Representative Body is the Body can be commenced under this Framework.
- (b) If the Treaty Authority has entered the Aboriginal Representative Body onto the Negotiations Database as the Body, that entry must be removed if the Minister revokes the Aboriginal Representative Body declaration under section 14 of the Treaty Act. In that situation, the Treaty Authority must recommence the process for identifying the entity that is to be entered onto the Negotiations Database in accordance with clause 17, but not before a subsequent Aboriginal Representative Body declaration is made under section 18 of the Treaty Act.
- (c) The Treaty Authority can only amend the entry of the Aboriginal Representative Body on the Negotiations

Database if:

- (i) the Aboriginal Representative Body requests the amendment; or
 - (ii) if, as a matter of last resort, the Treaty Authority determines the entry should be amended as part of resolution of a dispute raised under clause 18.4, in accordance with Part I.
- (d) Nothing in this clause prevents either Primary Negotiating Party for Statewide Treaty suspending negotiations in accordance with clause 26.6.

18.6 Contingency Process

The Treaty Authority must commence the Contingency Process under Schedule 1 for identifying the entity that is to be entered onto the Negotiations Database as the Body only if:

- (a) within three months from the commencement of the process for confirming the Body, the Treaty Authority does not receive any notification from the Aboriginal Representative Body;
- (b) the Treaty Authority has received a notification from the Aboriginal Representative Body that it does not seek to be the Body;
- (c) the Treaty Authority has refused to enter the Aboriginal Representative Body onto the Negotiations Database after receipt of further information in response to a request, or after the expiry of the specified period under clause 18.2(c); or
- (d) the Treaty Authority has removed the Aboriginal Representative Body from the Negotiations Database pursuant to clause 18.5(a) or (b).

19 Inviting the State to begin Treaty Negotiations

19.1 The Body requests State invitation

- (a) To begin negotiations for a Treaty, the Body must notify the Treaty Authority that it wishes to invite the State to begin Treaty negotiations.
- (b) The Treaty Authority will determine the manner and form of the notification in this clause.

19.2 Treaty Authority issues invitation to the State

- (a) On receipt of the notification in clause 19.1, the Treaty Authority, in the manner determined by it, must invite the State to begin Treaty negotiations with the Body.
- (b) The invitation by the Treaty Authority, except as provided for by this clause, must include the Treaty Authority's express confirmation that it complied with all applicable requirements, including the issuing of notifications, prior to making an entry of the Body onto the Negotiations Database under clause 18.2.
- (c) If the Treaty Authority, after making an assessment of the confirmation of the Body, cannot provide confirmation to the State as required by this clause, it must advise the State the reasons why confirmation cannot be given.
- (d) Where the Treaty Authority acts in accordance with clause 19.2(c), it may nonetheless still invite the State to begin the Treaty negotiation.
- (e) The invitation to the State is not invalidated because of any irregularity (whether procedural or substantive) or any accidental omission in the Treaty Authority's confirmation provided under this clause.

19.3 State accepts invitation to Treaty negotiation

- (a) To enter into Statewide Treaty negotiations, the State must accept the invitation issued by the Treaty Authority in clause 19.2.
- (b) Except where:

- (i) the State considers public authorities cannot comply with their obligations under the *Charter of Human Rights and Responsibilities Act 2006* (Vic); or
 - (ii) the Treaty Authority is unable to confirm those matters set out in clause 19.2(b),
- the State must otherwise respect the confirmation of a Body by the Treaty Authority and accept the invitation.
- (c) Nothing in this clause prevents the State from raising a dispute under Part I in relation to the invitation to enter into the Treaty negotiation.
 - (d) The Treaty Authority can cause the invitation to be publicly available and keep a public record of the length of time between the State's receipt of that invitation and the commencement of Treaty negotiations.
 - (e) Following its acceptance of the invitation to begin Treaty negotiations, the State must comply with the Minimum Standards in accordance with clause 20 and be entered onto the Negotiations Database in accordance with clause 21 before negotiations begin.

20 State's Minimum Standards for Statewide Treaty

The Parties to the Framework have not assumed the State is ready to negotiate a Treaty, and therefore the State also must meet Minimum Standards to enter into Treaty negotiations. This approach ensures that a commitment from the State is made public and provides certainty to First Peoples that the State is ready and willing to commence Treaty negotiations.

20.1 Preparing to meet Minimum Standards

- (a) To avoid delays in commencing Treaty negotiations, the State should begin preparations to meet the Minimum Standards when the Treaty Authority notifies the State under clause 17(b) of the commencement of the process for confirming a single Body.
- (b) Notwithstanding this early preparation, the State's compliance with the Minimum Standards is in relation to the Treaty for which it has accepted an invitation in accordance with clause 19.3.

20.2 Minimum Standards for the State

The State must comply with the following Minimum Standards to enter into Treaty negotiations:

- (a) In relation to **Land and Waters**, demonstrate its preparedness to negotiate a Treaty in relation to land and waters that constitute what is now known as the State of Victoria and all other land and waters vested in the State;
- (b) In relation to **Community**, identify that it represents the people of the State of Victoria;
- (c) In relation to **Leadership**:
 - (i) identify the persons and/or agencies that have been authorised to undertake the Treaty negotiations (**Negotiators**); and
 - (ii) identify the decision-making processes in place to authorise decisions within the Treaty negotiations;
- (d) In relation to **Inclusivity**, identify the processes in place to:
 - (i) educate and inform departments and State entities about the Treaty negotiations; and
 - (ii) educate the people of the State about the progress of the Treaty negotiations.

20.3 Additional Preparations for the State

- (a) While not Minimum Standards, the State should also make the following Additional Preparations to assist it to enter into negotiations for a Treaty:

- (i) In relation to **Land and Waters**, demonstrate good faith preparations to provide the Body with meaningful access to information on the relevant land and waters in the State's possession, custody or control, consistent with the State's other legal obligations with respect to that information;
 - (ii) In relation to **Community**, as appropriate and achievable in light of the importance of avoiding delays in beginning Treaty negotiations, identify processes in place to allow engagement of key stakeholders in relation to the land and waters over which the Treaty will be negotiated;
 - (iii) In relation to **Leadership**, demonstrate its Negotiators have the appropriate expertise and cultural competency to negotiate Treaties compatibly with this Framework's requirements; and
 - (iv) In relation to **Inclusivity**, identify processes in place to enable potential Additional Negotiating Parties, such as the Commonwealth, other State and Territory Governments, or Local Governments, to be invited to join negotiations, where appropriate and agreed to by the other Primary Negotiating Party in accordance with clause 22.
- (b) The State must take all reasonable steps to complete the Additional Preparations and avoid any undue delay to the commencement of negotiations by reason of the Additional Preparations being incomplete.
 - (c) The Body can agree that negotiations can commence prior to the Additional Preparations being completed. This agreement will be sought by the Treaty Authority in writing and, if received, recorded on the Negotiations Database.
 - (d) Even if the Body agrees to commence negotiations prior to the Additional Preparations being completed, the State must continue to complete the Additional Preparations.

