

Guide for First Peoples: Comment and Dispute Period for Statewide Treaty



What is this guide?

This guide was developed by the Treaty Authority for First Peoples in Victoria to provide practical information on the Comment and Dispute Period for Statewide Treaty.

For the purposes of this guide, 'First Peoples' means all:

- Traditional Owners of Country in the land and waters now known as Victoria; and
- Aboriginal and Torres Strait Islander people living in Victoria.

The guide is based on the rules for Treaty-making set out in the [Treaty Negotiation Framework](#) (also known as the 'Framework' in this guide).

The Framework sets out the steps for identifying the one body that will represent First Peoples to negotiate Statewide Treaty. The First Peoples' Assembly of Victoria (also known as 'the Assembly') has taken the first steps to be identified as that body (see page 2).

This guide focuses on the Comment and Dispute Period, which is the step that lets First Peoples have a say about whether the Assembly meets the Minimum Standards under the Framework. You can find out about the Minimum Standards below on page 1.

Key terms used in this guide are set out in **Attachment 1**.

Treaty facts – Statewide Treaty will benefit all Victorians

Statewide Treaty will be negotiated with the State of Victoria over all lands and waters now known as Victoria. It can cover statewide matters that impact all Victorians (such as improving health, education and justice outcomes for First Peoples).

Statewide Treaty will promote the self-determination and empowerment of all First Peoples in Victoria. In the spirit of reconciliation, it will also benefit all Victorians.

Get to know the Treaty rules: See Part C of the Framework.

What is the role of the Treaty Authority?

The Treaty Authority is the independent body that oversees Treaty-making in Victoria and will facilitate the Comment and Dispute Period for Statewide Treaty. The Treaty Authority is led by five respected Aboriginal people known as the 'Treaty Authority Members'.

How do we perform our role?

The Treaty Authority's values guide the way it oversees the Comment and Dispute Period:

- Fairness
- Responsibility
- Honour
- Connection.

The Treaty Authority is also guided by the following principles:

- We uphold self-determination and empowerment
- We treat all people with respect and professionalism
- We have culturally strong and safe processes
- Our processes are conducted in good faith to advance Treaty
- We ensure all interested parties have the opportunity to be heard
- We are independent and free from interference
- We are impartial (our decisions and actions are fair and culturally sound)
- We observe and uphold Aboriginal Lore, Law and Cultural Authority, and respect for Elders
- We uphold Indigenous Data Sovereignty and Governance
- We recognise the operating context of all parties
- We act compatibly with human rights.

Get to know the Treaty rules: See clauses 2.4 and 18.4 of the Framework.

What is the Comment and Dispute Period?

The Comment and Dispute Period is overseen by the Treaty Authority. It is an important part of the process for Statewide Treaty, as it allows First Peoples to submit a comment or raise a dispute about whether the Assembly meets the Minimum Standards for entering Treaty negotiations.

Treaty facts – What are the Minimum Standards?

The Treaty Negotiation Framework sets out the criteria, known as the 'Minimum Standards' that the Assembly must meet to enter negotiations for Statewide Treaty.

It is up to the Assembly to self-determine whether it meets the Minimum Standards.

The standards are grouped into four categories:

- Land and waters
- Community
- Leadership
- Inclusivity (see the full standards in **Attachment 2**).

Later down the track, the State of Victoria will also have to meet Minimum Standards before it can enter negotiations for Statewide Treaty.

Get to know the Treaty rules: See clauses 16.2 and 20.2 of the Framework.

What steps have already been taken?

The Assembly has notified the Treaty Authority that it wants to be entered on the Negotiations Database as the representative body that will negotiate Statewide Treaty on behalf of all First Peoples. The notification sets out how it meets the Minimum Standards.

You can read the Assembly's notification at treatyauthority.au

Treaty facts – What is the Negotiations Database?

The Negotiations Database is managed by the Treaty Authority and is where information is held about Treaty negotiations. This includes public information about who is negotiating a Treaty, the Country it will cover and the status of negotiations.

Following the steps set out in the Framework, the Treaty Authority has now:

- entered the Assembly on the Negotiations Database as the body that will negotiate Statewide Treaty on behalf of all First Peoples
- issued a public notice inviting First Peoples to submit a comment or raise a dispute about whether the Assembly has met the Minimum Standards.

Part 2 of this guide sets out how you can have a say.

Where can I get more information?

If you want more information on Statewide Treaty or the Comment and Dispute Period, you can get in touch with the Treaty Authority on 1300 133 033 or email us at info@treatyauthority.au

If you want to know the detailed rules about Statewide Treaty, you can have a look at the [Treaty Negotiation Framework](#). The Assembly has also published a short explainer on the Framework called '[Get to know the Treaty Negotiation Framework](#)'.

How to have your say

Who can have a say?

Only First Peoples can submit a comment or raise a dispute about whether the Assembly meets the Minimum Standards. Under the Framework, 'First Peoples' means:

- Traditional Owners of Country in the land and waters now known as Victoria, and
- Aboriginal and Torres Strait Islander people living in Victoria.

The Treaty Authority will not consider comments or disputes from other people.

