

The Treaty Authority and Australia's First Treaty

My name is Alex Cuthbertson. I am the descendant of white settlers in Australia and a Western-qualified lawyer. I am the General Counsel at the Treaty Authority in Victoria, Australia.

I want to thank David for providing a brief opportunity for me to speak about the work of the Treaty Authority and the status of Treaty in Victoria.

I would also like to acknowledge my colleague, Fiona Ryan, Senior Lawyer at Treaty Authority, who is also attending today.

As many people in this room will know, Australia is the only British colony in relation to which the British did not negotiate a Treaty with its First Peoples on colonisation, and the fiction of terra nullius prevailed until overturned by the Australian High Court in the Mabo decision in 1992.¹

The Australian Government first committed to a Treaty with First Peoples in 1988, but since then, there has been no real progress at a national level. As many of you may know, the failed constitutional "Indigenous Voice" referendum in 2023 has set back further progress at a national level.

The Victorian State Government began its journey toward Treaty in 2016 with the establishment of the Aboriginal Treaty Working Group, and now, almost a decade later, the first Stateside Treaty has been agreed, with a bill currently before the Victorian Parliament and due to be debated next week.²

This is a historic moment for colonial settler and First Peoples' relations in Australia. Almost 250 years after colonisation began, this is the first Treaty negotiated between an Australian government and Australia's First Peoples. This Treaty marks a new chapter in the relationship between First Peoples and the State of Victoria.

The Treaty Authority

The Treaty Authority was created at the end of 2023 and is led by five First Peoples Members.³

The Treaty Authority is a unique institution. It was created by agreement between the State of Victoria and the First Peoples' Assembly of Victoria⁴ – a democratic body

¹ *Mabo v Queensland (No 2)* [1992] HCA 23; (1992) 175 CLR 1.

² Statewide Treaty Bill 2025, <<https://www.legislation.vic.gov.au/bills/statewide-treaty-bill-2025>>.

³ See <<https://treatyauthority.au/about-us/meet-the-members-and-engagement-team/>>.

⁴ "Treaty Authority Agreement" (7 June 2002) <www.firstpeoplesvic.org/reports-resources/treaty-authority-agreement/>. See also, the Treaty Authority and Other Treaty Elements Act 2022 <<https://legislation.vic.gov.au/in-force/acts/treaty-authority-and-other-elements-act-2022/002>>.

elected by Traditional Owners living in Victoria to represent them in Statewide Treaty negotiations.

The Treaty Authority is the independent body overseeing Treaty Negotiations in Victoria. It currently has four roles:

1. Facilitating and overseeing Treaty negotiations;
2. Administering the Treaty Negotiation Framework (the rule book for Treaty-making in Victoria);⁵
3. Providing for the resolution of disputes in Treaty Negotiations in accordance with the Framework; and
4. Carrying out research to support Treaty negotiations and the administration of the Framework.

Under the Statewide Treaty, the Treaty Authority's dispute resolution function will expand to include the resolution of disputes arising under or in connection with the Statewide Treaty.⁶

Self-determination and empowerment are the central principles for Treaty-making and inform everything the Treaty Authority does.

The Treaty Authority's work is guided by its values of fairness, responsibility, honour and connection.

Importantly, in performing its functions, the Treaty Authority must use its best endeavours to observe and uphold Aboriginal Lore, Law and Cultural Authority. In this way, the Treaty Authority plays a vital role in bringing together two systems of law – Western or government law and Aboriginal Lore, Law and Cultural Authority.

In addition to my role as General Counsel, the Treaty Authority has appointed both male and female Cultural Counsel. The Cultural Counsel support the Treaty Authority to build its knowledge, understanding and respect for Aboriginal law, governance systems, kinship structures, cultural protocols and obligations. They bring cultural knowledge, lived experience, and leadership to the Treaty Authority to ensure cultural protocols and values guide its work, and that its engagement with First Peoples is culturally informed. I feel very privileged, as a Western law-qualified General Counsel, to be working alongside and to have the benefit of learning from Cultural Counsel.

⁵ "Treaty Negotiation Framework" (20 October 2022), <<https://firstpeoples.vic.org/reports-resources/treaty-negotiation-framework/>>.

⁶ "Statewide Treaty between First Peoples' Assembly of Victoria Ltd and The State of Victoria", <<https://content.vic.gov.au/sites/default/files/2025-9/Negotiated-Statewide-Treaty-Subject-to-assent-05092205.pdf>>, see Schedule A.

