

# Parliament of Victoria

## Statewide Treaty Bill 2025

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No. 4 | October 2025

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Bill Brief

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*Aboriginal and Torres Strait Islander readers are advised that the following contains the name of a person who has died.*

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## Bill information

**Introduced:** 9 September 2025

**House:** Legislative Assembly

**Second Reading:** 9 September 2025

**Commencement:** Part 1, Part 18, Division 1 of Part 19 and section 229 come into operation on the day after the day on which this Act receives the Royal Assent. The remaining provisions of this Act come into operation on 1 May 2026.

Links to key documents including the Bill, Explanatory Memorandum, Statement of Compatibility and Second reading Speech can be found at the [Library's Infolink page for this Bill](#).

For further information on the progress of this Bill, please visit the [Victorian Legislation and Parliamentary documents website](#).

## Executive summary

The Statewide Treaty Bill 2025 was introduced into the Legislative Assembly on 9 September 2025. If it passes both Houses of Parliament, it will give effect to the first treaty in Australia between First Peoples and a state or territory government. This Bill Brief will provide an overview of the development of the Bill and the process leading up to its introduction. This paper should not be seen as providing legislative interpretation or legal advice, nor is it an exhaustive summary of the Bill. It is meant as a brief overview of the context and content of the legislation in order to assist Members in further research and debate.

A treaty is a binding agreement between two parties, but this means different things in different contexts. In the case of treaties between governments and Indigenous peoples, key aims may include land and economic settlements, policy programs, resolving historical grievances, and developing ways to work together in the future. Some countries, such as New Zealand, Canada and the United States, have historical treaties with Indigenous peoples. However, in part because of the legal concept of *terra nullius*, this did not occur in Australia at the time of European settlement.

There have been calls for Treaty at a federal level in Australia for many years, and it is a key part of the Uluru Statement from the Heart. The statement's three main pillars are: Voice, Treaty and Truth. In 2016, the Victorian Government announced a policy of advancing self-determination for First Nations people in Victoria. Since then, many groups and people have been working towards Treaty, including the Aboriginal Treaty Working Group, the Aboriginal Community Assembly, the Victorian Treaty Advancement Commissioner and Victorian Treaty Advancement Commission, the First Peoples' Assembly of Victoria, and the Treaty Authority. Treaty negotiations officially began in November 2024.

The Bill will replace the First Peoples' Assembly of Victoria as the Aboriginal Representative Body with a new body called Gellung Warl. Gellung Warl will have three arms, each with their own distinct roles. These are:

- The **First Peoples' Assembly** will be the decision-making arm of Gellung Warl and will be able to represent and advocate for First Peoples to Parliament, the Victorian Government, state authorities and state-funded providers. Members of the Assembly will include people elected as well as those appointed by each Traditional Owner group. Each year, the Assembly will be allowed to address the Victorian Parliament and meet with the Cabinet, departmental secretaries and the Chief Commissioner of Police. Members of Parliament will be required to prepare a statement on Treaty compatibility when they introduce a Bill into Parliament.
- **Nyerna Yoorrook Telkuna** will be a truth-telling body that will continue the work of the Yoorrook Justice Commission. It will be able to investigate historical events to facilitate truth-telling and promote reconciliation.
- **Nginma Ngainga Wara** will be an independent outcomes and justice commission to provide an accountability mechanism that will monitor and evaluate the performance of the state in achieving better outcomes for First Peoples. It will be able to conduct inquiries and make recommendations in reports submitted to the Assembly.

Responses to the Bill and Treaty have varied. The opposition is critical of the proposal, while there have been a range of responses from the crossbench, some for and some against.

If the Bill passes Parliament, Victoria will be the first Australian jurisdiction to develop a treaty, but it is not the only jurisdiction to have worked towards one. The Northern Territory, Queensland, Tasmania and Western Australia had all begun the process of developing treaties; however, changes in government or in the political climate have seen these states cease their processes. South Australia, New South Wales and the Australian Capital Territory are all still working towards developing their own treaties.

# Introduction

A process for Treaty in Victoria between the Victorian Government and the region's First Peoples has been progressing for a significant amount of time. The Andrews government first announced its commitment to facilitating First Nations peoples' self-governance in 2016. Since then, the Victorian Treaty Advancement Commission, the Treaty Authority, and the First Peoples' Assembly of Victoria have been working towards developing a Treaty.

The Statewide Treaty Bill 2025 was introduced to the Victorian Parliament on 9 September 2025 and seeks to give effect to a Statewide Treaty as negotiated with the Victorian Government by the First Peoples' Assembly of Victoria. This Bill Brief provides an explanation of what a treaty is, and the process Victoria went through to develop the Treaty and this Bill. The paper then provides an overview of the key elements of the Bill, mainly establishing Gellung Warl, the First Peoples' Assembly of Victoria,<sup>1</sup> Nyerna Yoorrook Telkuna (a truth-telling body) and Nginma Ngainga Wara (an outcomes and justice commission).

A number of stakeholders—including representatives of political parties, First Peoples communities and institutions—have responded to the introduction of either Treaty or the Bill itself, some of which are summarised in this paper. As Victoria would become the first jurisdiction in Australia develop a Treaty, a jurisdictional comparison detailing where other states and territories and other countries are in this process is also included.

Please note that this paper should not be seen as offering legislative interpretation or legal advice, nor is it an exhaustive summary of the Bill. It is meant as a brief overview of the context and content of the legislation in order to assist Members in further research and debate.

## 1 | Treaties in Australia and Victoria

### What is a treaty?

A treaty is a binding agreement between two parties. Treaties can be agreed between governments but can also be established between other groups such as nations, states and peoples.<sup>2</sup> A treaty can mean many things depending on the context, the parties involved and the outcomes aspired to. In the case of treaties between governments and Indigenous peoples, key aims may include 'settling fundamental grievances, and establishing binding frameworks of future engagement and dispute resolution'.<sup>3</sup> Other features could include land and economic settlements and policy programs.<sup>4</sup>

For modern treaties, negotiators must ensure treaty agreements are compatible with existing legislative and legal frameworks and address questions of validity, durability and effectiveness.<sup>5</sup>

There is general agreement that any modern treaty with Indigenous peoples must contain three key elements:

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<sup>1</sup> Note that the current First Peoples' Assembly of Victoria is a non-statutory body established in 2019 as the Aboriginal Representative Body, and is abbreviated as FPAV. Where the paper refers to the First Peoples' Assembly of Victoria that will be part of Gellung Warl as established by the Bill, it is referred to as 'the Assembly'. Any references to the Victorian Parliament's Legislative Assembly are spelled out in full.

<sup>2</sup> M. Dodson (2021) 'We dare to hope: Treaty-making in Australia', in Hobbs, Whittaker & Coombes (eds) *Treaty-making: two hundred and fifty years later*, Sydney, The Federation Press, p. 205.

<sup>3</sup> H. Hobbs et al. (2023) 'What actually is a treaty? What could it mean for Indigenous people?', *The Conversation*, 3 April.

<sup>4</sup> S. Brennan et al. (2005) *Treaty*, Sydney, The Federation Press, pp. 133–134.

<sup>5</sup> C. Saunders (2021) 'Treaty-making in Australia: the non-Indigenous party', in Hobbs, Whittaker & Coombes (eds) *Treaty-making: two hundred and fifty years later*, Sydney, The Federation Press, pp. 43–60; A. Petrie & M. Graham (2018) *Treaty discussions in Australia: an overview*, May, Parliamentary Library & Information Service, Melbourne, Parliament of Victoria.

1. acknowledgement that the Indigenous peoples are a ‘distinct political community’ and were prior owners and occupiers of the land now claimed by the state, and that the state is responsible for the deep injustices and is committed to making amends;
2. a fair negotiation process that is engaged in good faith and involves working as equals towards a mutually beneficial resolution; and
3. recognition of the sovereignty of the Indigenous peoples and the provision for spaces, resources or structures ensuring Indigenous communities can exercise their sovereignty through self-government.<sup>6</sup>

The right of Indigenous peoples to negotiate treaties and instruments of self-governance is also enshrined in the United Nations Declaration on the Rights of Indigenous Peoples, which was signed by Australia in 2009 and provides underlying principles for a state’s engagement with Indigenous peoples and the participation of Indigenous peoples in all aspects of life.<sup>7</sup>

## Historical treaties

Historically, many treaties have been signed between colonising groups and the Indigenous peoples of colonised lands and waters—for example, between the British Crown and Indigenous peoples of lands that would become Canada and New Zealand, and between the Federal Government of the United States and its Native American nations (read more on treaties in other jurisdictions in the ‘Jurisdictional comparison’ section).<sup>8</sup>

Historical treaties and modern ones differ considerably. While modern treaties with Indigenous peoples are built on key principles outlined above, treaties negotiated in past centuries have often been subject to historical power imbalances and have been routinely broken. In the United States, for example, many of the treaties the Federal Government signed with Native American nations between 1778 and 1871 were forced upon those nations or ignored years later. Some Native Americans have referred to these agreements as ‘talking leaves’ as a comparison with how easily leaves could blow away.<sup>9</sup>

The ruling of *terra nullius*—the British Empire’s claim that Australia was unoccupied, empty land—meant that Australia’s First Peoples’ sovereignty was not recognised in the same way Indigenous peoples of North America and later New Zealand were, making these types of treaties impossible under British law in colonial Australia.<sup>10</sup>

## Treaty in Australia

In Australia, there has never been a formally recognised treaty between any party and the land’s Indigenous peoples. There have been recurrent calls for Treaty from First Nations Australians, particularly since the 1967 national referendum, in which Australians voted to allow the Commonwealth to legislate for Aboriginal peoples and include them in the national census.<sup>11</sup>

On a federal level, discussion of Treaty with Indigenous Australians had particularly strong support during the 1970s, with the Aboriginal Treaty Commission, and the 1980s, with the Barunga Statement.<sup>12</sup> The 1997 Mabo High Court case overturned the concept of *terra nullius*, acknowledging Australia’s Indigenous peoples have inherent rights as prior owners and

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<sup>6</sup> Australians for Native Title and Reconciliation (2022) *Factsheet: What is Treaty?*, Strawberry Hills, ANTAR; Dodson (2021) op. cit.; Hobbs et al. (2023) op. cit.

<sup>7</sup> Australian Human Rights Commission (2010) *The Community Guide to the UN Declaration on the Rights of Indigenous Peoples*, 13 December, AHRC.

<sup>8</sup> Saunders (2021) op. cit., p. 46.

<sup>9</sup> National Archives (US) (date unknown) ‘Rights of Native Americans’, Records of Rights website.

<sup>10</sup> Brennan et al. (2005) op. cit., p. 14.

<sup>11</sup> Petrie & Graham (2018) op. cit.

<sup>12</sup> Australian Institute of Aboriginal and Torres Strait Islander Studies (2022) ‘The Barunga Statement’, AIATSIS website; A. Thomas et al. (2023) ‘Before the Barunga Declaration, there was the Barunga Statement, and Hawke’s promise of Treaty’, *The Conversation*, 23 June.



occupiers of the land, making Treaty reminiscent of those in Canada and New Zealand more possible.<sup>13</sup>

Calls for a national Treaty grew again following the issuing of the *Uluru Statement from the Heart* in 2017.<sup>14</sup> The statement was the result of a gathering of the First Nations National Constitutional Convention, held by the Referendum Council. It urged reform on Indigenous rights and contained three main pillars: Voice, Treaty and Truth. The statement called for a First Nations Voice to the Australian Parliament as well as a Makarrata commission overseeing truth-telling and treaty-making.<sup>15</sup>

Since the Voice referendum's defeat in 2023, the re-elected Albanese government has not indicated whether it still intends to progress a Makarrata Commission but has expressed support for states pursuing truth-telling, 'particularly Victoria'.<sup>16</sup> In its 2022 policy document *Treaty for Victoria*, the Victorian Government stated that it was committed to 'all elements of the *Uluru Statement from the Heart*—Voice, Treaty, and Truth'.<sup>17</sup>

### 'Batman's treaty'

In 1835, colonial explorer John Batman produced a document he claimed was signed by several groups of local First Nations people from the area surrounding the Yarra River.<sup>18</sup> Batman argued the document was a 'treaty' with these groups that handed over 500,000 hectares of land.<sup>19</sup> This 'treaty' was repudiated by the New South Wales Governor later that year on the basis that only the Crown could make such agreements, and Batman was acting on behalf of the Port Phillip Association, rather than the Crown.<sup>20</sup>

While Batman called it a treaty, most historians describe the document as unreliable. The Yoorrook Justice Commission also found that the document, which was written in English and 'bore no trace of Aboriginal cultural lore or understanding', was seen by the Kulin nations as 'an agreement for temporary access—akin to a Tanderrum, or visitor's visa—... manipulated into a claim to the land'.<sup>21</sup> Furthermore, the Governor's proclamation repudiating the treaty insisted that the land of Australia was 'unoccupied Crown land', and that Indigenous Victorians had no claims of ownership or occupancy over it.<sup>22</sup>

## 2 | Recent background

Table 1, starting on the following page, details developments in the Victorian Treaty process since 2016.

<sup>13</sup> Brennan et al. (2005) op. cit., p. 4; B. Attwood (2009) *Possession: Batman's Treaty and the matter of History*, Melbourne, The Miegunyah Press, p. 2.

<sup>14</sup> Referendum Council (2017) *Uluru Statement from the Heart*, Uluru, Referendum Council.

<sup>15</sup> *ibid.*

<sup>16</sup> C. Williams et al. (2025) 'First Nations leaders urge 'bold' reforms on truth, treaty and closing the gap', *ABC News*, 14 May; E. Staszewska (2025) 'Federal government admits handballing truth-telling process as only 'half a person' employed', *SBS News*, 7 October.