21 Entry of the State onto the Negotiations Database

21.1 The State's compliance with Minimum Standards

- (a) Noting the historic power imbalance between the State and First Peoples, and the guiding principle of fairness and equality in clause 2.4, the Treaty Authority will assess the State's compliance with the Minimum Standards and fulfillment of the Additional Preparations under clause 20.
- (b) The Treaty Authority may provide general and specific guidance to the State on the Minimum Standards and Additional Preparations, including a reasonable timeframe and any support or steps needed for compliance with the Minimum Standards and fulfillment of the Additional Preparations.

21.2 State notification of compliance with Minimum Standards

- (a) To be entered onto the Negotiations Database for Statewide Treaty, the State must provide a notification to the Treaty Authority of its compliance with the Minimum Standards and fulfilment of its Additional Preparations under clause 20.
- (b) The Treaty Authority will determine the manner and form of this notification, subject to clause 21.2(c).
- (c) The notification provided by the State must include:
 - (i) how it satisfies the Minimum Standards in accordance with clause 20.2; and
 - (ii) how it has fulfilled the Additional Preparations in clause 20.3, unless the Body has consented to negotiations commencing prior to the Additional Preparations being completed, in which case the notification must address the extent of the State's progress in fulfilling the Additional Preparations; and
 - (iii) the contact details for its Negotiators.

21.3 Treaty Authority assesses the State's compliance with Minimum Standards

- (a) Based upon the notification at clause 21.2, the Treaty Authority will assess the State's compliance with the Minimum Standards, and fulfillment of the State's Additional Preparations detailed at clause 20.3.

- (b) If the Treaty Authority finds that the State has not complied with the Minimum Standards and/or sufficiently fulfilled or progressed towards fulfillment of the Additional Preparations detailed at clause 20.3:
 - (i) the Treaty Authority will in the first instance engage with the State and the Body with the aim of supporting the State's compliance with Minimum Standards and fulfilment of the Additional Preparations;
 - (ii) the State should promptly endeavour to comply with the Minimum Standards and progress its Additional Preparations;
 - (iii) the Body may agree to proceed to negotiations in accordance with clause 20.3(c); and
 - (iv) a dispute as to the State's compliance with Minimum Standards and/or fulfilment of the Additional Preparations may begin under Part I.

21.4 Treaty Authority enters the State onto Negotiations Database

- (a) When the Treaty Authority is satisfied that the State has complied with the Minimum Standards and sufficiently progressed its fulfillment of the Additional Preparations to commence negotiations, or the Body has agreed that negotiations can commence without the Additional Preparations being completed in accordance with clause 20.3(c), the Treaty Authority must enter the State onto the Negotiations Database for Treaty negotiations.
- (b) The Treaty Authority will determine how the State's entry onto the Negotiations Database is notified publicly in accordance with clause 4.5(f).
- (c) Once the State is entered onto the Negotiations Database for a Statewide Treaty, negotiations for a Statewide Treaty have begun.
- (d) If the State has not completed all of the Additional Preparations at the time of its entry onto the Negotiations Database and the commencement of Treaty negotiations, the Treaty Authority must update the Negotiations Database once the State has completed the Additional Preparations.

PART D

ADDITIONAL

NEGOTIATING PARTIES



The Framework is a vehicle for delivering better outcomes for First Peoples. To achieve this, Primary Negotiating Parties may consider it beneficial to the Treaty Process to involve other persons and groups in the Treaty negotiations.

22 Invitation to Additional Negotiating Parties

- (a) The Primary Negotiating Parties for any Treaty may, by agreement between them, invite other persons or groups to participate in all or any part of their negotiations as Additional Negotiating Parties at any time prior to formalisation of a Treaty.
- (b) Any Additional Negotiating Parties must be entered onto the Negotiations Database in accordance with clause 23 prior to entering any Treaty negotiation. The scope of any Additional Negotiating Parties' inclusion and role, including in arrangements for formalising agreement, is subject to the agreement of the Primary Negotiating Parties, the process for which can be recorded on the Negotiation Protocols agreed under clause 26.1.

23 Entry of Additional Negotiating Parties onto the Negotiations Database

- (a) If requested to do so by all Primary Negotiating Parties to any Treaty negotiation, the Treaty Authority must, on their behalf, extend an invitation to a prospective Additional Negotiating Party to enter into that Treaty negotiation.
- (b) If the prospective Additional Negotiating Party accepts that invitation in whole or in part, the Treaty Authority will enter the following details of the Additional Negotiating Party onto the Negotiations Database:
 - (i) date of entry on the Negotiations Database;
 - (ii) the name and members, if any, of the Additional Negotiating Party;
 - (iii) who will represent the Additional Negotiating Party in Treaty negotiations (**Negotiators**);
 - (iv) the relevant Treaty negotiation in which they have been invited to participate; and
 - (v) details of the scope of the Additional Negotiating Party's invitation including:
 - (A) whether the Additional Negotiating Party will be a party to Interim Agreements or formalised Treaties;
 - (B) whether the Additional Negotiating Party was invited to participate in all or only part of the Treaty negotiation; and
 - (C) if the invitation was only to participate in part of the Treaty negotiation, the details of the part of the Treaty negotiations to which the Additional Negotiating Party has been invited to participate.

PART E

CONDUCT OF TREATY NEGOTIATIONS



The State acknowledges that First Peoples have experienced intergenerational trauma and a history of engagement with the State and its entities that falls short of the conduct now required under the guiding principles of the Treaty Act.

In recognising this history and the ongoing power imbalance between First Peoples and the State, Treaty negotiations will be conducted according to Negotiation Standards that have a cultural overlay and are respectful of First Peoples' diversity, governance and practices of belonging. Additional Negotiating Standards will apply to the State's conduct in Treaty negotiations to address the power imbalance.

The Parties have not identified any matters that cannot be agreed in Treaty negotiations. Negotiations may cover any subject matter relevant to First Peoples.

24 Negotiation Standards

24.1 Negotiation Standards for all parties

- (a) In addition to the standards with respect to the State set out in clause 24.2, the Parties, and all Negotiating Parties, commit to the following Negotiation Standards which will apply to all negotiations under this Framework:
- (i) the negotiation process will foster fairness, trust and good faith, an open exchange of ideas, the frank discussion of interests that underlie positions, and the collective analysis of problems;
 - (ii) the negotiation process will be inclusive, including ensuring a Delegation or the Body adhere to both the express terms and the spirit of the Inclusivity requirements set out in the Minimum Standards and agreed as part of the Delegation formation or reconstitution stage;
 - (iii) the negotiation process will occur in a safe, supportive and culturally appropriate forum for all First Peoples involved in the negotiation process to exercise their rights to self-determination with dignity and to allow for cultural healing;
 - (iv) the negotiation process will recognise and include mechanisms to address the imbalance of power between the State and the First Peoples' Negotiating Parties;
 - (v) the negotiation process will recognise Aboriginal Lore, Law and Cultural Authority by acknowledging that Aboriginal Lore and Law is a substantive body of authority that informs First Peoples' agreement-making, decision-making and governance and by taking into account:
 - (A) Cultural Authority and Eldership; and
 - (B) practices of First Peoples' culture, for example language and ceremony;
 - (vi) the negotiation process will be respectful of:
 - (A) different kinds of belonging of First Peoples;
 - (B) traditional and contemporary governing structures led by communities;
 - (C) First Peoples' self-determining consultation processes, to build the mandate for a Treaty among First Peoples' communities;
 - (D) First Peoples in all their diversity, including age, sex, gender, sexuality, gender identity and ability;
 - (E) First Peoples' needs associated with intergenerational trauma, cultural safety, cultural healing, health and wellbeing; and
 - (F) the diverse backgrounds, skills and experiences of all Victorians.
- (b) The Negotiation Standards apply to all negotiation processes. Any Treaty negotiation process must comply with the Negotiation Standards.

