



Federation of  
Victorian Traditional  
Owner Corporations

# TREATY ENGAGEMENT

FINAL REPORT 2019



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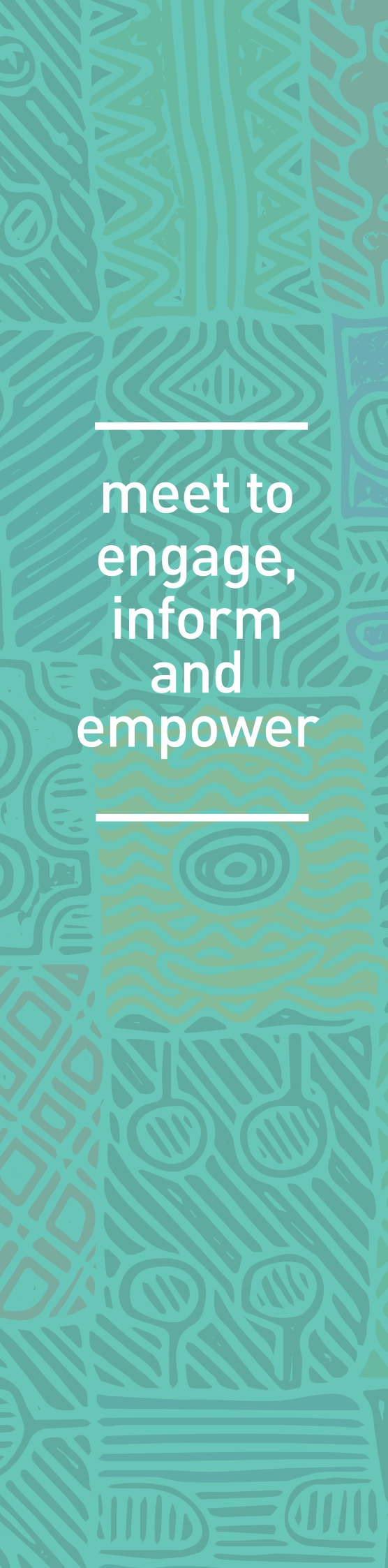
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meet to  
engage,  
inform  
and  
empower

# BACKGROUND

**In May 2018, the Federation of Victorian Traditional Owner Corporations (the Federation) was engaged to support the work of the Victorian Treaty Advancement Commission (VTAC) by holding meetings to engage, inform and empower Victorian Traditional Owners to progress 'treaty readiness' among all Traditional Owner groups whether in formally recognised or not yet formally recognised areas.**

The Federation facilitated meetings tailored to the needs and circumstances of each group, including supporting smaller targeted consultations with family groups or broader group meetings. The nature of the meetings adapted over time, depending on the level of information in the community and particularly as treaty grant funding was available to directly support Traditional Owner groups.

Meetings focused on the issues for each community and in most cases were led by experienced and knowledgeable facilitators, assisting to ensure effective two-way communication. Where requested, reports were provided back to groups for their use and approval.

The Federation's treaty engagement was also informed by the Federation's treaty research and policy development, creating a unique opportunity to draw together the knowledge and experience of Traditional Owners of Country in Victoria.

# SUMMARY

**The Federation held 29 meetings with Traditional Owners across Victoria, during the period from August 2018 to July 2019, with a total of 397 people participating. (refer to map on page 15)**

Based on these meetings, this report outlines:

1. Nine key issues drawn from the questions and issues raised during the engagement process
2. A summary of Traditional Owner aspirations for treaty
3. Factors that impacted on engagement
4. A summary table of activities/meetings undertaken.

It should be noted that while the Federation's treaty engagement identified a real enthusiasm for treaty among the Traditional Owner community, there remained considerable confusion about the process and a consistent range of questions and issues were raised at each meeting. The complex issues surrounding the Assembly structure and the voting process was a significant focus in every engagement meeting facilitated by the Federation.

The lack of funding support for attendance at meetings and the competing demands for groups involved in multiple consultations and other activities often impacted on the ability for Traditional Owners to engage appropriately and fully.

However, in addition to the meetings listed here, the Federation was able to consider and hone the ways in which it was able to engage and provide information, including through its networks and meetings and by ensuring that regular meetings with key bodies, including VTAC, maintained an informed and up-to-date information flow throughout the process. For example, the feedback from engagement meetings led to the shift in policy to ensure all Traditional Owners were able to participate in the Assembly elections, including those living interstate, and that reserved seats should be allocated to certain Traditional Owner corporations.