<sup>17</sup> Victorian Government (2022) *Treaty for Victoria*, Melbourne, First Peoples - State Relations.

<sup>18</sup> Brennan et al. (2005) op. cit., pp. 13–14.

<sup>19</sup> *ibid.*

<sup>20</sup> *ibid.*

<sup>21</sup> Yoorrook Justice Commission (2025) *Yoorrook: Truth be told*, Melbourne, Parliament of Victoria, p. 22.

<sup>22</sup> R. J. Miller & H. Hobbs (2023) 'Unraveling the International Law of Colonialism: Lessons from Australia and the United States', *Michigan Journal of Race and Law*, 28, p. 294.

**Table 1: Victoria's journey to Treaty**

2016	Aboriginal Treaty Working Group and early consultation
<p>The Victorian Government first announced its policy of advancing self-determination for First Nations Victorians in March 2016.<sup>23</sup> In July the government established the interim Aboriginal Treaty Working Group (ATWG), whose membership consisted of Victorian Traditional Owners representing Traditional Owner, cultural heritage and Aboriginal community-controlled groups.<sup>24</sup></p> <p>The ATWG led consultations with First Nations communities across the state and worked with the Department of Premier and Cabinet to design and establish the 'Aboriginal Community Assembly'.<sup>25</sup></p>	
September–November 2017	Aboriginal Community Assembly
<p>The ATWG announced in September 2017 that it was establishing an Aboriginal Community Assembly (ACA) made up of First Nations community members.<sup>26</sup> The ACA would provide advice to the ATWG on how an 'Aboriginal Representative Body' for First Nations Victorians would look, who could be elected and how voting would work.</p> <p>The ACA, made up of 33 members—13 from metropolitan Melbourne and 20 from regional Victoria—met in November over six days.<sup>27</sup> From these meetings, the ACA made recommendations to the ATWG, which in turn would report its findings to the incoming Victorian Treaty Advancement Commission.</p>	
December 2017–March 2018	Victorian Treaty Advancement Commission establishment
<p>In December 2017 the Victorian Government announced the appointment of Gunditjmara woman Jill Gallagher AO as the Victorian Treaty Advancement Commissioner.<sup>28</sup> The Victorian Treaty Advancement Commission was launched in January 2018 and received the final report of the ATWG in March 2018, taking over the group's work.<sup>29</sup></p> <p>The commission was designed to build on the information gathered through the ATWG and the ACA, and ultimately create the proposed Aboriginal Representative Body. The commission would also administer the elections for the body and then cease to exist once the Aboriginal Representative Body was established.<sup>30</sup></p>	

<sup>23</sup> N. Hutchins, Minister for Aboriginal Affairs (2016) *Statement on self-determination*, media release, 26 March.

<sup>24</sup> J. Gallagher (2021) 'The work of the Victorian Treaty Advancement Commission to bring us closer to treaties in Victoria', in Hobbs, Whittaker & Coombes (eds) *Treaty-making: two hundred and fifty years later*, Alexandria, The Federation Press, pp. 222–223.

<sup>25</sup> N. Hutchins, Minister for Aboriginal Affairs (2016) *Aboriginal Victorians talk Treaty*, media release, 18 July.

<sup>26</sup> N. Hutchins, Minister for Aboriginal Affairs (2017) *Aboriginal Victorians to design representative body*, media release, 7 September.

<sup>27</sup> N. Hutchins, Minister for Aboriginal Affairs (2017) *Assembly gathers in another step towards Treaty*, media release, 15 November.

<sup>28</sup> L. Donnellan, Acting Minister for Aboriginal Affairs (2017) *New commissioner to advance journey to Treaty*, media release, 13 December.

<sup>29</sup> First Peoples – State Relations (2025) 'Pathway to Treaty', First Peoples – State Relations website.

<sup>30</sup> Gallagher (2021) op. cit., p. 239.

June 2018	<i>Advancing the Treaty Process with Aboriginal Victorians Act 2018</i>
<p>The <i>Advancing the Treaty Process with Aboriginal Victorians Act 2018</i> ('Advancing Treaty Act') passed the Parliament on 21 June 2018, with a commencement date of 1 August 2018.<sup>31</sup> It was the first piece of treaty legislation passed in any Australian parliament and established a roadmap for treaty negotiations between the Victorian Government and Victorian First Nations peoples.<sup>32</sup></p> <p>The key purposes of the Act included:</p> <ul style="list-style-type: none"> <li>• advancing the treaty process;</li> <li>• establishing that the Aboriginal Representative Body would be the sole representative of Aboriginal Victorians in future treaty negotiations;</li> <li>• enshrining the treaty process; and</li> <li>• requiring the Aboriginal Representative Body to work with the state to establish elements necessary for future treaty negotiations.<sup>33</sup></li> </ul>	
2019	First Peoples' Assembly of Victoria
<p>In February 2019 the Victorian Treaty Advancement Commissioner Jill Gallagher declared that the Aboriginal Representative Body should be known as the First Peoples' Assembly of Victoria (FPAV).<sup>34</sup> The FPAV's initial aim was to work with the government to lay groundwork for Treaty, including establishing a treaty authority, a negotiation framework, and a self-determination fund.</p> <p>Between September and October 2019, the FPAV held its general elections, electing 31 members, including 11 reserved member seats representing each formally recognised Traditional Owner group and 21 general member seats.</p> <p>On 9 December 2019, the Minister for Aboriginal Affairs, Gavin Jennings, declared the FPAV to be the Aboriginal Representative Body, as required by the Advancing Treaty Act.<sup>35</sup></p> <p>In May 2023, the FPAV held its second statewide election, with the specific intent of this Assembly negotiating Treaty with the government.<sup>36</sup></p>	
2021	Treaty negotiation protocols
<p>In April 2021, the FPAV and the Victorian Government agreed to a set of treaty protocols, as required under the Advancing Treaty Act.<sup>37</sup> Also called Phase 2 of the treaty processes, the FPAV and the government worked together to establish four elements necessary to support treaty negotiations:</p> <ul style="list-style-type: none"> <li>• a dispute resolution process</li> <li>• a treaty authority</li> <li>• a treaty negotiation framework</li> <li>• a self-determination fund.<sup>38</sup></li> </ul> <p>A dispute resolution process was agreed to in January 2021.<sup>39</sup></p>	

<sup>31</sup> *Advancing the Treaty Process with Aboriginal Victorians Act 2018*.

<sup>32</sup> First Peoples – State Relations (2025) op. cit.

<sup>33</sup> M. Graham & A. Petrie (2018) *Advancing the Treaty Process with Aboriginal Victorians Bill 2018*, May, Parliamentary Library & Information Service, Melbourne, Parliament of Victoria, p. 5.

<sup>34</sup> Victorian Treaty Advancement Commission (2019) 'New name, more rights for traditional owners', Victorian Treaty Advancement Commission (archived), Web Archive, archived 6 March 2019.

<sup>35</sup> First Peoples – State Relations (2025) op. cit.

<sup>36</sup> First Peoples' Assembly of Victoria, (2023) *The Assembly's statewide Elections 2023*, media release, 11 May.

<sup>37</sup> First Peoples – State Relations (2025) op. cit.

<sup>38</sup> First Peoples – State Relations (2022) *Advancing the Victorian Treaty Process: Annual report 2020–21*, June, Melbourne, Victorian Government.

<sup>39</sup> *ibid.*, p. 13.



2021	Yoorrook Justice Commission
<p>The Yoorrook Justice Commission was formally established in May 2021 by Letters Patent after being called for by the FPAV and supported by the Victorian Government.<sup>40</sup></p> <p>Yoorrook was established to facilitate truth-telling, which FPAV established as a ‘building block’ of Treaty.<sup>41</sup> With the investigative powers of a Royal Commission, Yoorrook was tasked with hearing and reporting historical and contemporary injustices against Indigenous Victorians and the ongoing impact of colonisation. Yoorrook has since tabled three reports (and several interim reports) and was concluded on 30 June 2025.</p>	
June–August 2022	Treaty Authority
<p>The Treaty Authority, as agreed to by the FPAV and the government, was established by the <i>Treaty Authority and Other Treaty Elements Act 2022</i> and the Treaty Authority Agreement, which was signed on 10 June 2022.<sup>42</sup></p> <p>The Treaty Authority has been called an ‘independent umpire’ for the treaty processes, both for the Statewide Treaty and any other treaties that may occur in the future (for example, between individual Traditional Owner groups and the government).<sup>43</sup></p> <p>After the establishment of the Treaty Negotiation Framework, the Treaty Authority would also ensure that processes in the negotiations adhered to this framework.</p>	
October 2022	Treaty Negotiation Framework
<p>On 20 October 2022, the Victorian Government and the FPAV agreed to the Treaty Negotiation Framework, which was a requirement of the treaty process under the Advancing Treaty Act.<sup>44</sup></p> <p>The framework sets out the requirements for treaty-making in Victoria, including ‘how negotiations are conducted, and what subject matter Treaty negotiations in Victoria can cover’.<sup>45</sup> Amongst other requirements, the framework outlines core principles that must be upheld during Treaty, the roles of various groups and authorities in the process, and standards of conduct and negotiation.<sup>46</sup></p>	
May 2023	Second First Peoples’ Assembly election
<p>In May 2023 the FPAV held its second election, stating that the newly elected Assembly’s main role would be to represent First Peoples in treaty negotiations.<sup>47</sup> The results were announced in June.<sup>48</sup></p> <p>The Statewide Treaty Bill 2025 will replace the FPAV, the current Aboriginal Representative Body, with Gellung Warl under the Advancing Treaty Act. Gellung Warl will contain a permanent First Peoples’ Assembly of Victoria with expanded powers and functions (see ‘The Bill’ section).</p>	

<sup>40</sup> *ibid.*

<sup>41</sup> First Peoples’ Assembly of Victoria (2025) ‘[Frequently Asked Questions](#)’, FPAV website.

<sup>42</sup> The Treaty Authority and Other Treaty Elements Bill 2022 was introduced on 6 June 2022 and given Royal Assent on 23 August, after passing Parliament earlier that month. The Treaty Authority Agreement was therefore signed between the Bill’s introduction and the Act’s Royal Assent. Treaty Authority (2025) ‘[How the Treaty Authority Performs its Role](#)’, Treaty Authority website.

<sup>43</sup> First Peoples – State Relations (2025) ‘Pathway to Treaty’, *op. cit.*

<sup>44</sup> First Peoples’ Assembly of Victoria & the State of Victoria (2022) *Treaty Negotiation Framework*, 20 October, Melbourne.

<sup>45</sup> First Peoples – State Relations (2025) ‘Pathway to Treaty’, *op. cit.*

<sup>46</sup> First Peoples’ Assembly of Victoria and the State of Victoria (2022) *op. cit.*

<sup>47</sup> First Peoples’ Assembly of Victoria (2023) *op. cit.*

<sup>48</sup> First Peoples’ Assembly of Victoria (2023) *Traditional Owners chosen to negotiate Treaty in Victoria*, media release, 17 June.

November 2024	Statewide Treaty Negotiations
<p>On Thursday, 21 November 2024, negotiations on a Statewide Treaty were officially opened in a ceremony in Darebin Parklands.<sup>49</sup></p> <p>Negotiations continued throughout 2025, with each round addressing the role and functions of each party following Treaty.</p>	
September 2025	Statewide Treaty Bill 2025
<p>The Statewide Treaty Bill 2025 was introduced to Parliament on 9 September 2025.</p> <p>On the same day, the FPAV and the government announced they had reached an in-principle agreement on Treaty and released a draft of the negotiated Treaty Agreement.<sup>50</sup></p>	

### 3 | The Bill

The Statewide Treaty Bill 2025 ('the Bill') was introduced in the Legislative Assembly and second read by the Premier on 9 September 2025.<sup>51</sup> Rather than have the second reading speech incorporated into Hansard, the Premier chose to read it out in its entirety. The following section provides a high-level overview of key sections of the Bill and is not intended to be legislative interpretation or legal advice. For more detail, please see the text of the Bill and its Explanatory Memorandum.

#### Purpose and preamble

The Bill was developed with the FPAV as the authorised group to negotiate a Statewide Treaty under the Treaty Negotiation Framework established under the Advancing Treaty Act.<sup>52</sup> The majority of the Act will commence on 1 May 2026. Part 1 (Preliminary), Part 18 (Transitional provisions—transitional elections), Division 1 of Part 19 (Transitional regulations) and section 229 (New section 8A inserted into the Advancing Treaty Act) will commence on the day on which the Act receives Royal Assent.<sup>53</sup>

The Bill's Preamble opens with an acknowledgement of the 'unique status' of Victoria's First Peoples, the 'unceded connection' they have with Country and reiterates that the Victorian Constitution recognises First Peoples as the 'original custodians' of Victoria.<sup>54</sup> The Preamble identifies 'historic wrongs and ongoing injustices' committed against First Nations people, the impact these have had on their community and asserts a desire for this Bill to create a 'renewed relationship' between the state and First Nations peoples.<sup>55</sup>

There is an emphasis on the future throughout the Preamble. It states that 'future generations of Victorian children will grow up in a state shaped by Treaty, truth and justice' and that all Victorians will benefit from Treaty.<sup>56</sup> There is also an emphasis on the development of Gellung Warl as a self-determined process that 'is an expression of

<sup>49</sup> First Peoples - State Relations (2025) 'Pathway to Treaty', op. cit.

<sup>50</sup> N. Murray et al., Co-Chairs of the First Peoples' Assembly of Victoria and Minister for Treaty and First Peoples (2025) *Joint statement on treaty negotiations: Negotiations finalised for Victoria's Treaty*, media release, 9 September; First Peoples' Assembly of Victoria and the State of Victoria (2025) *Statewide Treaty - Negotiated pending assent*.

<sup>51</sup> J. Allan, Premier (2025) 'Second reading speech: Statewide Treaty Bill 2025', *Debates*, Victoria, Legislative Assembly, 9 September, p. 3509.