24.2 Additional Negotiation Standards applicable to the State

The State will meet the following Additional Negotiation Standards to address the power imbalance between the Primary Negotiating Parties:

- (a) providing non-material support for First Peoples' Negotiating Parties to participate in negotiations with equal standing, such as by acknowledging and respecting Indigenous governance structures;
- (b) being open and honest about its interests and limitations in negotiations, for example its internal approvals processes and matters outside its control;
- (c) not exercising any discretionary powers for the purpose of unduly influencing matters under negotiation, where that would be a purpose extraneous to the purpose for which that discretionary power was conferred;
- (d) requiring the State's Negotiators to complete cultural competency training and apply cultural awareness throughout negotiations;
- (e) directing the State's Negotiators to participate in negotiations with an open mind, thinking beyond existing policies and practices;
- (f) educating and informing departments and State entities about the Treaty Process; and
- (g) addressing issues in a timely manner to maintain progress to advance Treaty negotiations and to preserve a positive relationship with First Peoples' Negotiating Parties.

25 Subject matters for negotiation

25.1 No excluded matters

There are no matters that cannot or must not be agreed in the course of Treaty negotiations.

25.2 Subject matters for negotiation – general

- (a) The Primary Negotiating Parties will agree the subject matters for negotiation at the start of Treaty negotiations in accordance with this clause.
- (b) Additional subject matters may be negotiated if agreed during negotiations.
- (c) The State will not unreasonably refuse to discuss a subject matter put forward by a First Peoples' Negotiating Party.
- (d) A First Peoples' Treaty Delegation may not propose matters for negotiation where, if agreement were reached on the matter, the agreement would adversely affect:
 - (i) existing rights held by a Traditional Owner Group with Existing Status unless the relevant Traditional Owner Group with Existing Status forms part of the Delegation; and
 - (ii) any native title rights and interests within the meaning of the *Native Title Act 1993* (Cth) held by First Peoples, or engage any rights held by First Peoples under Subdivision C of Division 3 of Part 2 of the *Native Title Act 1993* (Cth), unless a Traditional Owner Group representing the relevant First Peoples:
 - (A) forms part of the Delegation; and
 - (B) demonstrates their collective agreement to the matter being discussed in the Treaty negotiations pursuant to clause 10.3(d)(ii).
- (e) Statewide and Traditional Owner Treaty negotiations:
 - (i) will be informed by any relevant findings and recommendations of the Yoorrook Justice Commission in respect of matters affecting First Peoples across the State of Victoria;
 - (ii) will consider whether Treaties should include requirements for review of formalised Treaties; and

- (iii) may cover any subject matter a First Peoples' Negotiating Party and the State agree to discuss, including:
 - (A) civil law issues;
 - (B) criminal justice system issues;
 - (C) cultural heritage;
 - (D) economic and community development;
 - (E) education;
 - (F) employment;
 - (G) environmental management;
 - (H) funding and revenue raising;
 - (I) health and wellbeing;
 - (J) housing;
 - (K) Indigenous Data Sovereignty;
 - (L) land and water justice;
 - (M) language;
 - (N) political participation;
 - (O) truth telling and healing; and
 - (P) welfare, including child and family services.

25.3 Subject matters for negotiation – Statewide Treaty

In addition to the matters set out in clause 25.2 and any other subject matters agreed between the Primary Negotiating Parties, Statewide Treaty negotiations must include discussion of:

- (a) whether, and if so how, a Statewide Treaty is recognised in and given effect in the Victorian Constitution or other legislation;
- (b) whether, and if so how, there should be a First Peoples' representative decision-making body created, including:
 - (i) the composition of any such body;
 - (ii) the effect of its decisions; and
 - (iii) the interrelationship of its decisions with pre-existing and future Victorian law; and
- (c) whether, and if so how, a First Peoples' authoritative Voice to Parliament or other forms of institutional oversight by First Peoples for the benefit of First Peoples should be created; and
- (d) how to recognise Traditional Owner Treaties and decision-making bodies under those Treaties.

25.4 Subject matters for negotiation – Traditional Owner Treaties

In addition to the matters set out in clause 25.2 and any other subject matters agreed between the Primary Negotiating Parties, Traditional Owner Treaty negotiations must include discussion of the following subject matters:

- (a) whether, and if so how, Traditional Owner Treaties will be recognised in and given effect in the Victorian Constitution or other legislation;
- (b) traditional relationships with relevant land and waters;
- (c) protecting land and waters and cultural heritage;
- (d) culture and language;
- (e) economic sustainability and empowerment; and
- (f) how to recognise a Statewide Treaty and decision-making bodies under that Treaty.

26 Process for engaging in negotiations

26.1 Agreeing the Negotiation Protocols

- (a) To assist in the conduct of negotiations, the Primary Negotiating Parties must develop and agree Negotiation Protocols.
- (b) The Treaty Authority will work with Primary Negotiating Parties to ensure that the Negotiation Protocols meet the standards set out in clause 24.
- (c) The Negotiation Protocols agreed between the Primary Negotiating Parties must include:
 - (i) where negotiations take place;
 - (ii) who is responsible for the conduct and coordination of negotiations;
 - (iii) how negotiations are to be conducted;
 - (iv) roles and responsibilities of participants in Treaty negotiations;
 - (v) process for agreeing Additional Negotiating Parties;
 - (vi) an agenda of subject matters to be negotiated; and
 - (vii) timelines.
- (d) Negotiations will be conducted in accordance with the Negotiation Protocols, or otherwise as agreed.
- (e) If the Primary Negotiating Parties agree, negotiations may commence if only some of the aspects of the Negotiation Protocols set out above have been agreed, with the rest to be agreed at a later stage of negotiations.

26.2 Modifying the Negotiation Protocols

The Negotiation Protocols agreed under clause 26.1 may be modified by agreement of the Primary Negotiating Parties concerned including if:

- (a) negotiations for a Traditional Owner Treaty have commenced and a Delegation is formed or reconstituted under clause 10; or
- (b) an Additional Negotiating Party joins the negotiations under clause 22.

26.3 Record of the Negotiation Protocols

- (a) A record of the Negotiation Protocols agreed by the Primary Negotiating Parties under clause 26.1 or modified by the Negotiating Parties under clause 26.2 must be provided to the Treaty Authority.
- (b) The Treaty Authority may determine the form in which the Negotiation Protocols are to be recorded, how they will be stored and who may access them.

26.4 Role of the First Peoples' Representative Body

If the relevant Delegation requests or otherwise agrees, representatives of the First Peoples' Representative Body may:

- (a) attend Traditional Owner Treaty negotiations; and
- (b) always recognising the authority of Traditional Owner Groups (through the Delegation) in relation to their Country, offer advice and support to the First Peoples' Treaty Delegation in those negotiations;

but the First Peoples' Representative Body is not a Negotiating Party in those negotiations.