Can an organisation submit a comment or raise a dispute?

Yes. If your organisation wants to submit a comment or raise a dispute about whether the Assembly meets the Minimum Standards, the person who submits the comment or raises the dispute must be authorised to speak on behalf of your organisation.

Get to know the Treaty rules: See clause 18.4(a) and (b) of the Framework.

What is the closing date?

The Treaty Authority will accept comments and disputes for a period of two months. The closing date for comments and disputes is 17 September 2024.

How can I submit a comment or raise a dispute?

You can submit a comment or raise a dispute about whether the Assembly meets the Minimum Standards using the Treaty Authority's [online form](#). The online form will ask you:

- for your name and contact details (or the name and contact details of the person who is authorised to speak on behalf of your organisation)
- whether you are a Traditional Owner of Country in Victoria, an Aboriginal and/or Torres Strait Islander person living in Victoria or a Victorian First Peoples' organisation
- whether you would like to submit a comment or raise a dispute, and
- which Minimum Standard/s your comment or dispute is about.

Once you have submitted your comment or raised your dispute, you will be offered a follow-up call with a Treaty Authority staff member to have a yarn about it.

If you need help submitting your comment or raising a dispute (such as help writing down your comment), give the Treaty Authority a call on 1300 133 033.

What can I submit a comment or raise a dispute about during the Comment and Dispute Period?

During the Comment and Dispute Period, the Treaty Authority will only facilitate comments or disputes about whether the Assembly meets the Minimum Standards.

You do not have to comment on every Minimum Standard. When you fill out your online form, you will be able to note which standards your comment or dispute is about.

If you want to talk to the Treaty Authority about anything else related to the Treaty process, you can get in touch on 1300 133 033.

Get to know the Treaty rules: See clause 18.4(a) of the Framework.

What is the difference between a comment and dispute?

A **comment** is when you tell the Treaty Authority what you think about whether the Assembly meets the Minimum Standards.

A **dispute** is when you raise a dispute with the Treaty Authority to be facilitated under our Finding Common Ground (Dispute Resolution) Policy.

What happens once I submit a comment?

The Treaty Authority will share your comment with the Assembly, unless:

- you are not a Traditional Owner of Country in Victoria, an Aboriginal and/or Torres Strait Islander person living in Victoria or a Victorian First Peoples' organisation
- your comment does not raise a substantive (meaningful) issue about whether the Assembly meets the Minimum Standards
- your comment is defamatory or offensive
- your comment is trivial or vexatious, or
- your comment is not made in good faith (i.e. it is not genuine).

The Treaty Authority will let you know if we are not going to share your comment with the Assembly and give you a chance to resubmit your comment.

What information will be shared with the Assembly?

When the Treaty Authority shares your comment with the Assembly, we will also:

- share your organisation's name with the Assembly if your comment is on behalf of an organisation
- share your name with the Assembly if you are an individual, unless you let us know that you don't want us to share your name when you filled out your online form.

We encourage you to allow the Treaty Authority to share your name with the Assembly to make sure they can fully respond to your comment as best as they can.

We won't share your name with anyone else outside the Treaty Authority or our contracted service providers.

The Treaty Authority will let you know how the Assembly responds to your comment.

What happens once I raise a dispute?

If you raise a dispute, the Treaty Authority may be able to help you resolve your concerns using our dispute resolution process, called 'Finding Common Ground'.

For the purposes of the Comment and Dispute Period, a dispute may only be raised by First Peoples about whether the Assembly meets the Minimum Standards.

The Finding Common Ground process will not apply to matters that:

- are defamatory or offensive
- trivial, frivolous or vexatious
- are unlikely to be resolved through the process
- may be resolved more informally first
- are irrelevant to Treaty negotiations
- are not appropriate for dispute resolution.

If your dispute is accepted using the Treaty Authority's Finding Common Ground process, our aim will be to support you to find common ground and reach agreement with the Assembly. The Treaty Authority will do this in way that draws on Aboriginal ways and wisdom, is flexible and creative, and promotes equality, respect and fairness.

The Treaty Authority may bring you together with the Assembly (for example, by holding a facilitated discussion or Yarning circle). Depending on the nature of your dispute, what is culturally appropriate and the views of the parties, the Treaty Authority can also give you an opinion, engage an expert or make a recommendation or determination.

What information will be shared if I raise a dispute?

In order to progress your dispute using the Treaty Authority's Finding Common Ground process, you will need to consent to the Treaty Authority sharing your name with the Assembly. The Finding Common Ground process is confidential between the parties to protect the safety, privacy and integrity of the process and to honour Australia's Indigenous Data Sovereignty and Data Governance Principles¹.

In some cases, it may also be appropriate to disclose some or all aspects of a dispute with another party. This will only happen with the agreement of both parties or where the Treaty Authority considers that disclosing this information is justified.

If you do not consent to the Treaty Authority sharing your name with the Assembly, the Treaty Authority may handle your dispute as a 'comment' as set out above.

For more information on the Finding Common Ground process, you can read the Guide for First Peoples: Finding Common Ground to Resolve Disputes.

How will my information be protected?