<sup>52</sup> *Explanatory Memorandum*, Statewide Treaty Bill 2025, p. 1.

<sup>53</sup> *Statewide Treaty Bill 2025*, cl 3.

<sup>54</sup> *ibid.*, Preamble, p. 1.

<sup>55</sup> *ibid.*, Preamble, p. 3.

<sup>56</sup> *ibid.*, Preamble, p. 4.

Aboriginal Lore, Law and Cultural Authority and the responsibilities of Traditional Owners of Country in Victoria'.<sup>57</sup>

Clause 2 sets out the objects of the Bill:

- to give effect to the Statewide Treaty;
- to allow for future treaty-making between Gellung Warl and the state;
- to advance the rights and self-determination of First Peoples; and
- to address historical disadvantages of First Peoples.

Clause 2 also outlines that the Bill is underpinned by the following principles:

- that Gellung Warl is designed for and by First Peoples and 'sits at the centre of the Treaty relationship';
- that Gellung Warl will be an enduring part of Victorian politics;
- that Statewide Treaty-making will continue to include negotiation and agreement;
- that the state and Gellung Warl must continue to co-operate to ensure a better future for all Victorians; and
- that the transfer of decision-making, rule-making, advisory and other powers and functions to Gellung Warl and the state will be included in future negotiations surrounding Statewide Treaty-making.

Clauses 5 to 8 of the Bill outline further basic principles:

- Clause 5 states that this Act will not affect native title rights and interests. It must be interpreted as to not prejudice any rights and interests that have been recognised by the *Native Title Act 1993* (Cth).
- Clause 6 states that the state government, and the First Peoples' Assembly, Nyerna Yoorrook Telkuna or Nginma Ngainga Wara must act in good faith in their dealings with each other. In Clause 4, it is stated that the term 'State Government' does not include the Parliament or judicial branch.
- Clause 7 states that parliamentary privilege will be preserved. This is relevant for Parts 7 and 17 which relate to parliamentary process.
- Clause 8 outlines that the powers conferred on Gellung Warl, the First Peoples' Assembly, Nyerna Yoorrook Telkuna or Nginma Ngainga Wara are not coercive, and no entity can impose a penalty for non-compliance. This includes the power to request information or for a person to attend a hearing. This is restated in clauses 7, 8 and 75.

## Gellung Warl

While clause 10 officially establishes Gellung Warl, clause 9 outlines its objects:

- to increase outcomes for First Peoples;
- to be led by democratically elected representatives in a 'self-determining and deliberative way';
- to be part of the democratic landscape of Victoria;
- to respect Aboriginal Lore, Law and Cultural Authority; and
- to operate in a flexible, transparent, accountable way, with integrity and the correct oversight.

Gellung Warl will be a body corporate that consists of the First Peoples' Assembly, Nginma Ngainga Wara and Nyerna Yoorrook Telkuna, but the First Peoples' Assembly will be responsible for the 'overall architecture' of Gellung Warl.<sup>58</sup> Gellung Warl will also become the

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<sup>57</sup> 'Explanatory Memorandum', Statewide Treaty Bill 2025, p. 2.

<sup>58</sup> Statewide Treaty Bill 2025, cl 10(3)(a); 'Explanatory Memorandum', Statewide Treaty Bill 2025, p. 10.

Aboriginal Representative Body under the Advancing Treaty Act.<sup>59</sup> It will have a common seal and standard powers of a body corporate,<sup>60</sup> and will not be subject to Ministerial direction.<sup>61</sup>

## *The First Peoples' Assembly*

A new First Peoples' Assembly of Victoria ('the Assembly') is established by clause 17. The Assembly is to be a 'self-determined democratically elected, enduring institution for the political representation of First Peoples' and will be the decision-making arm of Gellung Warl.<sup>62</sup> It will be answerable to First Peoples.

The Assembly will consist of both general (i.e. elected) and reserved (i.e. appointed) members.<sup>63</sup> Reserved members will be appointed by Traditional Owner groups as set out in Schedule 2, item 4.

The functions of the new Assembly are set out in clause 18. These include (but are not limited to) the ability to:

- represent and advocate for the interests of First Peoples, including during future treaty negotiations;
- make representations to the Parliament, state government, authorities and state-funded providers;
- appoint the CEO of Gellung Warl, and members of Nginma Ngainga Wara and Nyerna Yoorrook Telkuna;
- work towards capacity-building in First Peoples' communities, including:
  - promoting fundamental human rights of First Peoples;
  - providing support, advice and education to or in relation to First Peoples;
  - carrying out research into issues relating to First Peoples;
  - managing and allocating funds, including making grants;
  - promoting the role of First Peoples community and organisation (e.g. establishing a First Peoples' Institute); and
  - participating in the ceremonial life of the state and representing First Peoples nationally and internationally; and to
- work with Traditional Owner groups to ensure that Victoria meets its obligations regarding the United Nations Declaration on the Rights of Indigenous Peoples.

Other functions of the Assembly are set out in Schedule B of the Statewide Treaty, which is allowed for in clause 18(1)(p) of the Bill. These commitments include:

- co-designing protocols for the ceremonial life of the state, including the use of First Nations flags, a dedicated room at Parliament House, and the display of Treaty Markers in Parliament House and other government buildings;
- the inclusion of truth-telling in the Victorian curriculum;<sup>64</sup>
- assisting with cultural competency training for public service staff;
- being a naming authority for specified geographical features under the Geographic Place Names Act 1998;
- establishing and operating the First Peoples' Infrastructure Fund; and
- taking over administration of the First Peoples' Awards and events from the Department of Premier and Cabinet—including the Victorian Aboriginal Honour Roll, the Victorian Aboriginal Remembrance Service, the Ricci Marks Awards and funding of the NAIDOC Committee to deliver its program of events.<sup>65</sup>

<sup>59</sup> Statewide Treaty Bill 2025, cl 222.

<sup>60</sup> *ibid.*, cl 11.

<sup>61</sup> *ibid.*, cl 13.

<sup>62</sup> *ibid.*, cl 16.

<sup>63</sup> *ibid.*, cl 17.

<sup>64</sup> First Peoples' Assembly of Victoria & the State of Victoria (2025) *Statewide Treaty - Negotiated pending assent op. cit.*, Schedule B, B2.

<sup>65</sup> Statewide Treaty Bill 2025, cl 18; First Peoples' Assembly of Victoria & the State of Victoria (2025) *Statewide Treaty - Negotiated pending assent op. cit.*, Schedule B.

Clause 19 sets out the powers of the Assembly. It states that the Assembly is ‘self-determining and deliberative’ and has ‘the power to do all things that are necessary or convenient to be done’. The Assembly has the power to delegate some of its functions and will employ a person to be CEO of Gellung Warl to support the three bodies.<sup>66</sup>

## Rules

Part 4 gives the Assembly the power to make substantive and internal rules.<sup>67</sup> This includes rules on how First Peoples organisations certify evidence that a person has been accepted as an Aboriginal and/or Torres Strait Islander person by the community, and rules regarding the structure and governance of the Assembly and Gellung Warl.<sup>68</sup> These rules must not be inconsistent with this new Act or any other (including Commonwealth legislation), and notice must be given to the relevant minister and the Chief Parliamentary Counsel of a rule.<sup>69</sup> The rules must be published on the Assembly’s website.<sup>70</sup>

The Parliament has the power to disallow a rule set by the Assembly through a vote in each House.<sup>71</sup> If a rule is disallowed, it must be posted in the Victorian Government Gazette.<sup>72</sup>

## Guidelines, standards and statutory appointments

Part 5 provides the Assembly with the mechanisms to make guidelines, standards and statutory appointments.<sup>73</sup> This includes guidelines and standards for promoting and protecting First Peoples’ cultural safety, and the sharing and trading of water rights.<sup>74</sup> These are outlined in Schedule 3—Content and subject matter for First Peoples’ Assembly guidelines and standards. One example given is a voluntary opt-in regulatory framework for a person or entity to apply for accreditation that they comply with cultural safety standards and guidelines.<sup>75</sup>

## Elections

Part 6 outlines the process for electing a member of the Assembly and appointing reserved members. The Assembly’s Electoral Officer will need to establish an electoral roll, distinct from the State and Federal electoral rolls.<sup>76</sup> There are also provisions for electoral disputes to be adjudicated by the Victorian Civil and Administrative Tribunal (VCAT), in accordance with Part 4 and Schedules 1 and 2.<sup>77</sup>

To be on the Gellung Warl electoral roll, you must be over 16 years of age and be either a Traditional Owner or an Aboriginal and/or Torres Strait Islander person residing in Victoria, who has been residing in Victoria for at least three of the previous five years prior to applying for registration on the electoral roll.<sup>78</sup> The EM expands on this:

Given past injustices committed against First Peoples, in part enabled through the State holding and controlling information about First Peoples, self-determination of the electoral roll and the information on it is of particular importance to ensure First Peoples can trust this democratic process.<sup>79</sup>

Items 1 and 6 of Schedule 2 contain the minimum contents that the Assembly needs to include in its electoral rules for the conduct of elections.

To be a member of the Assembly, a person must meet the requirements set out in internal rules but cannot be a Member of a state or Commonwealth parliament, local councillors or

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<sup>66</sup> Statewide Treaty Bill 2025, cl 20.

<sup>67</sup> *ibid.*, cl 30.

<sup>68</sup> *ibid.*, cls 32–33.

<sup>69</sup> *ibid.*, cls 34, 41.

<sup>70</sup> *ibid.*, cl 40.

<sup>71</sup> *ibid.*, cl 45.

<sup>72</sup> *ibid.*, cl 47.

<sup>73</sup> *ibid.*, cl 49.

<sup>74</sup> *ibid.*, cl 50.

<sup>75</sup> ‘Explanatory Memorandum’, Statewide Treaty Bill 2025, p. 38.

<sup>76</sup> Statewide Treaty Bill 2025, cl 55.

<sup>77</sup> *ibid.*, cl 59.

<sup>78</sup> *ibid.*, Schedule 2, cl 5.

<sup>79</sup> ‘Explanatory Memorandum’, Statewide Treaty Bill 2025, p. 31.

council staff, public sector employees or members of the Treaty Authority, Nginma Ngainga Wara, Nyerna Yoorrook Telkuna or Gellung Warl.<sup>80</sup> A member may be suspended or removed from office in accordance with the internal rules.<sup>81</sup>

As stated in Schedule 2, elections will be held on a fixed schedule, at least every four years and within six months of the end of term of general members. Reserved members will be appointed by each Traditional Owner group. The appointee will be selected using procedures developed and published by each Traditional Owner group as outlined in clause 62.

## Reports and addresses to Parliament

Part 7 outlines how the Assembly will address and report to Parliament. Each year, the Assembly will be allowed to address a joint sitting of the Legislative Assembly and Legislative Council ‘about any matters that the First Peoples’ Assembly considered affect First Peoples’.<sup>82</sup> Up to two members of the Assembly may present the address, which is designed to ‘establish a constructive and cooperative relationship between the Parliament and the First Peoples’ Assembly’.<sup>83</sup>

In order for the Assembly to be across the workings of Parliament, clause 65 requires the Clerks of the Parliament to inform the Assembly of a Bill as soon as practicable after the introduction of a Bill to Parliament. Further, the Member of Parliament who introduces a Bill into Parliament must also prepare a statement of treaty compatibility and lay it before the House before the second reading speech.<sup>84</sup> This is similar to the process of presenting a statement of compatibility with the human rights charter. The statement must include:

- whether the Assembly was asked to advise or make representations on the Bill and the impact it may have on First Peoples;
- the timing of how advice was provided and in the Member’s opinion the ‘extent to which the Bill is consistent with any advice given or representations made’; and
- whether the Member believes that it is compatible or incompatible with advancing the rights of First Peoples and addressing disadvantages brought on by historic wrongs.

A Member must also let the Assembly know if the Bill addresses any of the Assembly’s internal or substantive rules.<sup>85</sup> If a Member fails to comply with the rules in sections 65, 66 or 67, it does not affect the validity of any Act or subordinate instrument.

After a Bill has been second read, the Assembly may request more information about the Bill from the introducing Member.<sup>86</sup> The Presiding Officers may also invite the Assembly to make a written submission or address Parliament in relation to a specific matter.<sup>87</sup> The Assembly is not required to make a submission or address.<sup>88</sup> A parliamentary committee may also request the Assembly make a written submission or address the committee.<sup>89</sup>

The Assembly may also at any time give a written report to Parliament on any matter affecting First Peoples. Within six months of a report being tabled, the responsible minister must provide a response, including any actions they have proposed or taken in response and their rationale.

Clause 75 clarifies that no part of the Bill will impact on parliamentary business. It states:

Nothing in this Act limits the power of a House of the Parliament to conduct its business, including, to avoid doubt, the consideration or passing of Bills—

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<sup>80</sup> Statewide Treaty Bill 2025, cl 21(2).

<sup>81</sup> *ibid.*, cls 23–24.

<sup>82</sup> *ibid.*, cl 64(2).

<sup>83</sup> ‘Explanatory Memorandum’, Statewide Treaty Bill 2025, p. 35.

<sup>84</sup> Statewide Treaty Bill 2025, cl 66.

<sup>85</sup> *ibid.*, cl 67.

<sup>86</sup> *ibid.*, cl 69.

<sup>87</sup> *ibid.*, cl 70.

<sup>88</sup> *ibid.*, cl 70(3).

<sup>89</sup> *ibid.*, cl 73.



- (a) about which the First Peoples' Assembly has been invited to make an address or a written submission; and
- (b) that are the subject of any report given to the responsible Minister.