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**397**

PEOPLE  
PARTICIPATING

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**29**

MEETINGS

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**11**

MONTHS

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# KEY ISSUES RAISED IN ENGAGEMENT ACTIVITIES

The key issues raised by Traditional Owners during the Federation's engagement process fall into several interconnected areas:

1. Treaty is Traditional Owner business.  
This raised key issues around the structure of the Assembly and the election process.
2. The importance of the principle of self-determination.
3. Issues of representation including concern that Traditional Owners from groups who do not yet have formal recognition have been excluded from the process.
4. Communication and consultation has not been consistent across all Traditional Owner groups.
5. The importance of a role for Elders.
6. There has not been adequate time to absorb and understand the process.
7. More resources are required to support Traditional Owner groups to consult among themselves and effectively participate.
8. Lack of information about the role and responsibilities of Assembly members and the resources that will be available to support their work.
9. Concern about the intersection between the treaty process and other formal recognition processes.

## 1. TREATY IS TRADITIONAL OWNER BUSINESS

Traditional Owners were consistently of the view that treaty is Traditional Owner business, and it is only Traditional Owners who can speak for Country. In this regard key issues raised included the following points:

### VOTING ON YOUR TRADITIONAL COUNTRY

Traditional Owners want to be able to elect a representative for their traditional Country which means being able to vote in the Assembly election for the candidates in the electoral region that contains their traditional Country, rather than being confined to voting in the electoral region where they live. This was particularly important for Traditional Owners who were living off Country and were therefore unable to vote for candidates standing on their traditional Country. Many did not feel comfortable voting for candidates in an electoral region that does not contain their traditional Country.

### STANDING AS A CANDIDATE ON YOUR TRADITIONAL COUNTRY

Consistently, Traditional Owners said that the seats in each electoral region decided through the Assembly election should only be open to Traditional Owners from that electoral region. This includes that Traditional Owners should only be able to stand in the electoral region that contains their traditional Country, rather than being able to choose whether they stand in the electoral region where they live, or the electoral region that contains their traditional Country. Many Traditional Owners who live off Country felt that they were not 'authorised' to stand as a candidate in an electoral region that did not contain their traditional Country.

### ISSUES FOR TRADITIONAL OWNERS OF COUNTRY IN VICTORIA WHO LIVE OUTSIDE VICTORIA

Concern was expressed that the required verification process for Traditional Owners living outside Victoria was problematic and potentially too onerous – especially for those from areas without formal recognition who may not be able to access a Traditional Owner corporation able to verify their Traditional Owner status. As the Federation's treaty engagement progressed, it became increasingly clear that many Traditional Owners living outside of Victoria had not received information about the treaty process including information about their right to vote and their right to stand as a candidate.

## THE ROLE FOR NON-TRADITIONAL OWNERS

Consistently questions were asked about why the broader Aboriginal and Torres Strait Islander community in Victoria is having a say in Traditional Owner business by participating in the voting process and effectively exercising control over which Traditional Owners get elected to the 21 seats decided through the Assembly election.

These discussions were also accompanied by an acknowledgement that the injustices of the past, including the forced removal of people off Country and the removal of children, are very much live issues and need to be addressed.

## 2. THE IMPORTANCE OF THE PRINCIPLE OF SELF-DETERMINATION

The importance of the principle of self-determination was emphasised by participants. This included the need for consultation processes undertaken on the journey towards treaty to give effect to self-determination, including the principle of free, prior and informed consent and the recognition of each Traditional Owner group's representative and governance structures and decision making processes.

Concern was expressed that if the treaty process moves forward without reflecting self-determination then there may be unintended or unforeseen consequences.

## 3. ISSUES OF REPRESENTATION

It was assumed in many treaty discussions that inevitably, Assembly members will speak for Country, even though this is not the asserted role for the Assembly. There was a fear that Assembly members could be seen to be representing someone else's Country, and this could be seen as divisive and set sections of the community against each other.

### ALL TRADITIONAL OWNER GROUPS NEED TO BE REPRESENTED

A strong message from all treaty engagement is that it is essential to find a role and a voice for all Traditional Owner groups in the Assembly model to ensure the Assembly maintains legitimacy in the treaty process.