Dispute Resolution Role

The process for resolving disputes in Treaty negotiations is set out in Part I of the Framework. The Treaty Authority has also issued a *Public Guide: Finding Common Ground to Resolve Disputes*.⁷ This Public Guide provides practical information on the Treaty Authority's process for 'finding common ground' in disputes.

The Treaty Authority Members' role has sometimes been referred to as quasi-judicial. However, Treaty Authority Members have limited power to make binding determinations. The Members' role is primarily that of a facilitator, bringing the parties together to assist them in reaching common ground in a culturally safe and appropriate way.

Treaty Authority Members use a dilly bag of culturally strong tools and protocols to support the parties to find common ground, starting with yarning circles or facilitated discussions. They can also engage experts to provide opinions, engage in mediation, make recommendations and, in limited circumstances, as a matter of last resort, make a determination.

As I said earlier, self-determination and empowerment are the central principles for treaty-making. The Treaty Authority will only make a determination if the parties have been unable to reach an agreement in other ways, and it is clear that the dispute cannot otherwise be resolved.

The Treaty Authority is just at the beginning of this journey, and we are looking to the experience here in Aotearoa New Zealand, in Canada, and elsewhere to guide us and help us build strong, resilient and effective processes.

In particular, we are looking to build processes that are focused on healing to try to address the devastating impacts of colonisation on First Peoples.

The Statewide Treaty

As I mentioned earlier, the Statewide Treaty has been negotiated between the State of Victoria and the First Peoples' Assembly, and the Statewide Treaty Bill 2025 is currently before the Victorian Parliament.⁸

This is the first Treaty ever negotiated with Australia's First Peoples, almost 250 years after colonisation.

⁷ "Public Guide: Finding Common Ground to Resolve Disputes", <https://treatyauthority.au/resource/guide-for-first-peoples-finding-common-ground-to-resolve-disputes/>.

⁸ Statewide Treaty Bill 2025, <<https://www.legislation.vic.gov.au/bills/statewide-treaty-bill-2025>>. The Bill was passed by the Victorian Parliament on 30 October 2025 and received Royal Assent on 13 November 2025.

It is important to note that, under the Treaty Negotiation Framework, there are two types of Treaties. First, Statewide Treaty, which is negotiated between the State of Victoria and the First Peoples' Assembly of Victoria. Statewide Treaty covers statewide matters that affect all First Peoples living in Victoria. Secondly, Traditional Owner Treaties, which are negotiated between the State of Victoria and local Traditional Owners about their aspirations and priorities for Country, including their traditional lands and waters. Traditional Owner Treaties will address matters important to Traditional Owners in their local areas.

The Statewide Treaty Bill, when passed, will establish a new entity, Gellung Warl⁹ as the permanent representative and deliberative body for First Peoples in Victoria. Gellung Warl will have three main parts:

- **First Peoples' Assembly of Victoria**, consisting of democratically elected members, to inform Parliament and the Victorian Government on matters that affect First Peoples.
- **Nginma Ngainga Wara**,¹⁰ to implement the commitment under the National Agreement on Closing the Gap to establish an independent accountability mechanism and improve outcomes for First Peoples.
- **Nyerna Yoorrook Telkuna**,¹¹ to continue the Truth-telling and healing process commenced by the Yoorrook Justice Commission, to support ongoing education, healing and reconciliation.

Gellung Warl's functions will include:

1. the ability to make decisions and rules about specific matters that directly impact First Peoples. This will include, for example, the ability to determine Aboriginality;
2. the ability to hold government and publicly funded bodies to account for the promises they make to First Peoples, to hold public hearings, ask questions of Ministers, conduct system-wide inquiries and run program-level evaluations;
3. a requirement that the Assembly is consulted by government departments on laws and policies affecting First Peoples;
4. an ability to make certain statutory appointments for existing First Peoples' roles on statutory bodies, such as the Heritage Council of Victoria; and
5. developing a First Peoples' Institute to enhance First Peoples' leadership capability.

⁹ Gellung Warl means 'tip of the spear' or 'pointed spear' in Gunaikurnai language.

¹⁰ Nginma Ngainga Wara means 'you will do' in Wadi Wadi language.

¹¹ Nyerna Yoorrook Telkuna mean 'to sit, to listen, to hear, to remember' (Nyerna), 'to truth' (Yoorrook), 'to heal' (Telkuna) in Wamba Wamba/Wemba Wemba language.

As I said before, this is a historic moment in colonial–First Peoples relations in Australia.