## Representations and advice to state government, authorities and state-funded service providers

Part 8 discusses the representations and advice that the Assembly may provide to the state government and state-funded service providers on how to address disadvantages experienced by First Peoples, to support self-determined outcomes for First Peoples and to develop better laws in relation to First Peoples. They come in a number of different forms:

- Representation meetings: Representation meetings will be held at least twice yearly between Cabinet and two members of the First Peoples' Assembly.<sup>90</sup> These meetings will be subject to cabinet confidentiality.<sup>91</sup>
- Engagement hearings: Engagement hearings will be held between the Assembly, and ministers, departmental secretaries and the Chief Commissioner of Victoria Police.<sup>92</sup> No more than one engagement hearing may be held in one year, and they will be attended by at least two members of the Assembly.<sup>93</sup> The purpose of these hearings is for the Assembly to ask questions on the priorities, operations, expenditures and budgets of departments and Victoria Police. These questions will relate to the health, welfare and education of First Peoples, the way a department is run in relation to First Peoples and other matters agreed to by the Premier and the Assembly.<sup>94</sup> The transcript of such meetings may be published if agreed to by the Assembly and the Premier.<sup>95</sup>
- Representations and submissions to ministers: The Assembly may from time to time make written submissions to a minister, including asking questions.<sup>96</sup> The minister must respond within 60 days.<sup>97</sup> Conversely, the minister may request information from the Assembly.<sup>98</sup>
- Briefing meetings and departmental consultation: Each departmental secretary and the Chief Commissioner of Police must also meet with the Assembly to brief them on matters of interest to First Peoples and allow the Assembly to ask them questions.<sup>99</sup> Two briefing meetings may be held each year between a secretary and the Assembly.<sup>100</sup> At least one of these meetings must relate to the government's budget priorities in regard to First Peoples.<sup>101</sup>
- Guidelines and duties to consult: Each departmental secretary and the Chief Commissioner of Police must develop written guidelines for matters specified in the Statewide Treaty and how they will consult with the Assembly during the development of legislation, statutory rules or any policy specifically directed to First Peoples.<sup>102</sup> These will be developed in consultation with the Assembly, and failure to develop these will not affect the validity or operation of an Act.<sup>103</sup>
- Representations and submissions to authorities and state-funded service providers: The Assembly may occasionally make written submissions to or ask questions of an authority or state-funded service provider about the provision of services or administration of programs for First Peoples.<sup>104</sup> These groups must respond within 60

<sup>90</sup> *ibid.*, cls 77–78.

<sup>91</sup> *ibid.*, cl 79.

<sup>92</sup> *ibid.*, cl 80.

<sup>93</sup> *ibid.*, cl 81(2).

<sup>94</sup> *ibid.*, cl 80(1)(a) & (2)(a).

<sup>95</sup> *ibid.*, cl 82.

<sup>96</sup> *ibid.*, cl 83.

<sup>97</sup> *ibid.*, cl 83(2).

<sup>98</sup> *ibid.*, cl 84.

<sup>99</sup> *ibid.*, cl 86.

<sup>100</sup> *ibid.*, cl 87(2).

<sup>101</sup> *ibid.*, cl 87(3).

<sup>102</sup> *ibid.*, cl 88.

<sup>103</sup> *ibid.*, cl 88(3).

<sup>104</sup> *ibid.*, cl 89.

days.<sup>105</sup> A state-funded authority is defined as including the following: a public entity, special body, the Victorian Public Service Commission, health services, hospitals, schools and universities. However, the definition does not include an ‘excluded body’, such as the Office of the Governor, IBAC, Integrity Oversight Victoria, the Office of the Public Interest Monitor, the Department of Parliamentary Services and others (for a full list of excluded bodies, see clause 89(6)).<sup>106</sup>

A failure to consider a submission will not create a legal right to civil action or impact the validity of any Act.<sup>107</sup> A failure to respond within 60 days will not have legal consequences.

## Financial arrangements and reporting

The Bill establishes principles for the funding arrangements between the state and Gellung Warl, legislated appropriations of the Consolidated Fund, protection of financial integrity with appropriate financial management, and required annual reporting. These principles include:

- self-determination and autonomy in how resources are allocated;
- sufficiency;
- stability, flexibility, and transparency;
- sustainability and affordability;
- accountability; and
- simplicity.

There is also a provision for review of this arrangement every four years, unless both parties agree that it is not required.<sup>108</sup>

Clause 144 sets out the maximum funding for each financial year commencing in the 2025–26 financial year until 2028–29, and provides for a 2.5 per cent increase on the previous year for each subsequent year. Additional capital expenditure is also provided from 2026–27 until 2028–29. Any surplus money is to be deposited into the Self-Determination Fund or used for investment purposes.

Additional funding may be agreed to by the responsible minister and the Treasurer under clause 145, and other financial management arrangements concerning accounts management, insurance, procurement policies and annual reporting are provided in clauses 146–150.

## Dissolution of First Peoples’ Assembly

Part 16 of the Bill contains several provisions for the dissolution of the Assembly and for new elections and appointments. The Assembly may dissolve itself by resolution in accordance with the internal rules under clause 177, or under a no-confidence community petition under clause 178. Under both scenarios, the responsible minister must be notified of the resolution under clause 183 and be provided with a statement of reasons, as well as the petition in the case of a no-confidence motion. The minister must then publish a notice of the resolution or receipt of the petition or any other statement in the Victorian Government Gazette as soon as possible after being notified.

The Treaty Authority may also dissolve the Assembly if it receives a report from IBAC or the Ombudsman and forms a view of serious corrupt conduct or serious and systemic maladministration in the Assembly.<sup>109</sup> The Authority must then compile a notice of dissolution, which must include the matters which constitute the grounds for the proposed dissolution, provide steps for the Assembly to address these matters if appropriate, and specify the timeframe within which these matters must be resolved.

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<sup>105</sup> *ibid.*, cl 89(3).

<sup>106</sup> *ibid.*, cl 89(6).

<sup>107</sup> *ibid.*, cl 4.

<sup>108</sup> ‘Explanatory Memorandum’, Statewide Treaty Bill 2025, pp. 71–72.

<sup>109</sup> Statewide Treaty Bill 2025, Division 3 of Part 16.

If the Treaty Authority is not convinced the matters have been resolved at the end of this timeframe, it may dissolve the Assembly.<sup>110</sup> The Assembly must be informed of the dissolution before an announcement is made. Dissolving the Assembly is an option of last resort.

The Treaty Authority must publish a notice in the Victorian Government Gazette stating that the Assembly has been dissolved, and the date of the next general election for all general members.<sup>111</sup> On publication of the notice, all Assembly members go out of office and all seats become vacant; a general election must be held for all general members, and reserved members must be reappointed.

## *Nginma Ngainga Wara*

Part 9 of the Bill provides for the establishment, purpose, functions and powers of the accountability arm of Gellung Warl, which will be called Nginma Ngainga Wara. *Nginma Ngainga Wara* means ‘you will do’ in Wadi Wadi language.<sup>112</sup>

The body will acquit the state’s commitment under the National Agreement on Closing the Gap, to provide an independent accountability mechanism to monitor and evaluate the performance of the state in achieving better outcomes for First Peoples, as set out in clause 93. These outcomes are defined in clause 4 and include commitments specified in the Closing the Gap Agreement, as well as other state government measures directed specifically to First Peoples. The latter includes the implementation of recommendations of the Yoorrook Justice Commission.<sup>113</sup>

To fulfill its purpose under clause 93, the Bill provides that Nginma Ngainga Wara can conduct inquiries and monitor the state’s progress in achieving outcomes for First Peoples. The inquiries would inform the functions of the Assembly and Nyerna Yoorrook Telkuna, and feed into practical and feasible solutions proposed to the Assembly.

Recommendations and solutions made by Nginma Ngainga Wara must be evidence-based best practice, and they must seek to remove defects and systemic racism, as well as strengthen and simplify law, policy and practice.<sup>114</sup> Nginma Ngainga Wara may also consult with any persons and experts (excluding Gellung Warl). Proposed recommendations must consider budgetary and resourcing impacts and be within the state’s capability.

The Assembly is responsible for appointing and suspending members of Nginma Ngainga Wara.<sup>115</sup> The Assembly must appoint up to three eligible persons as defined by clause 100(3), which states that the following persons would be ineligible: Members of state or Commonwealth parliaments, local councillors and staff, public sector employees or members of the Treaty Authority, and members of the Assembly and Nyerna Yoorrook Telkuna.

## Inquiries

Nginma Ngainga Wara is able to conduct inquiries or research into any structural or systemic matter that it regards as requiring the attention of the Assembly. Clause 103 states that these matters may relate to:

- institutional racism, discrimination, unconscious bias or lack of cultural safety;
- performance of any agency or minister that impacts First Peoples; and
- implementation of Yoorrook Justice Commission recommendations.

Inquiries can be self-initiated or directed by the Assembly. However, Nginma Ngainga Wara can determine it is unable to undertake research referred by the Assembly if it is outside of the matters stated above, or if it does not have sufficient resources. Matters that Nginma

<sup>110</sup> *ibid.*, cl 181.

<sup>111</sup> *ibid.*, cl 183.

<sup>112</sup> *ibid.*, cl 92; First Peoples’ Assembly of Victoria (2025) ‘[Treaty in language](#)’, First Peoples’ Assembly of Victoria website.

<sup>113</sup> Statewide Treaty Bill 2025, cl 93(b).

<sup>114</sup> *ibid.*, cl 96.

<sup>115</sup> *ibid.*, Schedule 1, cl 4.

Ngainga Wara considers to be urgent can be referred to other persons or bodies under clause 113.

Nginma Ngainga Wara can conduct inquiries in any way it sees fit, subject to accepted procedural fairness, the Act and internal rules.<sup>116</sup> Nginma Ngainga Wara cannot revisit a matter within 12 months of a previous inquiry on the same matter, unless Nginma Ngainga Wara recommends that the seriousness of the matter warrants a second inquiry and the minister agrees with the recommendation.<sup>117</sup> Nginma Ngainga Wara may receive and invite submissions from any persons or bodies. For the purposes of its inquiry, Nginma Ngainga Wara may request documents and information from an agency head or minister, as well as request that they attend for an interview or answer questions on matters concerning the inquiry.

## Reports

Inquiry reports must be submitted to the Assembly. The Assembly can publish the reports under clause 116, but the Assembly must comply with Nginma Ngainga Wara advice to not publish certain information or reports. Such reports may be restricted Nginma Ngainga Wara information, unless the entity providing the information has given their consent for publication; or the information is culturally sensitive or culturally secret and consent can only be obtained under internal rules.<sup>118</sup>

Under clause 110, Nginma Ngainga Wara may report to the Assembly at any time on its monitoring and evaluation activities, and additionally, the Assembly may also request such a report from Nginma Ngainga Wara once a year.

## *Nyerna Yoorrook Telkuna*

Part 10 of the Bill provides for the establishment, purpose, functions and powers of Nyerna Yoorrook Telkuna as the truth-telling arm of Gellung Warl. The office continues the work of the Yoorrook Justice Commission and is non-judicial, self-determined and place-based.<sup>119</sup>

*Nyerna Yoorrook Telkuna* means ‘to sit, to listen, to hear’ (Nyerna), ‘to truth’ (Yoorrook), ‘to cure, to heal’ (Telkuna) in Wamba Wamba/Wemba Wemba language.<sup>120</sup> The body is established by clause 118 and consists of persons appointed by the Assembly as well as members appointed in relation to a certain place. Clauses 125–127 detail the appointment, suspension or resignations of Nyerna Yoorrook Telkuna members, as well as persons who would be ineligible.

Nyerna Yoorrook Telkuna’s core purposes are:

- facilitating truth-telling about historical events and their continuing impacts;
- facilitating ongoing healing and reconciliation;
- collecting information on the impacts of colonisation on First Peoples; and
- maintaining an archive of truth-telling information collected as part of its purpose.<sup>121</sup>

‘Historical events’ is defined as events that pre-date the appointment of the Yoorrook Justice Commission by letters patent on 14 May 2021.

Nyerna Yoorrook Telkuna is guided by truth-telling principles set out in clause 120 which assures that it is self-determined and non-judicial, trauma-informed, localised and place-based, with clear roles for the Victorian community who are not First Peoples.

The functions of Nyerna Yoorrook Telkuna are set out in clause 121 to include promoting its truth-telling purpose, collecting, holding and archiving the information collected in the process, promoting ongoing healing and reconciliation, conducting research and education, and providing information to the Assembly and Nginma Ngainga Wara to support their work.

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<sup>116</sup> *ibid.*, cl 106.

<sup>117</sup> *ibid.*, cl 105.

<sup>118</sup> *ibid.*, Schedule 8, cl 8.

<sup>119</sup> *ibid.*, cl 117.

<sup>120</sup> *ibid.*, cl 118; First Peoples’ Assembly of Victoria (2025) ‘[Treaty in Language](#)’, FPAV website.

<sup>121</sup> Statewide Treaty Bill 2025, cl 119.

As the continuing truth-telling and reconciliation office, Nyerna Yoorrook Telkuna is tasked with managing and holding records of the Yoorrook Justice Commission that are not required to be transferred to DPC under the *Inquiries Act 2014*, or the Holder of Public Records under the *Public Records Act 1973*. Clauses 128–129 do, however, provide for information collected and held by Nyerna Yoorrook Telkuna itself in the truth-telling process, including ‘restricted Nyerna Yoorrook Telkuna information’—information which has been marked or advised as being confidential by the persons providing the information. In such cases, Nyerna Yoorrook Telkuna must not publish information that is culturally sensitive or culturally secret information without the consent of the entity that provided the information, and must be guided by internal rules as made by the Assembly.