26.5 Interim Offers

- (a) Interim Offers may be made by Primary Negotiating Parties in relation to any matter.
- (b) An Additional Negotiating Party may make an Interim Offer on a matter if the scope of that party's participation in negotiations includes seeking and agreeing Interim Offers on that matter.
- (c) In line with self-determination and empowerment, the State will give proper consideration to any Interim Offers made by a First Peoples' Negotiating Party.
- (d) Any negotiations between Negotiating Parties regarding an Interim Offer must be conducted in accordance with the Negotiation Standards and agreed Negotiation Protocols.
- (e) The process for formalising agreements in Part F applies to the acceptance of Interim Offers.

26.6 Suspension or termination of negotiations

- (a) Negotiations may only be suspended or terminated:
 - (i) as a matter of last resort for reasons compatible with the guiding principles in clause 2.4 and the Negotiation Standards in clause 24;
 - (ii) where requested in writing by a Primary Negotiating Party;
 - (iii) if supported by the Treaty Authority; and
 - (iv) by written notice from the Treaty Authority to all Negotiating Parties.
- (b) The Treaty Authority may issue guidance on this matter.
- (c) For the avoidance of doubt, suspension or termination is not to be used to circumvent or frustrate the facilitation and dispute resolution processes set out in the Framework.

26.7 Disputes arising in the course of negotiations

Any disputes arising in the course of Treaty negotiations that cannot be addressed through agreement between the Negotiating Parties, with or without the facilitation and assistance of the Treaty Authority, can be addressed through the dispute resolution process under Part I.

PART F
**PROCESS FOR
FORMALISING
AGREEMENT TO
TREATY OR TREATIES**



27 Process for formalising agreement

- (a) The process for formalising agreement to a Treaty or Interim Agreement will comprise the following steps:
 - (i) the parties signifying assent to the Treaty or Interim Agreement, recognising that:
 - (A) it is for each party to determine for itself how it will signify its assent to the agreement to be made; and
 - (B) in the case of First Peoples' Negotiating Parties, the manner in which a First Peoples' Negotiating Party signifies its assent will be determined by reference to their particular context, in light of self-determination and empowerment and Aboriginal Lore, Law and Cultural Authority;
 - (ii) each party to the Treaty or Interim Agreement will notify the Treaty Authority that they have signified their assent to the Treaty or Interim Agreement; and
 - (iii) when all parties to the Treaty or Interim Agreement have notified the Treaty Authority that they have assented to the Treaty or Interim Agreement, the Treaty Authority will publish a statement which records that the Treaty or Interim Agreement has been formally agreed.
- (b) First Peoples' Negotiating Parties will signify assent after having received Collective Support for the Treaty or Interim Agreement.
- (c) If requested, the Treaty Authority may support the parties to a Treaty or Interim Agreement to develop an implementation plan, including timeframes regarding when each part of the Treaty or Interim Agreement will be delivered.
- (d) The Treaty Authority will maintain a public register of all formalised Treaties and Interim Agreements.
- (e) If facilitative legislation or a referendum is required as a result of the Treaty, the State will use its best endeavours to secure the passage of the necessary legislation or public support for the referendum.

28 Collective support

- (a) Collective Support requires a First Peoples' Negotiating Party to demonstrate that it has engaged in a process to seek the freely offered support of its members for the Treaty or Interim Agreement.
- (b) The process to obtain freely offered support for the Treaty or Interim Agreement is a matter for First Peoples' Negotiating Parties to self-determine.
- (c) The process must be recorded and made available to:
 - (i) all parties that will sign the Treaty or Interim Agreement; and
 - (ii) the Treaty Authority.
- (d) Demonstration of Collective Support requires completion of the process referred to in this clause.

29 Disputes arising during the process for formalising agreement

Any disputes arising during the process of formalising agreement that cannot be resolved by agreement between or within the Negotiating Parties, with or without the facilitation and assistance of the Treaty Authority, can be addressed by commencement of the dispute resolution process under Part I.

PART G **ENFORCING A TREATY OR TREATIES**



30 Mechanisms for enforcing a Treaty or Treaties

- (a) The Parties agree:
 - (i) Treaties should include a culturally appropriate process for the resolution of disputes arising in relation to the Treaty;
 - (ii) in consultation with the Treaty Authority, consider the establishment of culturally appropriate enforcement mechanisms, such as a tribunal or other competent body; and
 - (iii) Treaties should provide that parties to a Treaty may not commence legal proceedings until any dispute resolution process agreed in the Treaty have been pursued.
- (b) The Parties acknowledge that appropriate enforcement mechanisms may depend on the content of Treaties and that, in particular, a Statewide Treaty may create institutions and arrangements which Primary Negotiating Parties may decide to use to enforce a Treaty.

31 Other enforcement mechanisms

- (a) The Parties acknowledge that additional mechanisms that may be adopted for enforcing Treaties or Interim Agreements include:
 - (i) negotiation between the Primary Negotiating Parties as to the need for enforcement and how enforcement should be achieved; and
 - (ii) if necessary, further negotiation, facilitated by the Treaty Authority, between the Primary Negotiating Parties as to the need for enforcement and how enforcement should be achieved.
- (b) An Additional Negotiating Party, if the scope of that party's participation, as agreed by the Primary Negotiating Parties, includes enforcement, must also be involved in these negotiations about the need for enforcement and how enforcement should be achieved.

32 Supreme Court

Without limiting clauses 30 or 31, the enforcement of any Treaty will be, to the extent possible, subject to the jurisdiction of the Supreme Court of Victoria.

33 Other Legal Rights

Nothing in Part G alters, impairs or detracts from any other legal rights or interests held by a party.

PART H

REPORTING REQUIREMENTS IN RELATION TO A TREATY OR TREATIES



34 Reporting requirements

The Parties are required to report regularly on the progress of Treaty negotiations and Treaty implementation for the purpose of keeping First Peoples, and the broader Victorian community, informed about Treaty-making in Victoria.

34.1 Annual Reporting

- (a) The Aboriginal Representative Body and the Minister must fulfil their reporting requirements under Part 8 of the Treaty Act. In addition to the matters specified in the Treaty Act, any annual report prepared under that Part must:
 - (i) provide an update on the status of ongoing Treaty negotiations;
 - (ii) provide an update on the formalisation and implementation of Interim Agreements; and
 - (iii) provide an update on the formalisation of any Treaties.
- (b) The Treaty Authority must prepare an annual report on its work to advance the Treaty Process that:
 - (i) provides an update on the status of ongoing Treaty negotiations;
 - (ii) provides an update on the status of the formalisation of any Treaties; and
 - (iii) includes any other information in relation to the Treaty Process that it considers relevant, including the matters required under the Treaty Authority Agreement.

34.2 Reporting on Treaties

- (a) Treaties must include reporting requirements of the parties to the Treaty following final agreement and formalisation.
- (b) The reporting requirements for final Treaties must specify to whom the parties to the Treaty must report and which matters must be reported publicly, and must include:
 - (i) the status of implementation of the Treaty;
 - (ii) activities undertaken by the parties in fulfilling their obligations under the Treaty;
 - (iii) key indicators for measuring and reporting on outcomes resulting from the Treaty; and
 - (iv) any other information in relation to the Treaty that the parties consider relevant.
- (c) Treaties should include any requirements for the review of formalised Treaties, including any requirements for public reporting of the findings of any review.