## TRADITIONAL OWNER GROUPS WITHOUT FORMAL RECOGNITION

Consistently, Traditional Owners who don't yet have formal recognition said they feel excluded from the treaty process and asked if there could be a role for them in the Assembly model. A recurring theme was exploring how Traditional Owner groups who do not have formal recognition could be involved in the process, and have a voice in the Assembly. This was not limited to Traditional Owners who don't have formal recognition, it was often raised by those Traditional Owner groups who will have a reserved seat on the Assembly.

Concerns were expressed about the lack of specific extra resources allocated to groups in areas without formal recognition to either to progress their formal recognition or assist them with nominating candidates. Some were concerned that candidates from formally recognised groups were more likely to get elected as they could potentially gain additional campaign support from their Traditional Owner corporation and its extended network.

It was often noted that as the majority of the areas not currently covered by formal recognition lie along the Victorian State boundary and are a distance from Melbourne, this creates an added burden for Traditional Owner groups in these areas who have limited or no resources.

## POTENTIAL FOR STACKING

Many participants were concerned about representation within the Assembly. There was a fear that the 11 reserved seats may be outweighed by the 21 general seats, and that the Assembly could be unrepresentative with the potential for block voting and 'stacking'.

There was also a fear expressed in many meetings about the possibility that non-Aboriginal people might enrol and vote – as there is no evidence of Aboriginality required for enrolment.

## 4. COMMUNICATION AND CONSULTATION HAS NOT BEEN CONSISTENT ACROSS ALL TRADITIONAL OWNER GROUPS

Concern was expressed by several Traditional Owner groups and corporations that the initial consultation process, including consultation around the development of the Assembly model, did not include all Traditional Owner groups. Concern was also expressed that the information about the treaty process had not been comprehensively delivered to all Victorian Traditional Owners. Information about the treaty process, the Assembly and the election was considered complex and adequate time was required to absorb the detail. There were many requests to hold more workshops and forums with Traditional Owners to discuss the issues.

Specific concern was raised about the need to get information to Traditional Owners who are not currently living in Victoria. In response to this concern, the Federation arranged for information about the Assembly and the treaty process be mailed out to all Traditional Owners on the data base held by First Nations Legal & Research Services. This included many Traditional Owners who do not currently reside in Victoria.

## 5. ROLE OF ELDERS

Key features of the discussion throughout the engagement included the importance of Elders in the treaty process along with universal agreement that consultation with Elders should have come a lot earlier in the process.

Participants felt that the spiritual and cultural wisdom of Elders should contribute to the process and their role should be affirmed and protected. There should also be a place where youth are represented too because Elders are more likely to be elected to the Assembly. Participants emphasised that they want the voices of both Elders and young people to be represented.



## 6. THERE HAS NOT BEEN ADEQUATE TIME TO ABSORB AND UNDERSTAND THE PROCESS

Concern was consistently raised about the timing of the process to establish the Assembly. A recurring message was that there has not been enough time to absorb and understand the process. While treaty is seen as an important opportunity, Traditional Owners are only just beginning the conversations around treaty.

While the extended timeframes were universally welcomed, concern remained about the lack of time to hold progressive conversations to enable Traditional Owners to engage with and understand the information about the treaty process.

Concern was also expressed that the timeframe for elections was insufficient for Traditional Owner corporations to carry out consultations with their Traditional Owner community and effectively participate in all elements of the election (both in the election and reserved seat processes).

## 7. MORE RESOURCES ARE REQUIRED TO SUPPORT TRADITIONAL OWNER GROUPS TO CONSULT AMONG THEMSELVES AND EFFECTIVELY PARTICIPATE

To achieve true self-determination, some participants felt that Traditional Owner groups should have been allocated resources to hold their own consultations with their group to prepare for the Assembly election in relation to both the general seats and reserved seats. There was a clear request that Traditional Owner corporations need to be adequately resourced to carry out the proposed processes in accordance with their corporate and cultural governance processes and obligations.

In addition, Traditional Owners requested increased access to resources to assist them to understand and meaningfully participate in the treaty making process and to put them on an even footing with the State.