## Other elements

### *Information-sharing and confidentiality*

The object of Part 11 of the Bill focuses on the management of information received and recorded by Gellung Warl, ensuring that it is self-determined, recognises the importance of transparency and accountability of public records management, and accounts for the unique nature and use of information in the Statewide Treaty process.<sup>122</sup> It also addresses the handling of restricted information provided to Gellung Warl in line with Indigenous data sovereignty, or the ‘right of indigenous peoples to govern the collection, ownership and application of data about indigenous communities, peoples, lands and resources’.<sup>123</sup>

Restricted Gellung Warl information—that is, information marked as confidential or advised to be confidential at the time it was provided—cannot be shared with or between the other arms of Gellung Warl without the consent of the entity that provided the information.<sup>124</sup> Further, under clause 134, restricted information that is also culturally sensitive or culturally secret can only be disclosed according to the internal rules to be designed by the Assembly. Under clause 135, consent to disclosure of restricted information is further limited where such disclosure is prohibited under this or any other Act.

Clauses 136–139 set up the regime for disclosure of culturally sensitive or culturally secret information by Gellung Warl to external entities. Consent can only be provided in accordance with the Assembly’s internal rules, unless it is to be provided to courts or tribunals, integrity agencies and law enforcement agencies. This provision, however, does not apply when records are to be provided to the Holder of Public Records under the *Public Records Act*.

Protections for confidentiality and privileges for information provided to Gellung Warl are provided under clause 140. Information that is protected by another Act or law, parliamentary or legal professional privilege, Cabinet confidentiality, public interest immunity, or a court or tribunal cannot be disclosed to Gellung Warl. The entity providing such information must confirm that it is authorised to do so.

There are also other common law protections for persons or entities for when they are attending and providing information that may incriminate them or make them liable to penalties. Documents held by Gellung Warl that are restricted Nginma Ngainga Wara information or reports resulting from Nginma Ngainga Wara inquiries are exempt from the *Freedom of Information Act 1982*.

### *Standards of conduct*

Part 13 of the Bill outlines the standards of conduct for members and staff of Gellung Warl. The Assembly must develop and implement member standards of conduct within six months of commencement of the section.<sup>125</sup> At minimum, the standards must address:

- victimisation and harassment;

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<sup>122</sup> ‘Explanatory Memorandum’, Statewide Treaty Bill 2025, p. 67.

<sup>123</sup> Australian Institute of Aboriginal and Torres Strait Islander Studies (2019) ‘[Delivering Indigenous Data Sovereignty](#)’, AIATSIS website.

<sup>124</sup> Statewide Treaty Bill 2025, cls 131–134.

<sup>125</sup> *ibid.*, cl 152.

- misuse of office;
- improper direction of staff of Gellung Warl;
- breaches of disclosure of information provisions in the Act and procedures and policies concerning information-handling under the Act;
- managing conflicts of interest; and
- disclosure of personal interest and gifts.<sup>126</sup>

Clauses 154–55 set similar provisions for staff members of Gellung Warl.

Clauses 156–57 address allegations of misconduct and serious misconduct, which are to be dealt with by internal rules, as well as stating the role of the Treaty Authority in dealing with such allegations.

## Community answerability and accountability

Further, accountability of Gellung Warl to Community is addressed under Part 14, *Larbagirrar Gnuurtuk Tulkuuk* (community answerability). The phrase means ‘community account, reckon, truth’ in Djab Wurrung language.<sup>127</sup> Under clause 160, the Assembly must develop and implement a community governance and answerability framework for Gellung Warl, which must be developed in consultation with Community and include its stated principles, a self-determined community engagement charter, *Ngarrakeetoong Martongakeeyt* (community vision), which means ‘big/long see’ in Keerray Woorroong language, and a strategic plan.<sup>128</sup> The Framework must be developed and published within six months of the commencement of the section. Clauses 161–64 provide further details for each of the elements of the framework.

## Complaints

Mechanisms for complaints by First Peoples about Gellung Warl are addressed in Part 15 of the Bill. The responsibility for developing the process to receive, manage and resolve complaints falls to the Assembly. The Treaty Authority provides support where requested by Gellung Warl.

The matters for complaint, and the process for making and dealing with complaints, are established by the internal rules. Certain complaints can be declined if the matter is being dealt with by any other body, including an integrity or law enforcement agency, or is deemed to be vexatious. Alleged misconduct would be dealt with as above in clauses 156–57. Complaints about electoral matters will be made to the Treaty Authority according to the internal rules. Matters concerning the validity of election results, however, will be made to VCAT.<sup>129</sup>

## Amending the Act

Procedures for amending the Statewide Treaty Act are provided under Part 17 of the Bill. The object of Part 17 is to establish a convention of consultation between Members of Parliament, Gellung Warl and the Treaty Authority in relation to Bills that impact the enabling legislation for Gellung Warl, but not to limit the ability of Parliament to make laws.<sup>130</sup>

Apart from editorial changes, machinery-of-government arrangements or matters substantively unrelated to the operation of the Act, a Bill may be introduced to abolish Gellung Warl or repeal the Act in part or in whole. Under clause 187, such a Bill must be accompanied by a consultation statement and be tabled before the second reading speech. The obligation to prepare and table a consultation statement is held by the Member who

<sup>126</sup> *ibid.*, cl 153.

<sup>127</sup> First Peoples’ Assembly of Victoria (2025) ‘[Treaty in Language](#)’ FPAV website.

<sup>128</sup> *ibid.*

<sup>129</sup> Statewide Treaty Bill 2025, cl 60.

<sup>130</sup> *ibid.*, cl 189; ‘Explanatory Memorandum’, Statewide Treaty Bill 2025, p. 92.



introduces the Bill whether they are a minister or non-government Member of Parliament. The consultation statement must include:

- whether the Assembly and Treaty Authority have been consulted within a specified timeframe;
- whether their responses have been considered;
- whether certain principles under the Advancing Treaty Act would be given effect under the proposed Bill; and
- whether the Assembly and Treaty Authority have raised issues in relation to the Bill.<sup>131</sup>

A copy of Assembly and Treaty Authority responses (if any) must be attached to the statement. The Presiding Officers may invite the Assembly or Treaty Authority to make a submission on such a proposed Bill.<sup>132</sup>

## 4 | Stakeholder responses to the Bill

### First Nations commentators

Ngarra Murray and Rueben Berg—Co-Chairs of the FPAV—issued a statement declaring, ‘A major milestone in Victoria’s decade-long Treaty process has been achieved with the Victorian Government and First Peoples’ Assembly of Victoria reaching in-principle agreement on Australia’s first treaty’.<sup>133</sup>

Nerita Waight, chief executive of the Victorian Aboriginal Legal Service and also a member of the FPAV, said the new body Nginma Ngainga Wara would ensure ‘that government will have to be accountable for its failures, for its errors in judgement, but that will result in things that will work on the ground’.<sup>134</sup>

Koori Curriculum stated, ‘Victoria is showing what’s possible when you stop treating First Peoples as problems to be managed and start treating us as partners in solutions’.<sup>135</sup>

The National Native Title Council (NNTC) supports the legislation, with CEO Jamie Lowe stating:

Treaty is about First Nations decision-making on First Nations issues ... This historic moment is the result of decades of hard work and advocacy by First Nations communities to realise ambitions for self-determination.<sup>136</sup>

Author and academic Marcia Langton provided a supportive analysis, stating the Treaty is ‘a model for treaties in other jurisdictions’ and ‘the first Australian experiment in shared sovereignty and Indigenous self-determination’.<sup>137</sup>

Senator and Gunnai, Gunditjmara and Djab Wurrung woman Lidia Thorpe said Gellung Warl sounded ‘good on paper’ but would be ‘measured by what it will do for our people, and whether it can correct the wrongs committed, and address the ongoing harm being perpetrated against First Peoples’.<sup>138</sup>

<sup>131</sup> Statewide Treaty Bill 2025, cl 187(3); *Advancing the Treaty Process with Aboriginal Victorians Act 2018*, ss 22–26.

<sup>132</sup> Statewide Treaty Bill 2025, cl 188.

<sup>133</sup> N. Murray & R. Berg (2025) *Joint Statement on Treaty Negotiations, First People’s Assembly*, media release, 9 September.

<sup>134</sup> D. Brennan (2025) ‘Thorpe: Treaty bodies ‘sound good on paper,’ but must deliver real change’, *National Indigenous Times*, 10 September.

<sup>135</sup> J. Staines (2025) *Koori Curriculum Victoria’s Treaty: A Story 60,000 Years in the Making*, media release, 11 September.

<sup>136</sup> J. Lowe (2025) *Australia’s First Treaty: A Historic Milestone for First Nations Decision-Making*, *National Native Title Council*, media release, 10 September.

<sup>137</sup> M. Langton (2025) ‘How Victoria’s Treaty could change Australia’, *The Saturday Paper*, 4 October.

<sup>138</sup> Brennan (2025) op. cit.

Notable First Nations figures from outside Victoria who oppose the Bill include Nyunggai Warren Mundine and Senator Jacinta Nampijinpa Price, with *The Age* reporting Price saying it was being implemented without consent or consultation.<sup>139</sup>

## Victorian Government

The government has supported efforts towards treaty since 2016.<sup>140</sup> Premier Jacinta Allan said in the second reading speech, ‘I am proud to be the first Premier in Australia’s history to sit before a truth-telling inquiry’ and that ‘Treaty doesn’t take anything away from anyone. It’s about improving people’s lives and giving everyone a better future’.<sup>141</sup> First Nations Labor Member Sheena Watt commented that ‘First Peoples should always be the ones making decisions about First Peoples’.<sup>142</sup>

## The Liberal-National opposition

In January 2024, the Victorian opposition withdrew its earlier support for a state-based Treaty with Indigenous Victorians after the failure of the national Voice referendum, citing concerns about cultural heritage processes causing development delays and resulting in higher construction costs.<sup>143</sup>

In a joint media release, Liberal Leader of the Opposition Brad Battin and the shadow minister for Aboriginal affairs, Nationals MP Melina Bath, stated that Treaty was the ‘wrong priority’, adding that the coalition parties ‘do not believe that Treaty is the best way to close the gap and deliver better outcomes for Indigenous Victorians’.<sup>144</sup> Mr Battin later said that ‘there’s been a vote put to the Victorian people and the vote was no for the Voice to Parliament and this will be effectively reinstating that’.<sup>145</sup>

## Crossbench

Victorian Greens leader Ellen Sandell welcomed Treaty. She stated:

This is a historic moment where every Victorian has been invited to walk with First Nations people on this incredible journey—to share in and celebrate the oldest living cultures in the world, and to create a better future together.<sup>146</sup>

Animal Justice Party MP Georgie Purcell and Legalise Cannabis Victoria MPs Rachel Payne and David Ettershank also expressed their support for both Treaty and enshrining a permanent First Peoples’ Assembly. Purcell said that the state had ‘voted resoundingly for treaty at two elections and the First Peoples’ Assembly is just one component of the process’, while Payne stated that Treaty could ‘elevate First Nations voices’.<sup>147</sup>

One Nation MP Rikkie-Lee Tyrrell and Libertarian MP David Limbrick have opposed Treaty and the Bill. Tyrrell described the Bill as introducing a ‘bureaucratic giant’ that will have

<sup>139</sup> C. Le Grand (2025) ‘If you’re shocked by the arrival of treaty in Victoria, you’ve not been paying attention’, *The Age*, 11 September.

<sup>140</sup> Hutchins (2016) *Statement on self-determination*, op. cit.

<sup>141</sup> J. Allan, Premier (2025) ‘Second reading speech: Statewide Treaty Bill 2025’, *Debates*, Victoria, Legislative Assembly, 9 September, p. 3493.

<sup>142</sup> S. Watt (2025) *A Milestone Moment for Victoria: Statewide Treaty introduced to Parliament*, media release, 12 September.

<sup>143</sup> (2024) ‘Victorian Coalition withdraws Aboriginal treaty support, citing cultural heritage concerns’, *ABC News*, 22 January; T. Rivera (2024) ‘No change to treaty position under new Nationals leader Danny O’Brien’, *The Australian*, 26 November.

<sup>144</sup> B. Battin & M. Bath, Leader of the Opposition and Shadow Minister for Aboriginal Affairs (2025) *Jacinta Allan’s Treaty is the wrong priority*, media release, 29 August.

<sup>145</sup> B. Kearns & C. Douglas (2025) ‘Opposition Leader Brad Battin slams Treaty legislation as a version of the Voice’, *Herald Sun*, 9 September.

<sup>146</sup> Victorian Greens (2025) ‘*HISTORY IN THE MAKING*’ FIRST-EVER TREATY BILL INTRODUCED TO VICTORIAN PARLIAMENT, media release, 9 September.

<sup>147</sup> B. Kolovos (2025) ‘First Peoples’ Assembly set to become permanent voice to Victorian parliament with crossbench support’, *The Guardian Australia*, 1 July.