34.3 Public register

In accordance with clause 27(d), the Treaty Authority will maintain a public register of all formalised Treaties and Interim Agreements.

PART I

PROCESS FOR THE RESOLUTION OF DISPUTES



35 Dispute resolution process

35.1 Scope of process

- (a) Disputes arising in Treaty negotiations or incidental to or in connection with Treaty negotiations will be resolved in accordance with this Framework, including disputes in relation to:
 - (i) the relevant Minimum Standards under clauses 8, 13, 16 and 20;
 - (ii) entry onto the Negotiations Database under clauses 9, 11, 14, 21, 23 or clause 2.4 of Schedule 1;
 - (iii) Delegation formation, agreement, or reconstitution under clause 10;
 - (iv) preparations for and involvement in the negotiation process under Parts B-E;
 - (v) the proposed interaction between Traditional Owner Treaties and a Statewide Treaty; and
 - (vi) formalising Treaty agreements under Part F.
- (b) The Negotiating Parties agree to work to:
 - (i) resolve disputes:
 - (A) efficiently and with finality;
 - (B) through a culturally strong process;
 - (C) having regard to Aboriginal Lore, Law and Cultural Authority; and
 - (D) in a timely manner; and
 - (ii) enable Treaty negotiations to continue during the dispute resolution process wherever possible;
 - (iii) recognise the interconnectedness of First Peoples' communities who may be affected by a dispute;
 - (iv) treat all parties to the dispute fairly and ensure all parties are listened to; and
 - (v) be open, transparent and focused on finding common understandings and maintaining and strengthening the relationship between the parties to the dispute.
- (c) The Parties acknowledge that Treaties will be reached by two or more Negotiating Parties coming together in good faith to reach agreement. The dispute resolution process will therefore seek to resolve disputes in a manner that supports agreement-making and preserves, restores and builds ongoing, just and respectful relationships, rather than through an adversarial dispute resolution process.

35.2 Treaty Authority guidance

- (a) The Treaty Authority may issue guidelines in relation to the resolution of disputes in Treaty negotiations. This may include guidelines promoting informal, flexible and culturally strong dispute resolution.
- (b) In seeking to resolve a dispute, the Treaty Authority will take account of the issues in dispute and Aboriginal Lore, Law and Cultural Authority.
- (c) The Treaty Authority will provide advice to the parties to the dispute throughout the process to ensure they meet the requirements of Part I of this Framework.

35.3 Confidentiality

- (a) The dispute resolution process should be confidential and will only be disclosed to third parties where:
 - (i) agreement is reached between all parties to the dispute; or
 - (ii) the Treaty Authority considers disclosure is justified in the circumstances of the dispute.
- (b) In considering whether disclosure is justified the Treaty Authority will take into account:
 - (i) the views of parties to the dispute;
 - (ii) whether disclosure would prejudice the resolution of the dispute;

- (iii) whether disclosure would prejudice Treaty negotiations;
- (iv) any requirements of law;
- (v) any requirements of Aboriginal Lore, Law or Cultural Authority; and
- (vi) the need to uphold and respect Indigenous Data Sovereignty and Indigenous Data Governance.

36 Stages in dispute resolution process

36.1 Dispute resolution process

- (a) If a dispute arises in Treaty negotiations or incidental to or in connection with Treaty negotiations, the parties to the dispute must try to resolve the dispute themselves on an informal basis and in good faith.
- (b) If the dispute cannot be resolved informally, the party raising the dispute must provide written notice detailing the nature and content of the dispute to the Treaty Authority and to the other party or parties to the dispute.
- (c) Subject to clause 36.1(f), upon receiving a written notice of a dispute, the Treaty Authority must:
 - (i) commence dispute resolution under this clause by:
 - (A) notifying the parties to the dispute that a dispute has been raised and will be dealt with under the dispute resolution process; and
 - (B) notifying any other party it considers should be joined to the dispute and inviting them to participate as a party to the dispute resolution process; or
 - (ii) notify the party issuing the notice under clause 36.1(b) that the dispute resolution process will not be commenced in relation to the dispute, if the Treaty Authority considers that the dispute is:
 - (A) trivial, vexatious or not relevant to Treaty negotiations;
 - (B) unlikely to be resolved through dispute resolution; or
 - (C) not appropriate for dispute resolution, including because the commencement of the dispute resolution process is premature, and

give advice to the party who issued the notice on alternative approaches for addressing the issues raised by the notice.
- (d) If the Treaty Authority commences a dispute under clause 36.1(c)(i), the Treaty Authority will convene facilitated discussions or yarning circles to offer the parties to a dispute the opportunity to speak in a safe and non-judgmental place, share their strengths in an inclusive environment and collaborate to build a plan and create a collective commitment to action.
- (e) If the Treaty Authority considers the facilitated discussions or yarning circles have not resolved the dispute, it will take action to seek to resolve the dispute, having regard to the nature of the dispute, what is culturally appropriate and the views of the parties, including to:
 - (i) request information from parties;
 - (ii) provide an opinion;
 - (iii) present proposals for resolution of the dispute;
 - (iv) engage experts to assist in the resolution of the dispute;
 - (v) convene further facilitated discussions or yarning circles, or convene mediation;
 - (vi) refer the dispute to an expert panel for recommendations;
 - (vii) determine that no further action should be taken;
 - (viii) make a recommendation; or
 - (ix) make a determination for the purposes of clause 9.3(b)(ii), 9.3(c)(ii), 10.3(b), 10.6(c), 11.3(c)(ii), 11.3(d)(ii), 11.4(b), 18.5(a)(i)(C), 18.5(c)(ii) or clauses 2.4(b) and 2.4(g) of Schedule 1.

- (f) For the purposes of resolving a particular dispute, the Treaty Authority may direct the parties to the dispute to follow any process or procedures that are different to those set out in clause 36.1(a)–(e) which the Treaty Authority considers necessary or desirable for the resolution of the dispute.
- (g) If the Treaty Authority makes a recommendation under clause 36.1(e)(viii), the parties to the dispute will use their best endeavours to give effect to that recommendation.
- (h) If the Treaty Authority makes a determination under clause 36.1(e)(ix) for the purposes of clause 9.3(b)(ii), 9.3(c)(ii), 10.3(b), 10.6(c), 11.3(c)(ii), 11.3(d)(ii), 11.4(b), 18.5(a)(i)(C), 18.5(c)(ii) or clauses 2.4(b) and 2.4(g) of Schedule 1, then that determination is final and has the effect described in that clause.
- (i) Notwithstanding anything in this clause, the Treaty Authority cannot require the Negotiating Parties to alter the substantive content of any Treaty or Interim Agreement or enter into, or not enter into, any Treaty or Interim Agreement.

36.2 Legal proceedings

The parties to a dispute must not commence any legal proceedings in respect of a dispute arising in the course of Treaty negotiations or incidental to or in connection with Treaty negotiations, until the dispute resolution process set out in clause 36.1, or any other process or procedure that the Treaty Authority directs under clause 36.1(f) be followed, has been exhausted.