During the Comment and Dispute Period, the Treaty Authority will collect and use information from First Peoples who submit a comment or raise a dispute.

Safeguarding your information is important to the Treaty Authority and we will make sure your information is protected in accordance with our [Privacy Policy](#) and Collection Notice.

The Treaty Authority will uphold and respect Australia's Indigenous Data Sovereignty and Data Governance principles to the fullest extent possible having regard to applicable laws.²

We may also use de-identified information we receive during the Comment and Dispute Period for general purposes including research, reporting, monitoring or evaluation.

After the Comment and Dispute Period, we may also publish a statement on our website with a de-identified summary of the issues raised and any outcomes.

What if my comment or dispute is not resolved?

Under the Framework, the Assembly may notify the Treaty Authority at any time that it is ready to invite the State of Victoria to begin negotiations. Once the Treaty Authority receives the Assembly's notification, it will invite the State to begin negotiations.

This means the State of Victoria may be invited to begin negotiations even if there are some unanswered comments or unresolved disputes from the Comment and Dispute Period. This will help to make sure the State can begin to prepare for Treaty negotiations without delay.

If your comment is unanswered or your dispute is not resolved by the end of the Comment and Dispute Period, the Treaty Authority will continue to work to resolve it as quickly as possible.

The Treaty Authority can also amend or remove the Assembly's entry on the Negotiations Database as part of resolving a dispute raised during the Comment and Dispute Period. This may happen as a matter of last resort, even after the end of the period.

Get to know the Treaty rules: See clauses 18.5 and 19 of the Framework.

¹ See Maiam nayri Wingara at <https://www.maiamnayriwingara.org/> (2018; 2023).

² See Maiam nayri Wingara at <https://www.maiamnayriwingara.org/> (2018; 2023).

What happens next?

Before negotiations for Statewide Treaty can begin, the State will need to accept the invitation and notify the Treaty Authority that it meets its own Minimum Standards.

The Treaty Authority will then assess the State's compliance with the Minimum Standards, before entering it onto the Negotiations Database.

Get to know the Treaty rules: See clauses 20-21 of the Framework.

Key terms

The following key terms are used in this guide.

References to 'clauses' are references to sections of the Treaty Negotiation Framework.

Key term	Explanation
Comment and Dispute Period (Clause 18.4)	The period overseen by the Treaty Authority to allow First Peoples to submit a comment or raise a dispute about whether the Assembly satisfies the Minimum Standards.
First Peoples (Clause 37)	The term 'First Peoples' is defined in the Treaty Negotiation Framework and this guide to mean: <ul style="list-style-type: none"> • Traditional Owners of Country in Victoria; and • Aboriginal and Torres Strait Islander people living in Victoria.
First Peoples' Assembly of Victoria or 'the Assembly'	The Assembly is the independent democratically elected body that represents Traditional Owners of Country and Aboriginal and Torres Strait Islander peoples in Victoria. The Assembly intends to negotiate Statewide Treaty once it is identified as the representative body under the Treaty Negotiation Framework.
Minimum Standards or 'the standards' (Clause 16.2)	The Treaty Negotiation Framework sets out the criteria, known as 'Minimum Standards', that the Assembly has to meet to negotiate Statewide Treaty. The standards are grouped into four categories: <ul style="list-style-type: none"> • Land and waters • Community • Leadership • Inclusivity <p>The State also has to meet its own Minimum Standards before it can enter negotiations for Statewide Treaty (clause 20.2).</p>
Negotiations Database or 'the database' (Clause 4.5)	This is the electronic database managed by the Treaty Authority which holds information about Treaty negotiations. This includes public information such as who is negotiating a Treaty, the Country it will cover and the status of negotiations.
Statewide Treaty (Part C)	Statewide Treaty will be negotiated with the State of Victoria over the lands and waters now known as Victoria. It will benefit all Victorians, including Traditional Owners of Country and Aboriginal and/or Torres Strait Islander people living in Victoria.
Treaty Negotiation Framework or 'the Framework'	The Treaty Negotiation Framework is the landmark agreement between the First Peoples' Assembly of Victoria and the Victorian Government. It sets out the rules for Treaty-making in Victoria.

Attachment 2: Minimum Standards

The Assembly must be satisfied that it meets the following Minimum Standards set out in [clause 16.2](#) of the Treaty Negotiation Framework.

Minimum Standard	What does the standard require?
Land and Waters	The Assembly 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 Statewide Treaty.
Community	<p>The Assembly must identify how it:</p> <ul style="list-style-type: none"> (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: <ol style="list-style-type: none"> 1. elected by First Peoples through periodic statewide 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.
Leadership	<p>The Assembly must identify:</p> <ul style="list-style-type: none"> (a) processes in place to choose representatives which have the appropriate authority to negotiate a Treaty on behalf of the Assembly (Negotiators) (b) the Negotiators chosen in accordance with those processes (c) decision-making processes in place by which the Assembly 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.
Inclusivity	<p>The Assembly must identify its processes in place to:</p> <ul style="list-style-type: none"> (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.

* Note: The term 'Collective Support' is explained in [clause 28](#) of the Treaty Negotiation Framework as the self-determined process to seek the freely offered support of members.