‘unprecedented influence and power’ over government, while Limbrick said the Bill was ‘dividing Victorians’.<sup>148</sup>

## Federal ministers and shadow ministers

An Indigenous Affairs Ministers Meeting Communique issued by Senator Malarndirri McCarthy stated:

Ministers acknowledged the historic occasion in Victoria with the Statewide Treaty Bill being introduced to parliament. Minister Hutchins provided an update on the Bill and highlighted that the First Peoples Assembly and the Victorian Government see the Victorian Treaty as the pathway for the state to achieve its Closing the Gap commitments.<sup>149</sup>

Federal Shadow Minister for Indigenous Affairs Kerryne Liddle raised doubts over how Treaty would interact with native title laws and stated, ‘The Coalition will continue to advocate practical action over symbolic gestures because that matters most to those who need help the most’.<sup>150</sup>

## Community stakeholders

A wide range of civil society and community-based organisations issued both individual statements of support and a joint position. Over 50 organisations, including the Australian Council of Social Service, the Australian Democracy Network and the Brotherhood of St. Laurence declared ‘Victoria can lead the nation as the first jurisdiction to legislate a Treaty with First Peoples—a step long overdue in the only Commonwealth country without such an agreement’.<sup>151</sup> Oxfam Australia spokesperson Jimi Peters stated ‘We are elated that today the Victorian Government has introduced the Statewide Treaty Bill—this is a proud moment in history and a significant step forward for First Peoples’ self-determination and decision-making’.<sup>152</sup>

The Human Rights Law Centre stated, ‘The Statewide Treaty Bill forges the path forward for a self-determined future for First Nations people in Victoria’.<sup>153</sup>

Ruby Okely of the Arts Law Centre of Australia declared that ‘this long-awaited milestone has been a decade in the making. If passed, the bill will make the First Peoples’ Assembly a permanent body under a new authority called Gellung Warl. Gellung Warl will consist of two bodies, including one focused on truth-telling and another on accountability’.<sup>154</sup>

The Victorian Farmers Federation noted:

The introduction of this legislation today will be the first time it’s been seen by many stakeholders ... It is critical that such a significant piece of policy and legislation is considered through an open and transparent consultation process as it moves through Parliament.<sup>155</sup>

Margaret Chambers, a research fellow at the Institute of Public Affairs, described Treaty as an ‘affront to the fundamental principle that all Victorians are equal under the law. If passed, the Allan government’s treaty legislation will fundamentally change Victoria’s legal structure creating special rights for some’.<sup>156</sup>

<sup>148</sup> R.-L. Tyrrell (Rikkie-Lee Tyrrell - Northern Victoria Region MLC) (2025) ‘I completely oppose Victoria's Treaty ...’, Facebook, 9 September; D. Limbrick (2025) ‘Vic children to learn ‘truth telling’’, Paul Murray Live, Sky News, via Facebook ‘David Limbrick MP – Libertarian’, 9 September.

<sup>149</sup> Sen. the Hon M. McCarthy, Minister for Indigenous Australians (2025) *Indigenous Affairs Ministers Meeting Communique*, media release, 11 September.

<sup>150</sup> C. Williams & K. Flanders (2025) ‘Hopes Australia's first treaty with Aboriginal people will help close the gap’, ABC News, 10 September.

<sup>151</sup> Australian Democracy Network (2025) *Civil Society organisations support Treaty*, media release, 17 September.

<sup>152</sup> Oxfam Australia (2025) *Oxfam Australia welcomes historic milestone as Statewide Treaty Bill introduced in Victoria*, media release, 10 September.

<sup>153</sup> The Human Rights Law Centre (2025) *We support Treaty*, media release, 30 September.

<sup>154</sup> R. Okely (2025) ‘Treaty Victoria’, Arts Law Centre of Victoria website.

<sup>155</sup> B. Hosking, Victorian Farmers Federation (2025) *VFF Statement: Victoria's Statewide Treaty Agreement*, media release, 9 September.

<sup>156</sup> M. Chambers (2025) *Victoria's statewide treaty bill is an affront to equality and democracy*, media release, 9 September.

## 5 | Jurisdictional comparison

### Australian jurisdictions

#### *Australian Capital Territory*

The Australian Capital Territory Government has committed to progressing Treaty<sup>157</sup> since establishing an Aboriginal and Torres Strait Islander Elected Body (ATSIEB) under the *Aboriginal and Torres Strait Islander Elected Body Act 2008*.<sup>158</sup> The ATSIEB works with the ACT Government and local First Nations communities to deliver the territory's *Aboriginal and Torres Strait Islander Agreement 2019–2028*.<sup>159</sup>

In 2022, the ACT Government published an implementation plan for Treaty, and a year later announced it would establish a panel for community engagement,<sup>160</sup> after the implementation plan was met with criticism and controversy over its lack of engagement with First Peoples' communities.<sup>161</sup> To date, there appear to be no further developments concerning the panel.<sup>162</sup>

#### *New South Wales*

NSW Labor committed to Treaty before both the 2019 and 2023 state elections. During its ultimately successful 2023 campaign, the party committed \$5 million to a consultation process with First Nations communities to determine a path forward for Treaty after the Voice referendum had occurred, regardless of its outcome.<sup>163</sup>

The new Minister for Aboriginal Affairs indicated that he would oversee a 12-month consultation period following the referendum. The consultation would: engage with First Nations people, Traditional Owners, native title holders, organisations and peak bodies; be led by three commissioners and an appointed secretariat; and would report back to Parliament on its findings.<sup>164</sup> However, following the referendum's defeat, Premier Chris Minns stated that NSW's treaty process would not progress past the consultation and planning phase until after an election.<sup>165</sup>

In April 2024, a recruitment process for treaty commissioners opened, and three commissioners were appointed: Nyangbal and Arakwal woman Naomi Moran; Gumbaynggirr man Aden Ridgeway; and Dr Todd Fernando.<sup>166</sup> A consultation process commenced in August 2025, and the commissioners have been tasked with seeking to 'understand the views of Aboriginal people on whether there is support for a treaty or other formal agreement making process and, if so, what a future treaty process might look like'.<sup>167</sup> The commissioners are supported by staff within Aboriginal Affairs NSW and will prepare a final report for the

<sup>157</sup> ACT Government and ACT Aboriginal and Torres Strait Islander Elected Body (2019) *ACT Aboriginal and Torres Strait Islander Agreement 2019–2028: Core focus area: Cultural integrity*, Canberra, ACT Government.

<sup>158</sup> *Aboriginal and Torres Strait Islander Elected Body Act 2008* (ACT), s 7.

<sup>159</sup> ACT Government and ACT Aboriginal and Torres Strait Islander Elected Body (2019) *ACT Aboriginal and Torres Strait Islander Agreement 2019–2028*, Canberra, ACT Government.

<sup>160</sup> ACT Government: Community services (2023) 'Aboriginal and Torres Strait Islander Eminent Panel for Community Engagement and Healing', ACT Government website (archived), Wayback Machine Internet Archive, archived 23 February 2023.

<sup>161</sup> R. Stephen-Smith (2022) *Statement: Receipt of Karabena Consulting Report "Implementation Pathways to achieve Ngunnawal, First Nations Peoples and Australian Capital Territory Government Treaties"*, media release, 7 July.

<sup>162</sup> Australians for Native Title and Reconciliation (2024) 'Treaty in the Australian Capital Territory', ANTAR website.

<sup>163</sup> R. Hayman (2023) 'NSW Labor commits to treaty consultations with Indigenous community if elected in March', ABC News, 21 January.

<sup>164</sup> J. Cross (2023) 'New NSW Minister for Aboriginal Affairs and Treaty lays out plans', *National Indigenous Times*, 7 April.

<sup>165</sup> T. Rose (2023) 'NSW treaty will not progress beyond consultation until after election, Chris Minns says', *The Guardian Australia*, 23 October.

<sup>166</sup> D. Harris, Minister for Aboriginal Affairs and Treaty (2024) *Recruitment under way for Treaty Commissioners*, media release, 12 April; NSW Government (2025) 'Consulting Aboriginal people on desire for a treaty process', NSW Government website.

<sup>167</sup> NSW Government (2025) op. cit.

Minister for Aboriginal Affairs and Treaty on the consultation's outcome, including recommendations on whether a treaty process is desired and pathways forward.<sup>168</sup>

## Northern Territory

In June 2018, the Northern Territory Government signed a Memorandum of Understanding (MoU) with the territory's Aboriginal Land Councils to 'provide for the development of a framework for negotiating a treaty with the First Nations of the Northern Territory of Australia'.<sup>169</sup> The MoU set out ten principles for guiding the treaty consultation process and made provision for the appointment of an Independent Treaty Commissioner, as well as an ongoing role for a Treaty Working Group that had been established earlier that year.<sup>170</sup>

In 2019, Yawuru man Professor Mick Dodson was appointed as the territory's first Treaty Commissioner, and was joined by Deputy Commissioner Ursula Raymond.<sup>171</sup> Between 2020 and 2022, the commission released several reports on the treaty negotiating framework, truth-telling practices, and a final report.<sup>172</sup> Following Professor Dodson's resignation in June 2021, Wirldi man Tony McAvoy SC was appointed as Acting Treaty Commissioner and the Commission's Final Report was released in June 2022.<sup>173</sup>

In response, the NT Government indicated that the pathway to Treaty would be 'complex', and noted it would 'seek to test the Treaty Report's recommended treaty-making framework and pathway against the views of Aboriginal Territorians to ensure it aligns with their aspirations' through a series of First Nations forums run with the Aboriginal Land Councils.<sup>174</sup> The government announced that the Treaty Unit within the Office of Aboriginal Affairs would be leading the next steps, and also committed to progressing a truth-telling process.<sup>175</sup> The Treaty Commission was subsequently abolished.<sup>176</sup>

The NT Government acknowledged that it had chosen to slow the treaty process while the national referendum on a Voice to Parliament was taking place, and in 2024 announced that it was reviving the Treaty Working Group with land councils to progress a pathway to Treaty.<sup>177</sup>

At the 2024 Territory election, the Labor party was defeated by the Country Liberal Party. New Chief Minister Lia Finocchiaro stated that the NT Government would no longer be pursuing plans for Treaty with Aboriginal people, and would instead be focusing on local government reform.<sup>178</sup>

## Queensland

In July 2019, under Premier Anastacia Palaszczuk, the Labor Queensland Government signed a joint Statement of Commitment as part of its *Tracks to Treaty—Reframing the relationship with Aboriginal and Torres Strait Islander Queenslanders* initiative.<sup>179</sup> The government also announced an Eminent Panel of Aboriginal and Torres Strait Islander Queenslanders and non-Indigenous Queenslanders, as well as a Treaty Working Group to

<sup>168</sup> *ibid.*

<sup>169</sup> Northern Territory Government (2018) *The Barunga Agreement*, Barunga, NT Government.

<sup>170</sup> *ibid.*

<sup>171</sup> A. Moran & J. McAllister (2019) 'Mick Dodson, Ursula Raymond stress importance of young Aboriginal voices in treaty consultations', *ABC News*, 4 August.

<sup>172</sup> Australian Policy Online (2025) 'Northern Territory Treaty Commission', APO website.

<sup>173</sup> Northern Territory Treaty Commission (2022) *Final Report*, June, Darwin, NT Treaty Commission.

<sup>174</sup> Office of Aboriginal Affairs (2023) 'NT Government response to NT Treaty Commission's Final Report', NT Government website (archived), Wayback Machine Internet Archive, archived 22 February 2023.

<sup>175</sup> *ibid.*

<sup>176</sup> J. Bardon (2023) 'Northern Territory Indigenous leader Yingiya Guyula angered by government's decision to close NT Treaty Commission', *ABC News*, 20 January.

<sup>177</sup> M. Garrick (2024) 'NT government to revive plans for treaty, six years after it was first promised by Territory Labor', *ABC News*, 19 January.

<sup>178</sup> D. Brennan (2025) "'Unfortunately not surprising": Treaty process in the NT officially "dismantled"', *National Indigenous Times*, 11 February.

<sup>179</sup> A. Palaszczuk et al., Premier, Minister for Aboriginal and Torres Strait Islander Partnerships and Minister for Environment (2019) *Historic signing of 'Tracks to Treaty' commitment*, media release, 14 July.



lead statewide consultation.<sup>180</sup> The panel published the *Path to Treaty* report in February 2020, making recommendations and setting out the steps for a treaty process.<sup>181</sup>

In August 2020, the Queensland Government announced a Treaty Advancement Committee,<sup>182</sup> which provided its report to government in October 2021. Its recommendations included that: a ‘First Nations Treaty Institute’ be created to be ‘a facilitating and enabling body to advance the work to make Queensland treaty-ready’;<sup>183</sup> a separate truth-telling and healing process also be undertaken; and a ‘Path to Treaty Office’ be established within government to facilitate both.<sup>184</sup> In 2022, the Queensland Government responded to the Committee’s report, accepting or accepting in-principle each of its recommendations.<sup>185</sup>

In August 2022, the government established an independent interim body—later renamed the Interim Truth and Treaty Body (ITTb), tasked with maintaining momentum on the state’s Path to Treaty reforms, while legislation to establish the First Nations Treaty Institute (the Treaty Institute) and the Truth-telling and Healing Inquiry (TTHI) was progressed through the parliament.<sup>186</sup>

In February 2023, Premier Palaszczuk introduced the Path to Treaty Bill, which was co-designed by the ITTB alongside the Path to Treaty Office.<sup>187</sup> Having first been referred to a committee, the *Path to Treaty Act 2023* passed in April 2023 with bipartisan support,<sup>188</sup> and came into effect by proclamation in April 2024.<sup>189</sup> In August 2023, the government received advice from the ITTB on the next steps towards enabling the Treaty Institute and the TTHI.<sup>190</sup>

Members of the TTHI and the Treaty Institute Council were announced in May 2024. The government also provided terms of reference for the Inquiry,<sup>191</sup> whose five members commenced in July 2024 for a three-year term.<sup>192</sup>

In opposition, the Queensland LNP withdrew its support for treaty in the state, following the Voice referendum in 2023.<sup>193</sup> After winning the 2024 election, the new LNP government, under Premier David Crisafulli, repealed the Path to Treaty Act, resulting in the termination of the TTHI,<sup>194</sup> and the cessation of work to progress the Path to Treaty, including through the Treaty Institute.<sup>195</sup>

The Crisafulli government stated that this represented a ‘fresh start’ for Queensland, and that funds would instead be reallocated to ‘boost tangible outcomes in Indigenous communities across key sectors including housing, education, health, and employment’.<sup>196</sup>

<sup>180</sup> *ibid.*

<sup>181</sup> Treaty Working Group (2020) *Path to Treaty*, February, State of Queensland.

<sup>182</sup> A. Palaszczuk & C. Crawford, Premier and Minister for Aboriginal and Torres Strait Islander Partnerships (2020) *Queensland Government’s historic commitment to Treaty-making process*, media release, 13 August.