PART J
**DEFINITIONS,
INTERPRETATION &
GENERAL PROVISIONS**



37 Dictionary

In this Framework, unless the contrary intention appears:

Aboriginal Community Controlled Organisation is an organisation based in Victoria that delivers services to Aboriginal people and a community or communities and is:

- (a) incorporated under relevant legislation and not-for-profit;
- (b) controlled and operated by Aboriginal people;
- (c) connected to the community, or communities, in which it delivers services; and
- (d) governed by a majority Aboriginal governing body.

Aboriginal Lore and Law is described in clause 2.

Aboriginal Representative Body means the First Peoples' Assembly of Victoria Ltd declared to be the Aboriginal Representative Body under section 11 of the Treaty Act or any subsequent body declared to be the Aboriginal Representative Body under section 18 of the Treaty Act.

Aboriginal Trust is a Trust incorporated under the *Aboriginal Lands Act 1970* (Vic), whether or not the Committee of Management, or the members of a Trust, under that Act is or are majority Aboriginal.

Additional Negotiating Party means any party invited to, and who has accepted the invitation to, join any Treaty negotiations under clause 22.

Additional Preparations have the meanings given by clauses 13.3 and 20.3 respectively.

Additional Requirement has the meaning given by clause 16.3.

Collective Support has the meaning given by clause 28.

Comment and Dispute Period has the meaning given by clause 18.4.

Consultation and Dispute Period has the meaning given by clause 2.3(b) of Schedule 1.

Contingency Process has the meaning given by clause 15.2(a)(v).

Cultural Authority is described in clause 2.

Existing Status has the meaning given by clause 8.2.

First Peoples means:

- (a) Traditional Owners of Country in Victoria; and
- (b) Aboriginal and Torres Strait Islander persons who are living in the place now known as Victoria.

First Peoples' Negotiating Party means a party comprising First Peoples that is participating in the Treaty Process, including a Traditional Owner Group, a First Peoples' Treaty Delegation, the First Peoples' Representative Body negotiating the Statewide Treaty or an Additional Negotiating Party.

First Peoples' Representative Body or **Body** is the body which has been confirmed by the Treaty Authority as the First Peoples' Representative Body under Part C or Schedule 1.

First Peoples' Treaty Delegation or **Delegation** means a delegation formed for the purposes of negotiating a Traditional Owner Treaty with the State in accordance with clause 10.

Framework means the Treaty Negotiation Framework established by agreement between the Parties under section 30 of the Treaty Act.

Indigenous Data as endorsed by delegates at the 2018 Indigenous Data Sovereignty Summit, refers to information or knowledge, in any format or medium, which is about and may affect First Peoples both collectively and individually.

Indigenous Data Governance as endorsed by delegates at the 2018 Indigenous Data Sovereignty Summit, refers to the right of First Peoples to autonomously decide what, how, and why Indigenous Data is collected, accessed, disclosed and used. It ensures that data on or about First Peoples reflects First Peoples' priorities, values, cultures, worldviews, and diversity.

Indigenous Data Sovereignty as endorsed by delegates at the 2018 Indigenous Data Sovereignty Summit, refers to the rights of First Peoples to exercise ownership over Indigenous Data. Ownership of Indigenous Data can be expressed through the creation, collection, access, analysis, interpretation, management, dissemination, and reuse of Indigenous Data.

Interim Agreement means an agreement made in acceptance of an Interim Offer.

Interim Offer means an offer made under clause 26.5.

Local Government has the meaning given to it by section 74A(1) of the Victorian Constitution.

Minimum Standards means those standards applicable to the relevant Primary Negotiating Party as set out in clauses 8, 13, 16 and 20.

Minister means the Minister of the Crown responsible for administering the Treaty Act including a Minister of the Crown for the time being acting for or on behalf of that Minister.

Negotiating Party means any Primary Negotiating Parties and Additional Negotiating Parties for any Treaty.

Negotiations Database means the database of Negotiating Parties under clause 4.5.

Negotiation Protocols has the meaning given in clause 26.1.

Negotiation Standards has the meaning given in clause 24.1.

Negotiators means the persons authorised by a Negotiating Party to represent the Negotiating Party in Treaty negotiations.

Parties means the parties to this Framework, being the Aboriginal Representative Body and the State of Victoria.

Primary Negotiating Parties means the parties specified in clauses 7.1 and 15.1 respectively.

Relevant Groups has the meaning given in clause 10.3(b).

Self-Determination Fund means the self-determination fund established by agreement under section 35 of the Treaty Act.

Statewide Treaty means a Treaty negotiated between the First Peoples' Representative Body and the State under Part E of this Framework.

Traditional Owner has the meaning given in clause 3.4.

Traditional Owner Group or **Group** is a group that can satisfy the Minimum Standards under clause 8.

Traditional Owner Treaty means a Treaty negotiated between a First Peoples' Treaty Delegation and the State under Part E of this Framework.

Treaty means any one or more of the Statewide Treaty and Traditional Owner Treaties.

Treaty Act means the *Advancing the Treaty Process with Aboriginal Victorians Act 2018* (Vic).

Treaty Authority means the Treaty Authority established by agreement between the Parties under section 27 of the Treaty Act.

Treaty Authority Act means the *Treaty Authority and Other Treaty Elements Act 2022* (Vic).

Treaty Authority Agreement means the agreement made between the Aboriginal Representative Body and the State made under section 27 of the Treaty Act.

Treaty Process means Treaty negotiations under this Framework and, for the avoidance of doubt, includes the process for entry into negotiations, the negotiations themselves and the formalisation, enforcement and reporting on Treaties.

UNDRIP means the United Nations Declaration on the Rights of Indigenous Persons adopted by the United Nations General Assembly on 13 September 2007.

Victorian Constitution means the *Constitution Act 1975* (Vic).

Yoorrook Justice Commission means the Royal Commission known as the Yoorrook Justice Commission established under the *Inquiries Act 2014* (Vic) on 12 May 2021.

38 Interpretation

The Parties have agreed that the following general principles of interpretation apply to this Framework:

- (a) Intended legal operation:
 - (i) This Framework is intended to preserve any right or expectation First Peoples enjoy or have under any Act or law, including the *Aboriginal Heritage Act 2006* (Vic), the *Aboriginal Lands Act 1970* (Vic), the *Conservation, Forests and Lands Act 1987* (Vic) or the *Traditional Owner Settlement Act 2010* (Vic).
 - (ii) Nothing in this Framework is intended to prevent First Peoples from enjoying the same rights and benefits as any resident of Victoria or citizen of Australia or accessing any of the various programs and services of Victoria or Australia in effect from time to time, including those directed to First Peoples and their organisations, in accordance with the criteria established from time to time for the application of those programs and services.
- (b) This Framework should be interpreted in a way that is consistent with the Treaty Act. In the event of any conflict between the Treaty Act and this Framework, the Treaty Act prevails.
- (c) The Framework should be interpreted by reference to the UNDRIP, except to the extent of any inconsistency with the Treaty Act and applicable laws of the State and the Commonwealth.
- (d) An interpretation of this Framework that promotes the purpose in clause 2.2, the Parties' intentions for the Treaty Process in clause 2.3 and the principles in clauses 2.4 and 2.5 will be preferred to an interpretation of the Framework that would not promote that purpose or those intentions and principles.
- (e) References in the Framework to 'source of authority' and 'traditional ownership' are not intended to and will not be interpreted so as to limit the scope of subject matters on which a Delegation or the First Peoples' Representative Body can negotiate.
- (f) Headings are for convenience only and do not affect interpretation.
- (g) The words italicised and contained in boxes outline the rationale for certain provisions to explain how this Framework supports First Peoples to decide First Peoples' issues. The words italicised and contained in boxes are not operative clauses of this Framework and are not intended to create or limit rights and obligations under this Framework, nor the subject matters for the Treaties negotiated under the Framework.
- (h) Unless the context indicates a contrary intention:
 - (i) the expression person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership, a trust or other entity and includes any successor by merger or otherwise of such person;
 - (ii) a reference to any person or to any party to this agreement includes that person's or party's executors, administrators, successors and permitted assigns, including a person taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
 - (iii) a reference to any document (including this Framework) is to that document as varied, novated, ratified or replaced from time to time;
 - (iv) a reference to any statute or to any statutory provision includes any statutory modification re-enactment or replacement of it or any statutory provision substituted for it, and all ordinances, bylaws, regulations, rules and statutory instruments (however described) issued under it;
 - (v) words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;
 - (vi) references to parties and clauses are references to parties and clauses to or of this agreement;
 - (vii) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
 - (viii) the word includes in any form is not a word of limitation;