## 8. THE ROLE, RESPONSIBILITIES AND ACCOUNTABILITY FOR MEMBERS OF THE ASSEMBLY

### ROLE AND RESPONSIBILITIES

Prospective candidates sought further information about the duties and accountabilities of Assembly members to the constituents within their electoral area as well as the anticipated time commitment. Concern was expressed by potential candidates after candidate nominations were open, that the corporate constitution of the Assembly was not available, yet candidates had to agree to be bound by the constitution as part of the nomination process.

### ACCOUNTABILITY

A key issue raised in regard to the Assembly was the need for accountability. There was a view that the person elected is to be a mechanism to represent the people and has to be held accountable to the community. Regular communication with the community was seen as a key aspect of accountability.

The ensuing issues around ongoing trust of authority and governance processes was a common theme and attendees discussed their wariness of participating in the elections without knowing how their representatives would be accountable to them. One Traditional Owner corporation was using some of its grant funding to engage legal advice around devising a charter of responsibilities and accountability for their reserved seat representative.

There was good understanding why Registered Aboriginal Parties (RAPs) are the chosen vehicle for selecting reserved seat holders. However, given the diversity of decision-making and governance structures within Victoria's RAPs and no clear standard or expectation for representation and accountability, concerns were raised as to what this means for appointing Assembly members to the reserved seats.

## REMUNERATION, RESOURCES AND SECRETARIAL SUPPORT FOR ASSEMBLY MEMBERS

Many prospective candidates wanted to know what the remuneration would be for Assembly members and further clarity was requested in relation to the three levels of remuneration within the Assembly (General Assembly member, Cabinet member and Co-Chair).

Questions were often asked about the financial resources that would be available to Assembly members to enable them to engage with their constituents in order to take issues back to the Assembly. The question of what secretarial support will be provided to the Assembly was raised consistently, who would provide this and what it would be.

Campaign support available to candidates was often raised and consistently the feedback was that \$500 offered by VTAC was inadequate, especially for candidates from areas without formal recognition where there are no or limited existing corporate structures.

## 9. THE INTERSECTION BETWEEN THE TREATY PROCESS AND OTHER FORMAL RECOGNITION PROCESSES

Participants shared concern about how treaty would interact with and complement their rights under the *Aboriginal Heritage Act 2006* (Vic), *Traditional Owner Settlement Act 2010* (Vic) and *Native Title Act 1993* (Cth). Considerable time, energy and resources have been put into seeking recognition under the existing structures.

Cultural survival, connection to and control of land and resources continues to be of fundamental importance to Traditional Owners who participated in the Federation's treaty engagement and there was a strong hope that treaty would enhance these things. Questions remained about how the different formal recognition processes would interact and complement each other.

A common concern was the risk that the Commonwealth Government could override treaty agreements.

# TRADITIONAL OWNER ASPIRATIONS FOR TREATY

While the existing Assembly model was described by participants as not being perfect, on the whole Traditional Owners were enthusiastic about the opportunities the current Victorian treaty process offers.

In summary, treaty is seen as having great potential to improve recognition, fulfil obligations to Country, enhance economic opportunities and target social outcomes for Traditional Owner communities.

Comments included:

*The door is currently open we should make it work while we have the opportunity.*

*The journey towards treaty in Victoria is an unprecedented opportunity to embark on a mature relationship between Traditional Owners and the State which is long overdue.*

*Our Elders fought for this.*

*We need to get involved if we want to have our voice heard and have the government take us seriously.*

*The model isn't perfect but we can build on this opportunity over time.*

*We've got to stop dealing in hopelessness and start dealing in hope.*

*Treaty will be what we make it.*

*Treaty is a stepping stone and we've got little ones relying on us.*

Participants expressed a variety of views on what they hope to gain from treaty, as summarised below:

<b>Recognition</b>	Formal recognition of Traditional Owners as First Peoples. Having legal recognition and legal responsibility for governance over our Country. Recognition also included a desire for First Nations art and culture to be more visible
<b>Empowerment</b>	Along with self-determination, empowerment was a key theme in all treaty discussions. At the heart of treaty there needs to be power shift from government and its agencies to give Traditional Owners more control. Reserved seats in Parliament were often mentioned as a core aspiration.
<b>Sovereignty</b>	Sovereignty was identified one of the main priorities for participants. Traditional Owners want the right to make decisions about their own communities. There were however questions as to how sovereignty would be recognised, whether Traditional Owner groups would become a sovereign state and whether or not the Victorian Government has the capacity to recognise sovereignty.
<b>Culture and language</b>	Treaty provides an opportunity to strengthen culture and re-invigorate traditional languages.
<b>Constitutional Protection</b>	Participants would like treaties enshrined in the Victorian Constitution as a formal and legally binding recognition and protection. Participants did not want treaty to be something that could be taken away in the future. Treaty is also for the benefit of future generations, so that they do not experience the hardships of their forbearers.
<b>Addressing past wrongs</b>	How will the stolen generations be addressed by treaty?
<b>Compensation</b>	A treaty is an opportunity to provide reparations for past wrongs. Exemption from taxes and rates was raised as a possible form of reparation, along with royalties or a percentage of stamp duties set aside for Traditional Owners.
<b>Healing</b>	Treaty-making should encourage healing and be conducted in a manner that is culturally safe. Formal recognition of Traditional Owners is an important element of treaty, along with recognition of 'truth and stories' and the role of 'healing through truth telling'. Treaty provides an opportunity to set up a truth commission to recognise the true history of this land.
<b>Land and Resources</b>	Treaty should enhance connection to and control of land and resources, including legal responsibility and governance. This should move forward towards complete traditional custodianship, including full control and management of parks, reserves and waters.
<b>Add to and Protect Existing Frameworks</b>	Treaty should play a role in protecting and adding to existing recognition processes. It is important that it does not undermine the existing systems of recognition under the <i>Aboriginal Heritage Act 2006</i> (Vic), <i>Traditional Owner Settlement Act 2010</i> (Vic) and <i>Native Title Act 1993</i> (Cth).
<b>Economic Development</b>	Treaty should also provide jobs and commercial rights, including priority access to economic opportunities
<b>Education</b>	Education in schools needs to address Australia's true history and the importance of Aboriginal culture.
<b>Adaptability</b>	Treaty also needs to have the flexibility to adapt to future changes in politics and community needs.
<b>Community Awareness</b>	As treaty facilitates reconciliation, some participants suggested that we need to educate the whole community about treaty to raise awareness and seek support for this process.

# EXTERNAL FACTORS THAT IMPACTED ON ENGAGEMENT

**The ability to engage with Traditional Owner groups on such a significant and complex issue was managed through strong networks and ensuring the information available was up to date. However, a range of factors hampered the Federation's ability to engage as fully as possible, including the lack of available resources to support Traditional Owners to get to meetings and the many concurrent demands on Traditional Owner groups. Engagement with the treaty process was not always a high priority for Traditional Owners.**

Specific issues that impacted on the Federation's engagement included:

- The current demands on Traditional Owner groups and their limited resources, including the rigorous requirements of formal recognition processes, often meant it was difficult for groups to put time and energy aside for treaty conversations. Traditional Owner groups across the State are at different stages of development but all face the same challenges of being under-resourced to meet community expectations.
- The Federation's treaty engagement occurred during a period of many external and concurrent Government engagement processes. The purpose of each of these consultation processes was often not clearly understood and this created confusion and consultation fatigue. Feedback from Traditional Owner groups was that consultation processes need to have a clear purpose and outcome and over consultation needs to be avoided.
- The introduction of the Aboriginal Victoria Community Engagement Grants Program in mid-2018 provided an opportunity for some Traditional Owner groups - along with many Aboriginal Community Controlled Organisations (ACCOs) - to undertake their own engagement. The Federation provided support to groups who were the recipients of these grants when requested, but has generally not been able to draw on any consistent or comprehensive feedback.
- Lack of funding for travel assistance – this was a key issue across most engagement opportunities and impacted on the number of Traditional Owners who were able to attend treaty meetings, especially those held on Country.
- During the engagement process, there were differing perspectives within the Traditional Owner community about the treaty process and the proposed model for the First Peoples Assembly of Victoria. This had an impact on the willingness of some Traditional Owners and Traditional Owner groups to engage in the Federation's treaty engagement process.
- The lack of time and resources to continue the engagement process in light of the many requests for more engagement and communication allowing time to absorb details and gather information.

# TREATY ENGAGEMENT MEETINGS BY LOCATION

AUGUST 2018 – AUGUST 2019





[www.fvtoc.com.au](http://www.fvtoc.com.au)