<sup>183</sup> Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships (2021) *Treaty Advancement Committee Report*, October, State of Queensland, p. 3.

<sup>184</sup> *ibid.*, p. 4.

<sup>185</sup> Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships (2022) *Queensland Government Response to the Treaty Advancement Committee Report*, State of Queensland.

<sup>186</sup> Interim Truth and Treaty Body (2023) ‘Submission to the Community Support and Services Parliamentary Committee on the Path to Treaty Bill 2023’, Community Support and Services Parliamentary Committee on the Path to Treaty Bill 2023, Brisbane, Community Support and Services Committee, p. 7.

<sup>187</sup> *ibid.*

<sup>188</sup> A. Palaszczuk & C. Crawford, Premier and Minister for Aboriginal and Torres Strait Islander Partnerships (2023) *Historic Path to Treaty legislation passes Parliament*, media release, 10 May.

<sup>189</sup> L. Enoch, Minister for Treaty, Minister for Aboriginal and Torres Strait Islander Partnerships (2024) *Appointment of leaders brings truth-telling and healing closer*, media release, 26 April.

<sup>190</sup> L. Enoch, Minister for Treaty, Minister for Aboriginal and Torres Strait Islander Partnerships (2023) *Interim Truth and Treaty Body advice received for Path to Treaty next steps*, media release, 7 August.

<sup>191</sup> L. Enoch (2024) *Truth-telling and Healing Inquiry Terms of Reference*, May, Brisbane, Queensland Government.

<sup>192</sup> Truth-telling and Healing Inquiry (2024) ‘Truth-telling and Healing Inquiry commences’, Truth-telling and Healing Inquiry website.

<sup>193</sup> E. Gillespie & B. Smee (2023) ‘Queensland LNP abandons support for treaty with First Nations people’, *The Guardian Australia*, 19 October.

<sup>194</sup> Truth-telling and Healing Inquiry (2024) ‘Final statement from the Truth-telling and Healing Inquiry’, Truth-telling and Healing Inquiry website.

<sup>195</sup> Queensland Government (2025) ‘Treaty’, Queensland Government website.

<sup>196</sup> F. Simpson, Minister for Aboriginal and Torres Strait Islander Partnerships (2024) *A Fresh Start for Queensland: Path to Treaty Act repealed as Indigenous communities receive direct funding boost*, media release, 28 November.



## South Australia

In 2016, the Labor South Australian Government announced an allocation of \$4.4 million over five years to facilitate a treaty process in the state.<sup>197</sup> In 2017, Kokatha and Mirning man Dr Roger Thomas was appointed the state's Independent Treaty Commissioner, with an office of the commissioner to be established. Dr Thomas's role was to draft a proposed framework for Treaty following consultation with Indigenous communities.<sup>198</sup>

In July 2017, Dr Thomas provided a report to the Minister for Aboriginal Affairs and Reconciliation summarising the views of Aboriginal people on Treaty and recommending a treaty negotiations framework.<sup>199</sup> In September, three Aboriginal groups were invited to enter treaty negotiations with the state,<sup>200</sup> including the Narungga, Adnyamathanha and Ngarrindjeri nations.<sup>201</sup>

In February 2018, the SA Government signed the Buthera Agreement with the Narungga Nation Aboriginal Corporation, with the parties intending 'to work together with the aim of promoting a legislative structure that enables the parties to negotiate entry into a treaty in the future'.<sup>202</sup> The government stated that it was 'a significant milestone towards Treaty', noting that it was 'the first agreement of its kind between any Australian government and an Aboriginal group'.<sup>203</sup> Election of the Marshall Liberal Government in March 2018 brought a new policy direction in Aboriginal affairs, and treaty negotiations were 'paused'.<sup>204</sup>

Since its election in 2022, the Malinauskas Labor Government has focused on progressing a First Nations Voice to Parliament.<sup>205</sup> South Australia now has the first and only First Nations Voice in Australia,<sup>206</sup> and one that is committed to progressing Treaty. The *First Nations Voice Act 2023* was enacted in March 2023, formally establishing a First Nations Voice in the state.<sup>207</sup> The Act is intended to complement provisions of any other Act 'that implements measures to progress Truth and Treaty, as identified in the Uluru Statement from the Heart'.<sup>208</sup> Voice Members also meet with the Minister for Aboriginal Affairs to discuss how to progress Treaty in South Australia.<sup>209</sup>

Minister for Aboriginal Affairs and the state's first Aboriginal Attorney-General, Kyam Maher, has previously indicated that Treaty is a priority, and he intends to restart the process in the state.<sup>210</sup>

## Tasmania

In June 2021, the Tasmanian Liberal Government appointed former Governor Professor Kate Warner, alongside Tasmania University Law School Dean Professor Tim McCormack, to consult with the state's First Nations people to 'find an agreed pathway to reconciliation',

<sup>197</sup> C. Winter (2016) 'Treaty: South Australian Government enters historic discussions with Aboriginal nations', *ABC News*, 14 December.

<sup>198</sup> R. Jones (2017) 'Indigenous treaty commissioner Roger Thomas appointed in South Australia', *ABC News*, 28 February.

<sup>199</sup> R. Thomas (2017) *Talking treaty: Summary of engagements and next steps*, July, Adelaide, Office of the Treaty Commissioner, Government of South Australia.

<sup>200</sup> Department for Industry and Skills (2018) 'Historic Buthera Agreement a significant step towards Treaty', Department for Industry and Skills website (archived), Wayback Machine Internet Archive, archived 10 August 2018.

<sup>201</sup> Department of the Premier and Cabinet (2018) 'Discontinued Treaty Negotiations', Department of the Premier and Cabinet website (archived), Wayback Machine Internet Archive, archived 10 August 2018.

<sup>202</sup> Government of South Australia (2018) *The Buthera Agreement*, February, Adelaide, Government of SA, p. 4.

<sup>203</sup> Department for Industry and Skills (2018) op. cit.

<sup>204</sup> C. Wahlquist (2018) 'South Australia halts Indigenous treaty talks as premier says he has 'other priorities'', *The Guardian Australia*, 30 April.

<sup>205</sup> Government of South Australia Attorney-General's Department (2022) 'South Australia's First Nations Voice to Parliament', Attorney-General's Department website.

<sup>206</sup> K. Maher, Aboriginal Affairs Minister (2023) *Come and support SA's Voice to Parliament*, media release, 17 March.

<sup>207</sup> Government of South Australia Attorney-General's Department (2022) op. cit.

<sup>208</sup> *First Nations Voice Act 2023* (SA), s 8.

<sup>209</sup> South Australian First Nations Voice to Parliament (2024) *Annual meeting of Voice Members*, media release, 18 December.

<sup>210</sup> G. Torre (2022) 'Treaty a key goal for South Australia's first Aboriginal Attorney General', *National Indigenous Times*, 20 November.

including to make recommendations on ‘the view of the Tasmanian Aboriginal people on a Truth-Telling process and on what a pathway to Treaty would consist of’.<sup>211</sup>

Warner and McCormack presented the *Pathway to Truth-Telling and Treaty* report to Premier Peter Gutwein in November 2021, making 24 recommendations—including that the government formulate a legislative framework to enable truth-telling and treaty processes to occur concurrently, and that Treaty should not wait for a truth-telling process to be completed.<sup>212</sup>

In March 2022, Premier Gutwein announced that the government would establish an Aboriginal Advisory Body to work with the government to establish truth-telling and treaty processes in the state, and invited representatives from registered Aboriginal community organisations to provide advice on the body, including its membership, terms of reference and how it would represent Aboriginal people in Tasmania.<sup>213</sup> A budget allocation of \$500,000 was made and a new government division established to coordinate the Aboriginal Affairs portfolio.<sup>214</sup> Following Premier Gutwein’s resignation in April 2022, incoming Premier Jeremy Rockliff stated that he remained committed to Treaty and truth-telling.<sup>215</sup>

In July 2022, First Peoples in Tasmania elected a delegation called *tuyulpa tunapri*, which in the Palawa language means ‘to light the fire of understanding’, to represent them in negotiations with the state government for a pathway to Treaty and truth-telling.<sup>216</sup> The delegates developed a draft Lutruwita Treaty Bill, to grow a partnership between the Aboriginal community in Tasmania and the state, and to enable the creation of a Treaty Commission.<sup>217</sup>

In August 2022, Premier Rockliff met with Aboriginal representatives to begin discussions on how treaty and truth-telling should progress,<sup>218</sup> and in December, announced the Aboriginal Advisory Group,<sup>219</sup> which held its inaugural meeting in February 2023.<sup>220</sup> In 2025, the Group indicated that it would be preparing its final report to government.<sup>221</sup>

In May 2025, the Tasmanian Government announced that it would no longer be pursuing a Treaty process with the state’s Aboriginal peoples, and would instead be allocating funding for truth and healing commissioners.<sup>222</sup> This change in direction was based on advice from the Aboriginal Advisory Group,<sup>223</sup> who supported the government’s decision.<sup>224</sup>

## Western Australia

In 2015, the Western Australian Liberal Government under Premier Colin Barnett signed the South West Native Title Settlement agreement with the Noongar people, represented by the South West Aboriginal Land and Sea Council. The settlement agreement, worth \$1.3 billion alongside a package of benefits, contained six Indigenous Land Use Agreements and took

<sup>211</sup> K. Warner et al. (2021) *Pathway to Truth-Telling and Treaty: Report to Premier Peter Gutwein*, November, Hobart, Tasmanian Government, p. 19.

<sup>212</sup> *ibid.*, pp. 9–10.

<sup>213</sup> P. Gutwein, Premier (2022) *Next steps on pathway to Truth-telling and treaty*, media release, 1 March.

<sup>214</sup> Gutwein (2022) *op. cit.*

<sup>215</sup> J. Rockliff, Premier (2022) *Premier Rockliff’s Speech*, media release, 8 April.

<sup>216</sup> Tasmanian Aboriginal Centre (date unknown) ‘*Treaty & Truth Telling*’, Tasmanian Aboriginal Centre website (archived), Wayback Machine Internet Archive, archived 23 February 2023.

<sup>217</sup> *ibid.*

<sup>218</sup> C. Morse (2022) ‘*Tasmanian government holds historic meeting with Aboriginal corporations, with one notable absentee*’, *National Indigenous Times*, 3 August.

<sup>219</sup> L. Lohberger (2023) ‘*Tasmania says it is committed to truth and treaty, but how is it progressing?*’, *ABC News*, 29 May.

<sup>220</sup> Department of Premier and Cabinet (Tas) (2023) *Aboriginal Advisory Group Inaugural Meeting*, media release, 7 February.

<sup>221</sup> Department of Premier and Cabinet (Tas) (2025) *Aboriginal Advisory Group Communique*, media release, 13 May.

<sup>222</sup> J. Gibson & A. Barraclough (2025) ‘*Tasmanian government to fund truth-telling commissioners but drop treaty process*’, *ABC News*, 28 May.

<sup>223</sup> C. Morse (2025) ‘*Tasmanian government’s commitment to Aboriginal Truth-telling and Healing Commission draws mixed response*’, *National Indigenous Times*, 26 June.

<sup>224</sup> C. Morse (2025) ‘*Aboriginal Advisory Group applauds Tasmanian government’s commitment to establish Truth-telling and Healing Commission*’, *National Indigenous Times*, 28 May.

effect from 25 February 2021.<sup>225</sup> The Agreement has been recognised as the ‘most comprehensive Native Title agreement negotiated in Australian history’.<sup>226</sup>

A central condition of the settlement agreement was recognition of the Noongar people through an Act of parliament.<sup>227</sup> The *Noongar (Koorah, Nitja, Boordahwan) (Past, Present, Future) Recognition Act 2016* was subsequently enacted and has been described as ‘Australia’s First Treaty’ by legal academics at the University of NSW.<sup>228</sup>

In 2018, then-Minister for Aboriginal Affairs Ben Wyatt, an Indigenous man and member of the McGowan Labor government elected at the 2017 election, indicated that the government would seek a Voice to parliament in the state, and that it was hoping to progress treaty discussions in WA once the settlement agreement with the Noongar people was finalised.<sup>229</sup>

In 2024, the WA Government indicated that, rather than focusing on treaty negotiations, it was instead working to resolve native title matters by agreement, through ‘genuine, culturally appropriate and enduring partnerships’ with Traditional Owners, and highlighted that three more native title settlement agreements had been reached in the state.<sup>230</sup>

## Other jurisdictions

### Aotearoa / New Zealand

*Te Tiriti o Waitangi*, the Treaty of Waitangi, was created in February 1840 and is one of New Zealand’s founding documents.<sup>231</sup> The Declaration of Independence was signed five years earlier by a group of Māori chiefs brought together by British Resident James Busby, and established Britain as the state’s protector but the Māori as the sovereign power and authority in New Zealand.<sup>232</sup> The Treaty was written in both English and Te Reo Māori and was signed at Waitangi in the Bay of Islands by representatives of the British Crown and Māori Chiefs.<sup>233</sup> New Zealand then became part of the British colony of New South Wales.<sup>234</sup>

The Treaty is considered ‘a broad statement of principles on which the British and Māori made a political compact to found a nation state and build a government in New Zealand’.<sup>235</sup> While promising to enable Māori to continue to live in New Zealand and to protect their culture, the Treaty also gave the Crown the right to govern the country and to represent the interests of all inhabitants.<sup>236</sup> Some divergence exists, however, between the treaty language versions—the Māori text provided (limited) rights of governorship to the Crown, whereas the English text gave full sovereignty to the British Crown. As a result, considerable disagreement persists in terms of the Treaty’s interpretation and the application of its principles.<sup>237</sup>

To address this conflict, the *Treaty of Waitangi Act 1975* was passed to ‘provide for the observance, and confirmation, of the principles of the Treaty’, including through the creation of a Tribunal to make recommendations on claims relating to the practical application of those principles.<sup>238</sup> The subsequent Waitangi Tribunal, a standing commission of inquiry, ‘makes recommendations on claims brought by Māori relating to legislation, policies, actions or omissions of the Crown that are alleged to breach the promises made in the Treaty of Waitangi’.<sup>239</sup> In 1985, the Tribunal gained retrospective jurisdiction to inquire into events

<sup>225</sup> South West Aboriginal Land and Sea Council (date unknown) ‘Settlement Agreement’, SWALSC website.