- (ix) a reference to a party using its best endeavours or reasonable endeavours or best efforts does not include or imply a reference to or an obligation upon that party paying money or providing other valuable consideration to or for the benefit of any person; and
- (x) a reference to this agreement includes schedules to it.

39 General provisions

The Parties have agreed the following general provisions for the operation of this Framework.

(a) Amendment and Review:

- (i) This Framework may only be amended by a document signed by or on behalf of the Parties.
- (ii) The Parties will review the effectiveness of this Framework:
 - (A) within the first 12 months of the Framework, if:
 - (1) the Parties consider it necessary or appropriate to do so; or
 - (2) the Treaty Authority considers it necessary or appropriate to do so – if the Treaty Authority recommends that specified amendments be made to clarify the Framework, the Parties must consider the Treaty Authority’s recommendations and amend the Framework as they consider appropriate;
 - (B) following agreement of a Statewide Treaty or Interim Agreement, if required; and
 - (C) in any event, within the first four years of the operation of this Framework.
- (iii) Irrespective of the Parties’ review of this Framework, the Treaty Authority may review the effectiveness of this Framework from time to time and make recommendations to the Parties as to whether and, if so how, the Framework should be amended. The Parties will consider any such recommendations and agree whether and, if so, how the Framework should be amended.

(b) Entire Agreement:

- (i) Subject to the Treaty Act and, where relevant, the Treaty Authority Agreement and Treaty Authority Act, this agreement constitutes the entire agreement between the Parties as to the establishment of the Framework and supersedes all previous agreements, arrangements and understandings (whether written or oral) between the Parties in relation to the same.

(c) Reading Down:

- (i) If any provision of this agreement is void, voidable, unenforceable or illegal in its terms but would not be void, voidable, unenforceable or illegal if it were read down and it is capable of being read down, then that provision will be read down accordingly.

(d) Severance of provisions:

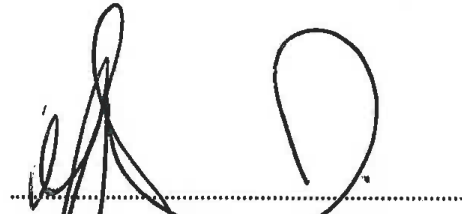
- (i) If, notwithstanding clause 39(c), a provision of this agreement is or, but for this clause 39(d), would be void, voidable, unenforceable or illegal:
 - (A) if the provision would not be void, voidable, unenforceable or illegal if a word or words were omitted, that word or those words are severed; and
 - (B) in any other case, the whole provision is severed,
- and the remainder of this agreement will be of full force and effect.

Signed as an agreement.

Executed by First Peoples' Assembly)
of Victoria in accordance with)
section 127 of the *Corporations Act 2001*)
(Oth):



.....
Signature of Director

Geraldine Atkinson
.....
Name of Director


.....
Signature of Director

Marcus Stewart
.....
Name of Director

Signed for and on behalf of The State of)
Victoria in the presence of:)
)


.....
Signature of Witness

Prudentia Stewart
.....
Name of Witness


.....
Signature of Authorised Officer

Colin Brooks MP, Acting Minister for
Treaty and First Peoples
.....
Name of Authorised Officer

SCHEDULE 1: CONTINGENCY PROCESS FOR CONFIRMATION OF FIRST PEOPLES' REPRESENTATIVE BODY

Part C of the Framework provides that Statewide Treaty will be negotiated by the Aboriginal Representative Body, as the First Peoples' Representative Body, if confirmed under that Part.

The First Peoples' Representative Body will be the sole representative of First Peoples for the purpose of negotiating Statewide Treaty.

If the Aboriginal Representative Body is not confirmed as the Body under Part C, another entity that satisfies the Minimum Standards and is confirmed as the Body in accordance with the Contingency Process set out in this Schedule, will negotiate Statewide Treaty.

In this Schedule, all references to Treaty or Treaties are to Statewide Treaty, unless otherwise specified.

1 Treaty Authority notifies of commencement of Contingency Process

If the Treaty Authority commences a Contingency Process for identifying the entity that is to be entered onto the Negotiations Database as the Body under clause 18.6 of the Framework:

- (a) that process will commence on a date nominated by the Treaty Authority;
- (b) the Treaty Authority must give advance notice of that date to the Parties, any Traditional Owner Group entered onto the Negotiations Database and First Peoples (by issue of a public notice); and
- (c) that process will be conducted in accordance with clause 2 of this schedule.

2 Entry of other entities onto Negotiations Database

2.1 Notification of Minimum Standards

- (a) If the Treaty Authority commences a Contingency Process under clause 18.6 of the Framework, an entity other than the Aboriginal Representative Body has three months from the commencement of the Contingency Process to notify the Treaty Authority that it seeks to be entered onto the Negotiations Database as the Body and that it satisfies the Minimum Standards at clause 16.2 of the Framework.
- (b) The Treaty Authority will determine the manner and form of a notification under this clause.

2.2 Preliminary entry onto the Negotiations Database

- (a) Subject to clause 2.2(c), on receipt of a notification under clause 2.1(a), the Treaty Authority must make a preliminary entry of that entity onto the Negotiations Database without independently assessing the entity's satisfaction of the Minimum Standards.
- (b) The Treaty Authority will determine the manner and form of the preliminary entry of the entity onto the Negotiations Database under this clause.
- (c) If the Treaty Authority considers a notification by an entity under this clause to be incomplete or spurious, it:
 - (i) must request further information from the entity or provide an opportunity for clarification or correction of the notification, within a specified period; and

- (ii) may, either after receipt of further information in response to a request, or after the expiry of the specified period, refuse to make a preliminary entry of the entity onto the Negotiations Database.
- (d) The Treaty Authority can only remove an entity's preliminary entry from the Negotiations Database if:
 - (i) that entity requests its removal;
 - (ii) that entity ceases to exist; or
 - (iii) the Treaty Authority makes a determination under clause 2.4(c) to finally enter a different entity onto the Negotiations Database as the Body.
- (e) The Treaty Authority can only amend an entity's preliminary entry on the Negotiations Database if that entity requests the amendment.

2.3 Agreement-making and Consultation and Dispute Periods

- (a) If there is a preliminary entry of more than one entity onto the Negotiations Database within three months from the commencement of the Contingency Process, the Treaty Authority will commence a process of discussion and agreement-making between the entities, with a view to securing a voluntary agreement regarding a single entity to be the Body, within one month after the end of the three-month period referred to in clause 2.1(a).
- (b) If there is a preliminary entry of one or more entities onto the Negotiations Database after:
 - (i) three months from the commencement of the Contingency Process; or
 - (ii) if applicable, the period of agreement-making under this clause;
 the Treaty Authority will issue a public notice of a three-month period (**Consultation and Dispute Period**) to allow First Peoples to comment and be consulted on whether an entity's entry on the Negotiations Database should be confirmed under clause 2.4.
- (c) The Consultation and Dispute Period will be facilitated by the Treaty Authority and allow for:
 - (i) First Peoples' commentary, consultation and input into the Treaty Authority's decision to confirm the Body under clause 2.4; and
 - (ii) the Treaty Authority to attempt to resolve any dispute in accordance with the dispute resolution process under Part I of the Framework.

2.4 Confirmation of the Body

- (a) If there is preliminary entry of only a single entity onto the Negotiations Database after:
 - (i) three months from the commencement of the Contingency Process under clause 2.1(a);
 - (ii) if applicable, the period of agreement-making under clause 2.3(a); and
 - (iii) the Consultation and Dispute Period;
 then the Treaty Authority must finally enter that entity onto the Negotiations Database as the Body.
- (b) If, after the Consultation and Dispute Period, there remains preliminary entry of more than one entity on the Database, the Treaty Authority must, as soon as practicable, decide which entity will be the Body, having regard to the Minimum Standards in clause 16.2(b) of the Framework and taking into account:
 - (i) commentary, consultation and input raised under clause 2.3(c) by First Peoples, including, in particular, commentary, consultation and input raised by any entity in relation to which there has been a preliminary entry onto the Negotiations Database; and
 - (ii) the nature of any unresolved disputes raised by First Peoples under clause 2.3(c).
- (c) Following a decision as to the entity that will be the Body under this clause, the Treaty Authority must make a final entry of the Body onto the Negotiations Database.
- (d) The Treaty Authority will determine the manner and form of the final entry of the Body onto the Negotiations Database, subject to clause 4.5(f) of the Framework.

- (e) The Treaty Authority may request additional information to complete a final entry if it requires information that was not provided at any earlier stage.
- (f) Once the Treaty Authority has made a final entry of the Body onto the Negotiations Database under this clause, no further dispute about whether that entity is the Body can be commenced under this Framework, except a dispute in relation to misconduct of the kind referred to in this clause.
- (g) A final entry of the Body cannot be removed from the Negotiations Database, except:
 - (i) at the Body's request;
 - (ii) if the Body ceases to exist; or
 - (iii) if the Treaty Authority decides, following institution of a dispute under Part I, that:
 - (A) the Body has committed conduct at a systemic level that brings the Body into disrepute and that is not limited to the conduct of one person;
 - (B) as a result, the Body is unable to effectively perform its functions under this Framework; and
 - (C) the Body has failed to take reasonable steps to remedy the misconduct and to take all necessary steps to prevent further misconduct that are reasonably available.
- (h) Nothing in this clause prevents either Primary Negotiating Party for Statewide Treaty suspending negotiations in accordance with clause 26.6 of the Framework.

2.5 Notification of final entry onto the Negotiations Database

- (a) The Treaty Authority will determine how the final entry of an entity as the Body on the Negotiations Database is notified publicly, in accordance with clause 4.5(d) of the Framework.
- (b) Notwithstanding the above, the Treaty Authority must notify the State to enable the State to continue preparations towards complying with its Minimum Standards detailed at clause 20 of the Framework.



Sherry Johnstone, Spirit and Soul Creations.
 Proud Keeray Woorroong (Gunditjmara)/Yorta Yorta woman and artist.

ARTWORK STORY: DRIVERS OF OUR OWN DESTINY

To embed First Peoples' culture in the Treaty Negotiation Framework, the Aboriginal Representative Body asked Sherry Johnstone to create an artwork that represents the Treaty Process for First Peoples in Victoria.

Sherry Johnstone, Spirit and Soul Creations. Proud Keerray Woorroong (Gunditjmarra)/Yorta Yorta woman and artist.

- 1 Bottom left circle:** Remembers our Ancestors, who planted the seeds of culture, tradition and connection, living in harmony with the land and animals.
- 2 Along the bottom:** First Peoples are the original custodians of the lands. We belong to it, we are part of it. We are all obligated to look after Country.
- 3 Pattern in the land at the bottom:** Represents First Peoples' connection to the land, waterways, song lines, people and places.
- 4 Stars:** The stars hold our dreaming, it's where our Ancestors are, our people were the first astronomers.
- 5 Middle circle:** The shield represents protection of our Ancestors' plight, protection of culture, story, practice and traditions. The flag represents First Peoples, Aboriginality and our identity. The message sticks represent First Peoples continuing to pass on our culture, wisdom, knowledge and stories. The spears behind the flag represents Aboriginal Lore and Law. The wavy lines in the outer circle represent the activism of First Peoples to make our voices heard.
- 6 Boomerangs:** Represents our values and practices always coming back to our Ancestors' way and bringing back our ways. Within the boomerangs are windows of opportunity that will open to First Peoples through Treaty. The scars in the boomerang represent the scars and wounds we still carry from our Ancestors' sacrifices, fighting for their land, recognition and to have their voices heard and culture valued.
- 7 Hands:** The hands represent First Peoples determining our future. Through Treaty, we will be the drivers of our own destiny. The hands also represent our Ancestors supporting and guiding us along the way.
- 8 The waterways coming out from each side of the middle circle:** Our waterways are the veins of Mother Earth and are a vital part of our existence and ecosystem. Water is life. We need our waterways and must nurture them.
- 9 The tree with the hourglass:** Represents running out of time to repair the damage that has been done to Country, waterways and the ocean. From carbon emissions, our ever-increasing population and development, natural and man-made disasters, bush fire management, deforestation, pollution and climate change. By drawing upon First Peoples' ancient knowledge and wisdom, we can make a difference.
- 10 Top right-hand circle:** Represents First Peoples and the State coming together to reach an agreement. The message stick shows the meetings and gatherings that will be needed to achieve Treaty. The patterns around this represent working together, entwining our energies like a woven basket to become stronger together. The small seeds around the outside of the circle represent planting the seeds for our future generation's wellbeing and cultural safety.
- 11 Bunjil:** Bunjil represents how like a bird Treaty will free our spirits, allowing us to spread our wings and take flight, reaching new heights, fulfilling our future and finding our cultural purpose.
- 12 The sun:** The sun behind Bunjil represents a brighter future through Treaty.
- 13 The leaves:** The leaves represent, like the healing power of Country and bush medicine, Treaty will start the healing process for First Peoples. Like the native flowers, we will blossom and grow.
- 14 The journey line from the bottom left circle to the middle circle up to the top right circle:** Represents honoring our Ancestors' plight and journey. On the outside are the steppingstones as we take one step at a time on the journey towards Treaty.



FIRST PEOPLES'
ASSEMBLY OF
VICTORIA