<sup>226</sup> Government of Western Australia (2025) ‘South West Native Title Settlement’, Government of WA website.

<sup>227</sup> Government of Western Australia (2020) ‘South West Native Title Settlement – Noongar recognition through an Act of Parliament’, Government of WA website.

<sup>228</sup> H. Hobbs & G. Williams (2018) ‘The Noongar Settlement: Australia’s first Treaty’, *Sydney Law Review* 1, 40(1).

<sup>229</sup> R. Hirini (2018) ‘WA announces initiative for Indigenous voice to state parliament’, *NITV News*, 7 June.

<sup>230</sup> S. Boltje (2024) ‘Treaty now or never? Concerns treaties will become ‘political football’ as Aboriginal advocates across the country call for action’, *ABC News*, 10 February.

<sup>231</sup> Brennan et al. (2005) op. cit., p. 95.

<sup>232</sup> Agreements Treaties and Negotiated Settlements (2020) ‘The Treaty of Waitangi’, ATNS website.

<sup>233</sup> *ibid.*

<sup>234</sup> B. Keane (2017) ‘He Whakaputanga – Declaration of Independence’, *Te Ara – the Encyclopedia of New Zealand* website.

<sup>235</sup> New Zealand History (2017) ‘The Treaty in brief’, *Manatū Taonga — Ministry for Culture and Heritage* website.

<sup>236</sup> The University of Melbourne Library (2025) ‘New Zealand Law’, UoM website.

<sup>237</sup> Agreements Treaties and Negotiated Settlements (2020) op. cit.

<sup>238</sup> *Treaty of Waitangi Act 1975* (NZ)

<sup>239</sup> The Waitangi Tribunal (date unknown) ‘The Waitangi Tribunal’, The Waitangi Tribunal website.

dating back to 1840.<sup>240</sup> At the time of its 40th anniversary in 2015, the Waitangi Tribunal had registered over 2,500 claims.<sup>241</sup>

In 2023 and as part of a coalition agreement with the National and New Zealand First parties, ACT Party leader David Seymour introduced the Principles of the Treaty of Waitangi Bill, which sought to redefine the Treaty's legal status, but was ultimately defeated in April 2025 after widespread protests.<sup>242</sup> The government announced a formal review of the Waitangi Act in April 2025, including the operations of the Waitangi Tribunal.<sup>243</sup> The review will also be looking at references to the Treaty of Waitangi principles in other legislation.<sup>244</sup>

## Canada

Indigenous rights, including treaty rights, are recognised and affirmed in Canada's *Constitution Act 1982*, section 35—'Rights of the Aboriginal Peoples of Canada'. Under the Act, the term 'aboriginal peoples' includes the Indian, Inuit and Métis peoples.<sup>245</sup> Two kinds of treaties exist in what is now Canada: historic treaties with First Nations peoples, and modern treaties (also known as comprehensive land claim agreements).<sup>246</sup> Treaties between Indigenous groups and the federal government may also include provinces/territories as parties to the agreement.<sup>247</sup>

### Historic treaties

The British Crown entered into treaties with Indigenous peoples on lands that were then known as the British colonies of North America. Between 1701 and 1923, 70 historic treaties were signed—including the 'Numbered Treaties'. These treaties 'form the basis of the relationship between the Crown and 364 First Nations, representing over 600,000 First Nations peoples in Canada'.<sup>248</sup> Today there is a 'specific claims' process to address past grievances in relation to historic treaties and to manage land and other First Nations assets.<sup>249</sup>

### Modern treaties

In contrast to historic treaties, modern treaties in Canada are 'a distinct expression of reconciliation and a constitutionally entrenched commitment between the Crown and Indigenous partners to build true nation-to-nation, Inuit-Crown, and government-to-government relationships'.<sup>250</sup>

The modern treaty period began in 1973 following the Supreme Court decision in *Calder et al. v. Attorney-General of British Columbia*, which recognised Aboriginal title as a legal right for the first time. The decision led to the first modern treaty signed in 1975, the James Bay and Northern Quebec Agreement. Twenty-seven modern treaties are currently being implemented in Canada.<sup>251</sup>

Since 2023, treaty negotiations in Canada are supported by a Collaborative Modern Treaty Implementation Policy, which was co-developed by the Canadian Government and Indigenous treaty partners.<sup>252</sup> The Federal Government also operates under a Statement of Principles in its approach to modern treaty implementation,<sup>253</sup> and is informed by a Cabinet

<sup>240</sup> *ibid.*

<sup>241</sup> The Waitangi Tribunal (date unknown) 'What is the Waitangi Tribunal?', The Waitangi Tribunal website.

<sup>242</sup> J. Guenzler (2025) 'Māori rights upheld as Treaty Principles Bill is defeated', *National Indigenous Times*, 10 April.

<sup>243</sup> T. Potaka, Māori Development Minister (2025) *Review seeks to improve Waitangi Tribunal*, media release, 9 May.

<sup>244</sup> Ministry of Justice (NZ) (2025) 'Review of legislation including reference to the principles of the Treaty of Waitangi', Ministry of Justice website.

<sup>245</sup> *Constitution Act 1982* (Can), s 35(2).

<sup>246</sup> Government of Canada (2024) 'About treaties', Crown-Indigenous Relations and Northern Affairs Canada website.

<sup>247</sup> Agreements Treaties and Negotiated Settlements (2020) 'Treaties in Canada', ATNS website.

<sup>248</sup> Government of Canada (2024) *op. cit.*

<sup>249</sup> *ibid.*

<sup>250</sup> Government of Canada (2025) 'Modern Treaties', Crown-Indigenous Relations and Northern Affairs Canada website.

<sup>251</sup> *ibid.*

<sup>252</sup> Government of Canada (2023) *Canada's Collaborative Modern Treaty Implementation Policy*, Government of Canada.

<sup>253</sup> Government of Canada (2023) 'Statement of Principles on the Federal Approach to Modern Treaty Implementation', Crown-Indigenous Relations and Northern Affairs Canada website.

Directive that articulates an operational framework for how modern treaty obligations are managed, including by federal departments and agencies.<sup>254</sup>

In October 2024, the government of then-Prime Minister Justin Trudeau introduced a Bill to legislate an independent oversight body headed by a new Commissioner for Modern Treaty Implementation.<sup>255</sup> The Bill lapsed at the conclusion of the 44th Parliament in January 2025, but was reintroduced in September 2025 and second read in October.<sup>256</sup>

### *Other processes*

The province of British Columbia has its own Treaty Commission, which is a tripartite statutory body that facilitates agreements between the federal and provincial governments and participating First Nations.<sup>257</sup> Treaty commissions also exist in Saskatchewan and Manitoba provinces, and these commissions work with First Nations peoples and the Canadian Government on the region's historic treaties.<sup>258</sup>

Additionally, the Canadian Constitution recognises that Indigenous peoples have an inherent right to self-government, and 25 negotiated agreements relating to Indigenous self-government, involving 43 Indigenous communities, are currently in operation.<sup>259</sup>

## *United States of America*

Treaties are central to the relationship between the United States Government and Native American peoples.<sup>260</sup> Under the US Constitution, treaties have the same legal force and effect as the country's federal statutes; they 'bind both the Federal Government and the signing Indian tribe or tribes, and generally constitute recognition of rights to lands and resources, as well as rights to fish, hunt, and gather'.<sup>261</sup>

Between 1774 and 1871, the US Government negotiated approximately 377 treaties with American Indian nations.<sup>262</sup> However, while recognising them as independent and sovereign on their own territories, the courts and Congress denied Indian nations international recognition, thereby seeking to characterise them as dependent and inferior peoples to make acquisition of their lands easier.<sup>263</sup> Representatives of the Native American tribes involved in treaty negotiations were often pressured into signing these agreements,<sup>264</sup> with treaties sometimes used as a way to displace Native Americans from their tribal lands.<sup>265</sup>

The US House of Representatives ceased to recognise individual tribes as independent nations from 1871—effectively ending the country's treaty-making era—though existing treaties remain valid and enforceable.<sup>266</sup> Agreement-making between Native Americans and the government, including the creation of reserves, has continued by other means and with similar legal effect. Nations retain considerable rights relating to education, health, management of taxation, policing, child welfare and natural resources.<sup>267</sup>

<sup>254</sup> Government of Canada (2023) '[Cabinet Directive on the Federal Approach to Modern Treaty Implementation](#)', Crown-Indigenous Relations and Northern Affairs Canada website.

<sup>255</sup> Parliament of Canada (2024) '[An Act respecting the Commissioner for Modern Treaty Implementation](#)', C-77, LEGISinfo website.

<sup>256</sup> Parliament of Canada (2025) '[An Act respecting the Commissioner for Modern Treaty Implementation](#)', C-10, LEGISinfo website.

<sup>257</sup> BC Treaty Commission (2023) '[About Us](#)', BC Treaty Commission website.

<sup>258</sup> Government of Canada (2025) '[Contributions to Support the Negotiation and Implementation of Treaties, Claims and Self-Government Agreements or Initiatives](#)', Crown-Indigenous Relations and Northern Affairs Canada website.

<sup>259</sup> Government of Canada (2024) '[Self-government](#)', Crown-Indigenous Relations and Northern Affairs Canada website.

<sup>260</sup> National Museum of the American Indian (2016) '[Nation to Nation: Treaties Between the United States and American Indian Nations](#)', Smithsonian website.

<sup>261</sup> White House Tribal Nations Conference (2016) '[Memorandum Of Understanding Regarding Interagency Coordination And Collaboration For The Protection Of Tribal Treaty And Reserved Rights](#)', 29 November, p. 2.

<sup>262</sup> National Archives (US) (2025) '[American Indian Treaties: Supporting Documentation](#)', National Archives website.

<sup>263</sup> Brennan et al. (2005) op. cit., p. 83.

<sup>264</sup> J. Williford (2011) '[A Nation of Treaties](#)', *Humanities*, 32(6).

<sup>265</sup> Office of the Historian (date unknown) '[Indian Treaties and the Removal Act of 1830](#)', Office of the Historian, United States Department of State website.

<sup>266</sup> Agreements Treaties and Negotiated Settlements (2020) '[Treaties in the United States of America](#)', ATNS website.

<sup>267</sup> Brennan et al. (2005) op. cit., p. 83.



## Self-governance

Treaties have informed and enabled tribal self-government with an emphasis on self-determination.<sup>268</sup> The *Indian Self-Determination and Education Assistance Act of 1975* sought to '[strengthen] tribal governments and tribal organizations on Indian reservations by emphasizing tribal administration of federal Indian programs, services, functions, and activities, as well as associated funds'.<sup>269</sup> The Act was significantly amended in 1994 by the *Tribal Self-Governance Act*,<sup>270</sup> which is today administered by the Office of Self Governance within the US Bureau of Indian Affairs.<sup>271</sup>

American Indian and Alaska Native tribes have self-government arrangements in place, with 574 tribal entities currently recognised by and eligible for funding and services from the Bureau.<sup>272</sup> Tribal governments and communities are represented by the National Congress of American Indians, which serves as 'a forum for unified policy development among tribal governments', including the protection of treaty rights.<sup>273</sup>

## Recent developments

In 2016, the Obama administration facilitated a Tribal Treaty Rights Memorandum of Understanding, which affirmed the signatory government agencies' commitment to 'protect tribal treaty rights and similar tribal rights relating to natural resources through consideration of such rights in agency decision-making processes and enhanced interagency coordination and collaboration'.<sup>274</sup> The MoU was updated in 2022 by the Biden administration, and further committed signatories to 'early consideration of Tribal treaty rights, reserved rights and similar Tribal rights in federal decision making and regulatory processes'.<sup>275</sup>

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<sup>268</sup> *ibid.*, p. 85.

<sup>269</sup> G. D. Strommer & S. D. Osborne (2015) 'The History, Status, Status, and Future of Tribal Self-Governance Under the Indian Self-Determination and Education Assistance Act', *American Indian Law Review*, 39(1), p. 18.

<sup>270</sup> *ibid.*, p. 34.

<sup>271</sup> U.S. Department of the Interior: Indian Affairs (date unknown) 'Office of Self Governance: Our Mission', Bureau of Indian Affairs website.

<sup>272</sup> Indian Affairs Bureau (2024) *Notice: Indian Entities Recognized by and Eligible To Receive Services From the United States Bureau of Indian Affairs*, U.S. Department of the Interior.

<sup>273</sup> National Congress of American Indians (2025) 'About NCAI', NCAI.

<sup>274</sup> White House Tribal Nations Conference (2016) *op. cit.*

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## Suggested citation

Aroozoo, M., E. Florence, C. Otter, B. Reid, A. Tonkin & A. Wright (2025) *Statewide Treaty Bill 2025*, Parliamentary Library & Information Service, Melbourne, Parliament of Victoria.

## Acknowledgements

The Parliament of Victoria Library acknowledges the Traditional Owners of the lands on which we work and live. We pay our respects to Aboriginal and Torres Strait Islander Elders past and present, and we value Aboriginal and Torres Strait Islander history, culture and knowledge.

The authors would like to thank Debra Reeves for her assistance in the preparation of this paper.

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## Bill Brief

Parliamentary Library & Information Service

ISSN: 2204-4779 (Print) 2204-4787 (Online)